U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37614275

Date: APR. 15, 2025

Appeal of Service Center Operations (SCOPS) Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

Service Center Operations (SCOPS) denied the petition, concluding the Petitioner had not established that he met the initial evidence requirement for this classification through evidence of either a one-time achievement or that he meets three of the alternative evidentiary criteria under 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, SCOPS determined that the Petitioner fulfilled only one of the initial evidentiary criteria, published material at 8 C.F.R. § 204.5(h)(3)(iii).[1] On appeal, the Petitioner maintains that he meets five evidentiary criteria, which will be discussed below.[2]

A. Published Material

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation." We withdraw SCOPS's determination that the Petitioner satisfies this criterion.

The Petitioner offered an article in [redacted] entitled "[redacted]"; an article in [redacted] entitled "[redacted]"; an article in [redacted] entitled "[redacted]"; and an article in [redacted] entitled "[redacted]" but these articles are not about the Petitioner. The language of this criterion requires "[p]ublished material

[1] Although SCOPS determined that the Petitioner satisfied the published material criterion, the record does not support this conclusion. We will address this issue in the next section.

[2] In his appeal brief, the Petitioner does not contest SCOPS's findings that he did not meet the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii) and therefore he has not overcome SCOPS's determination on this issue. We consider the Petitioner's prior eligibility claims not raised or contested on appeal to be abandoned. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

about the alien." *See, e.g., Negro-Plumpe v. Okin*, No. 2:07-CV-820-ECR-RJJ, 2008 WL 10697512, at *3 (D. Nev. Sept. 9, 2008) (upholding a finding that articles regarding a show are not about the actor). In addition, the author of the latter two articles was not identified as required by this criterion. *See Javakhadze v. Mayorkas*, No. 3:21-CV-00617-E, 2023 WL 8037730, at *6 (N.D. Tex. Nov. 20, 2023) (upholding articles did not contain the required authors).

The record also includes screenshots from SimilarWeb regarding visitor traffic for [redacted] and [redacted] For example, the SimilarWeb "Traffic & Engagement" information for [redacted] listed "Total visits" from August 2024 at "7.485M," a "Global rank" of "13,240," a "Country rank" of "660," and an "Industry rank" of "53." The Petitioner, however, did not establish the significance of these statistics, showing that the aforementioned websites represent major trade publications or other major media.[3] *See Branski v. Seng*, No. 24-CV-360, 2024 WL 4678939, at *5 (E.D. Wis. Nov. 4, 2024) (indicating that the failure to provide context to circulation figures makes it difficult to assess their significance).

Given the above, the Petitioner has not established that he meets this criterion.

B. Original Contributions

The regulations at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." In order to satisfy this criterion, a petitioner must establish that not only has he made original contributions, but that they have been of major significance in the field.[4]

As evidence under this criterion, the Petitioner submitted an article he coauthored, entitled [redacted]. The Petitioner, however, has not shown that his article has provoked widespread commentary on its importance from others working in the field, has remarkably impacted or influenced his field, has been highly cited relative to others' work in the legal field, or has otherwise risen to a level of major significance in the field. He also provided media coverage relating to his criminal defense cases from [redacted] and [redacted] but the Petitioner has not shown that these articles reported on his original contributions of major significance in the field of law or that the level of media attention received by his criminal defense work is otherwise indicative of majorly significant contributions in the field.

In addition, the Petitioner provided letters of support from colleagues in the field discussing his capabilities as a lawyer and work experience. SCOPS considered these letters, but found that they were not sufficient to demonstrate that the Petitioner's work constituted original contributions of major significance in the field.

In his appeal brief, the Petitioner asserts that he "provided several letters of support that detail his scholarly and business-related contributions in the legal field." These letters discussed the Petitioner's

[3] *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2 (indicating that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).
[4] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

legal knowledge and experience as an attorney, but their statements do not demonstrate the originality of his work and its major significance in the field. As discussed below, the reference letters do not offer sufficiently detailed information, nor does the record include adequate corroborating documentation, to show the nature of specific "original contributions" that the Petitioner has made to the field that have been considered to be of major significance.[5]

For example, G-C-O-F-, a member of the [redacted], asserted that the Petitioner "is a very active attorney in the whole State of Parana, as well as in other states of Brazil and that he stands out because he is extremely committed to his job." G-C-O-F- further stated that the Petitioner's "success is remarkable because besides being very requested in the most diverse demands in our region, he always seeks to act with excellence, offering the best work to his clients," but he does not offer specific examples of how the Petitioner's original work has influenced the field of law to the extent it is of major significance in the field.

