U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37689365

Date: APR. 16, 2025

Appeal of Service Center Operations Directorate (SCOPS) Decision

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

The Petitioner is a tattoo artist who 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.

SCOPS denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner had a major, internationally recognized award, nor did he demonstrate that he met at least three of the ten regulatory criteria. The matter is now before us on appeal under 8 C.F.R. § 103.3. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The alien enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The alien's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. The term "extraordinary ability" refers only to those 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-step analysis. In the first step, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that

meets at least three of the ten criteria 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 move to the second step to 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, 1121 (9th Cir. 2010) (discussing a two-step 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 Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

A. Evidentiary Criteria

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). Before SCOPS, the Petitioner claimed he met eight of the regulatory criteria. SCOPS decided that the Petitioner did not satisfy any of the claimed criteria. On appeal, the Petitioner maintains that he meets the requirements relating to five evidentiary criteria as he abandoned any claims to the following criteria: contributions of major significance, display of his work, and his performance in a leading or critical role. After reviewing all the evidence in the record, we conclude the Petitioner has not established he qualifies for this restrictive immigrant classification.

1. "Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." 8 C.F.R. § 204.5(h)(3)(i).

This criterion contains several evidentiary elements, all of which must be met to satisfy the regulation. According to the plain language of the regulation the evidence must establish: (1) the alien is the recipient of the prizes or the awards; (2) those accolades are nationally or internationally recognized; and (3) each prize or award is one for excellence in the field of endeavor.

The Petitioner provided multiple photographs of claimed awards that were accompanied by what appears to be his self-created captions. He also submitted an article that briefly mentions him and his placement in a competition from what appears to be a publication titled *The Backstage*. However, because the Petitioner did not offer any additional information relating to this publication, SCOPS determined that he did not meet this criterion's requirements.

On appeal, the Petitioner contests SCOPS's determination noting USCIS policy does not require the awards to be widely known outside his field. But the evidence the Petitioner provided before SCOPS is the same he offers on appeal, and it does not illustrate any of the awards are nationally or internationally recognized within his field. The record lacks evidence demonstrating the single article from *The Backstage* demonstrates his awards are of the type mandated by this criterion. National and international recognition results through the awareness of the accolade in the eyes of the field nationally or internationally. USCIS policy speaks to this issue stating:

Examples of qualifying awards may include, but are not limited to:

- Certain awards from well-known national institutions or well-known professional associations.

See generally 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual. We highlight two important qualifiers within that bullet point: (1) certain awards; and (2) well-known.

The term "certain awards" in the Policy Manual may refer to the top prizes or honors from a nationally or internationally recognized competition or institution. In some cases, receiving such a top award may be enough to meet the requirements of this criterion. However, the applicant must provide evidence showing that the competition or institution is well known in the field. This recognition should be evident through specific means; for example but not limited to, national- or international-level media coverage. The record lacks sufficient material relating to the entities or competitions that issued the awards in the photographs.

Because the Petitioner has not submitted evidence to corroborate his claims, he has not met the plain language requirements of this criterion.

2. "Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." 8 C.F.R. § 204.5(h)(3)(ii).

This criterion contains several evidentiary elements the Petitioner must satisfy. First, the Petitioner must demonstrate that he is a member of an association in his field. Second, the Petitioner must demonstrate both of the following: (1) the associations utilize nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements are outstanding, and (2) the associations use this outstanding determination as a condition of eligibility for prospective membership.

The Petitioner claimed one membership with the Alliance of Professional Tattooists, Inc. (APT). SCOPS determined that the Petitioner did not meet the requirements of this criterion as he did not show APT requires outstanding achievements, nor do they use recognized national or international experts to determine which individuals qualify for membership.

The Petitioner makes several arguments on appeal (e.g., SCOPS didn't consider the nature of the organization, excellence within a profession can be measured by the role of the organization plays in maintaining high professional standards and its work to regulate the industry) and he identifies several non-precedent decisions he claims this office has issued over the last decade along with decades-old federal district court decisions.

Directly relating to the Petitioner's arguments, none of those demonstrate APT membership meets this criterion's plain language requirements. He has not shown the organization used nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements are outstanding, nor did he establish the associations utilize that outstanding determination as a condition of eligibility for prospective membership. The materials the Petitioner provided do not satisfy this criterion's requirements and he must demonstrate the evidence meets the

plain language requirements. *See Kumar v. USCIS*, No. CV RDB-23-2251, 2024 WL 1374794, at *5 (D. Md. Apr. 1, 2024) (noting that a foreign national's documentation is insufficient where it does not show the organization mandates outstanding achievements and the use of recognized national or international experts to determine which individuals qualify for membership).