In addition, G-L-B-, [redacted] for the [redacted] indicated that he worked with the Petitioner "in the process before the Criminal Court of [redacted], Parana State. In this same lawsuit, [the Petitioner] was absolutely successful in getting a favorable decision from the Superior Court of Justice, and at the end of the process, he was 100% successful in getting positive results for his client." While G-L-B- further noted that the Petitioner "develops his work in the entire State of Parana, including making oral sustaining before the Superior Courts, thus obtaining relevance to the Brazilian legal practice," the record does not include sufficient information or supporting evidence demonstrating that the Petitioner's legal work has affected his field in a substantial way or otherwise constitutes original contributions of major significance in the field.

Furthermore, J-V-C-G-, a Judge of the Criminal Court of the Municipality of [redacted] State of Parana, asserted that the Petitioner "is a very active attorney in this county of [redacted], Parana, and he stands out for his professionalism in the way he exercises in his office. His success is remarkable because besides being very requested in the most diverse demands in our region, he always seeks to act with excellence, offering the best work to his clients." J-V-C-G-, however, does not offer specific examples of how the Petitioner's legal work has influenced the field or otherwise rises to the level of original contributions of major significance in the field.

Likewise, N-S-J-, [redacted] of the [redacted], stated:

> During more than 10 years that [the Petitioner] has been developing his work, no ethical or disciplinary infraction has ever been reported. Therefore, it is public knowledge that the lawyer [the Petitioner] is a very active defender in the whole State of Parana, as well as in other states in Brazil, and he stands out for being an excellent professional and committed to his work.
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> [The Petitioner] is a high level of expertise and a hardworking person. He is always ready to face challenges and seeks innovative solutions to problems of the most diverse nature. He is endowed with critical thinking and does not give up on the most complicated obstacles.

[5] While we discuss a sampling of these letters, we have reviewed and considered each one.

While N-S-J- is complimentary of the Petitioner's professionalism and dedication to his legal work, he does not identify the Petitioner's specific original contributions or explain how they equate to contributions of major significance in the field. Without sufficient information and evidence demonstrating that his work constitutes original contributions of major significance in the field, the Petitioner has not established that he meets this criterion.

C. Authorship

The regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

The Petitioner submitted an article he coauthored, entitled '[redacted]' This article is available at [redacted] but SCOPS determined the article was not scholarly. As defined in the academic arena, a scholarly article reports on original research, experimentation, or philosophical discourse.[6] It is written by a researcher or expert in the field who is often affiliated with a college, university, or research institution.[7] Scholarly articles are also generally peer reviewed by other experts in the field of specialization.[8] In general, it should have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts expressed in the article.[9] For other fields, a scholarly article should be written for learned persons in that field. ("Learned" is defined as "having profound knowledge gained by study").[10] Learned persons include all persons having profound knowledge of a field.[11] The Petitioner's appeal brief does not contest SCOPS's determination on this issue or specifically identify any erroneous conclusion of law or statement of fact relating to SCOPS's analysis. Nor does the appeal brief even reference SCOPS's discussion regarding this criterion.

In addition, the Petitioner has not demonstrated that Investidura.com is a professional publication or major media. In evaluating whether a submitted publication is a professional publication or major media, relevant factors include the intended audience (for professional journals) and the circulation or readership relative to other media in the field (for major media).[12] Here, the Petitioner has not shown that the intended audience for [redacted] is indicative of a professional publication. Nor has he demonstrated that its circulation or readership rises to the level of major trade publications or other major media. While the record includes SimilarWeb website traffic data for [redacted] listing "Total visits" from August 2024 at "29,447," a "Global rank" of "1,219,236," a "Country rank" of "65,031," and an "Industry rank" of "10,567," the Petitioner did not establish the significance of these statistics, showing that the website is a major trade publication or other form of major media. Accordingly, the Petitioner has not established he satisfies this criterion.

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[6] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*

D. Role

The regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation."

To qualify under this criterion, a petitioner must show that they performed in a leading or critical role for an organization, establishment, or a division or department of an organization or establishment. For a leading role, USCIS looks at whether the evidence establishes that the person is (or was) a leader within the organization or establishment or a division or department thereof.[13] A title, with appropriate matching duties, can help to establish that a role is (or was), in fact, leading.[14] For a critical role, USCIS looks at whether the evidence establishes that the person has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities or those of a division or department of the organization or establishment.[15] A petitioner must also demonstrate that the organization or establishment, or the department or division for which they hold or held a leading or critical role, has a distinguished reputation.[16] Merriam-Webster's online dictionary defines "distinguished" as "marked by eminence, distinction, or excellence" or "befitting an eminent person."[17]

The Petitioner maintains on appeal that he has performed in a leading or critical role for A-P-T- and his law firm, C-G-I-P-. The Petitioner, however, has not presented evidence showing that these organizations have a distinguished reputation. While the Petitioner asserts that they are "distinguished organizations," he does not point to any corroborating evidence in the record showing their eminence, distinction, or excellence. Because the documentation in the record does not establish the distinguished reputation of A-P-T- or C-G-I-P-, the Petitioner has not demonstrated that they meet the requirements of this criterion. Since this issue is dispositive, we decline to reach and hereby reserve the appellate arguments regarding whether the Petitioner has performed in a leading or critical role for these organizations. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). The Petitioner therefore has not established that he meets this criterion.

E. Salary

The regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. For this criterion, USCIS determines whether the person's salary is high relative to the compensation paid to others working in the field.[18]

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[13] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*

The Petitioner submitted his "Receipt of Filing of Annual Income Tax Return" for "fiscal year 2023/calendar year 2022" listing his taxable earnings. At that time, the Petitioner was working as a partner in a Brazilian law firm (C-G-I-P-).[19] He also provided a 2024 "Salary Calculator Report" from Salaryexpert.com listing the mean salary for a "Lawyer in Brazil."[20] The Petitioner, however, did not submit the proper comparative data based on those performing similar services in the field. Specifically, his position of law firm partner indicates a higher job classification than a lawyer. Furthermore, the Petitioner's own job description and the letters from his partners list further job duties and responsibilities than a lawyer, justifying a more managerial position. The Petitioner has not shown that he received a high salary in relation to other law firm partners rather than other lawyers. In addition, SCOPS's decision noted that the Salaryexpert.com data (2024) is not based on the year that the Petitioner earned the income in Brazil (2022).

To meet this criterion, the Petitioner must present evidence showing that he has earned a high salary or other significantly high remuneration in comparison with those performing similar services in the field. Both precedent and case law support this application of 8 C.F.R. § 204.5(h)(3)(ix). *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field*); Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Here, the Petitioner has not established that he has commanded a high salary or other significantly high remuneration for services in relation to others in the field. Accordingly, he has not established that he fulfills this criterion.

In this case, the Petitioner has not demonstrated that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

III. CONCLUSION

The Petitioner has not established he satisfies the criteria relating to memberships, published material, original contributions, authorship, leading or critical role, and high salary. Because the Petitioner's inability to fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3) is dispositive of his appeal, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. We therefore reserve this issue.[21]

Nevertheless, we have reviewed the record in the aggregate, concluding it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already

[19] Letters from his law firm partners stated that his responsibilities included acquisition of new customers, conducting consultations with customers and suppliers, interviewing and hiring new lawyers and employees, administrative control, oversight of receipts and payments, and supervision of contracted lawyers.

[20] Regarding using a mean salary comparison, this criterion requires the Petitioner to offer evidence showing that he has commanded a "high salary or other significantly high remuneration" relative to others in the field and not just a salary that is above average in his field.

[21] *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. at 954 (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). Here, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.