He also did not provide a copy of any of the cited non-precedent decisions from this office to verify his characterization of each case was accurate. And for the federal district court cases, in contrast to the broad precedential authority of the case law of U.S. circuit courts, we are not bound to follow the published decision of a U.S. district court in matters arising even within the same district. *Matter of Duarte-Gonzalez*, 28 I&N Dec. 688, 690 n.2 (BIA 2023) (citing *K-S-*, 20 I&N Dec. 715, 719–20 (BIA 1993)). Although we find a district judge's reasoning useful for consideration in our analysis, we are not required to follow it as a matter of law. *Id.*

Even considering that, we do not agree with the Petitioner's contentions of what the district court decided relating to the membership criterion. In *Muni v. INS*, 891 F. Supp. 440 (N.D. Ill. 1995), the Petitioner claims the court "demonstrated that he was part of a soccer association, and the court ruled that a highly competitive selection process was not necessary if membership demonstrated excellence in the field." We were unable to find support for the Petitioner's position within the *Muni* opinion and he does not quote nor offer a pinpoint citation to the portion of the opinion in which he derived his statement. The Petitioner has not shown the *Muni* opinion supports his claims under the membership criterion.

He also cites to *Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713–14 (9th Cir. 2011), but that opinion does not refer to the membership criterion so we will not address the Petitioner's arguments any further here.

Ultimately, the Petitioner has not submitted evidence that meets the regulation's plain language requirements.

3. "Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." 8 C.F.R. § 204.5(h)(3)(iv).

This criterion requires not only that the Petitioner was selected to serve as a judge, but also that he is able to produce evidence that he actually participated as a judge. Additionally, these duties must have been directly judging the work of others in the same or an allied field in which the Petitioner seeks an immigrant classification within the present petition. The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion as he failed to demonstrate his employment included judging the work of others.

As his qualifying claim, the Petitioner stated his role in evaluating, selecting, and training tattoo artists ensured that the most skilled and committed artists joined his employer's team. His evidence consisted of a letter from [redacted] SCOPS determined that the Petitioner did not meet the requirements of this criterion noting the Petitioner's evidence did not show this letter was in any way associated with his employer where he apparently assisted in the hiring process.

On appeal, the Petitioner indicates that SCOPS disregarded the way the tattoo industry operates and how the evaluation of artistic works occurs within that field. The Petitioner did not submit any evidence to corroborate this assertion. Unsupported assertions and speculation have little evidentiary value and are insufficient to establish a filing party has satisfied their burden of proof; such assertions do not even make a prima facie eligibility showing. *See Matter of Mariscal-Hernandez*, 28 I&N Dec. 666, 673 (BIA 2022); *see also Matter of Azrag*, 28 I&N Dec. 784, 787 (BIA 2024).

Here again, the Petitioner cites to several authorities that do not contain the findings he alleges. For instance, *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799 (AAO 2012) was about a culturally unique nonimmigrant classification and does not bear any similarities to this criterion's requirements. He also offered what appear to be several nonprecedential decisions from this office without providing a copy of the decision or using a naming convention that would enable us to locate the referenced material. And finally, he again cited to the *Muni* opinion, but that court did not address this criterion or its requirements.

Aside from the Petitioner's own assertions that carry little evidentiary value in these proceedings, the primary form of evidence he relies on is from a person that he has not shown bears any connection to his former employer. As a result, it too bears diminished evidentiary value and falls short of meeting his burden of proof. Even setting aside that the Petitioner has not provided adequate evidence from the former employer in which he claims he performed in the role of judging the work of others in the field, the Petitioner's incidental evaluative responsibilities do not establish that he served in a capacity, either individually or on a panel, as "a judge" of the work of others.

The letter from [redacted] vaguely referenced that the Petitioner has a sensitivity to others' competencies and mentioned his involvement in the selection process at [redacted] but it does not describe exactly what he performed within that process. To qualify under this criterion, the record should demonstrate precisely what the alien did in the role that might constitute judging the work of others in the field. *See Negro-Plumpe v. Okin*, No. 2:07-CV-820-ECR-RJJ, 2008 WL 10697512, at *4 (D. Nev. Sept. 9, 2008). As it stands, the Petitioner has not even adequately demonstrated that he worked for [redacted] which he must first establish before he may claim any alleged judging role he may have performed for the company.

The evidence in the record does not satisfy the plain language requirements of this criterion.

4. We Reserve the Remaining Claimed Criteria

We conclude that although the Petitioner claims he meets more than three criteria, because his arguments fail on any criterion discussed above, that means through the remaining two criteria he claims on appeal, he cannot numerically meet the required number of criteria, and it is unnecessary for us to make a decision on these additional grounds. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve the remaining issues. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also Matter of Larios-Gutierrez De Pablo & Pablo-Larios*, 28 I&N Dec. 868, 877 n.8 (BIA 2024) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). It is also unnecessary that we provide the type of final merits determination

referenced in *Kazarian*, 596 F.3d at 1119–20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those progressing toward that goal. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown the significance of their work is indicative of the required sustained national or international acclaim or that 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). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an alien 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.