U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42098412

Date: APR. 16, 2026

Appeal of Service Center Operations Decision

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

The Petitioner seeks classification on behalf of the Beneficiary 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 record did not establish that the Beneficiary had a major, internationally recognized award, nor did it demonstrate that he met at least three of the ten regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). The matter is now before us on appeal. 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,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(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 two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate 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 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. at 376.

II. ANALYSIS

The Beneficiary is the co-founder and head of product of a technology company in [redacted], California. Because the Petitioner has not indicated or established that the Beneficiary received a major, internationally recognized award, the Petitioner must establish that the Beneficiary satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). SCOPS determined the Beneficiary satisfied two of the ten criteria listed in the regulations relating to leading or critical role and high salary. On appeal, the Petitioner asserts the Beneficiary meets the evidentiary criteria relating to awards, memberships, published materials, and authorship. For the reasons discussed below, the Petitioner does not demonstrate that the Beneficiary meets at least three categories of evidence. [1]

A. Awards

The regulation at 8 C.F.R. § 204.5(h)(3)(i) calls for "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." We first determine whether the alien is the recipient of prizes or awards, and then whether the award is nationally or internationally recognized and was granted based upon excellence in the alien's field of endeavor. *See generally 6 USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual.

[1] While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety.

The Petitioner claims eligibility for this criterion based on the Beneficiary achieving over $35 million in venture capital funding as the co-founder of [redacted] (operating as [redacted]) and [redacted]. The Petitioner provided two Simple Agreements for Future Equity between [redacted] and [redacted] and [redacted], totaling $3.5 million. The record also includes letters from the chief executive officer (CEO) of [redacted] and the chief technology officer of [redacted] stating that [redacted] has received venture capital funding from numerous companies, along with information about these companies. In response to SCOPS' request for evidence, the Petitioner cited an unpublished district court decision, *Zizi v. Cuccinelli*, 2021 WL 2826713 (N.D. Cal 2021), which found that we were arbitrary and capricious in concluding that venture capital funding did not satisfy the lesser prizes or awards criteria. We note that in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before us; however, the analysis does not have to be followed as a matter of law. *Id.* at 719.

According to *USCIS Policy Manual*, the description of this type of evidence in the regulation indicates that the focus should be on the person's receipt of the awards or prizes, as opposed to the employer's receipt of the awards or prizes. *See generally 6 USCIS Policy Manual* F.2(B)(1). Although the evidence shows that [redacted] received funding from [redacted] and [redacted], the Petitioner does not demonstrate that the Beneficiary received the venture capital funding consistent with this regulatory criterion.

Moreover, the Petitioner does not establish that receiving venture capital funding qualifies as a prize or award. In support, the Petitioner submitted an archived screenshot from USCIS' website entitled, "Understanding O-1A Requirements," which is not relevant in this proceeding. Assuming that venture capital could be considered a prize or award, this would not mean that any and all venture capital, from whatever source, is a nationally or internationally recognized prize or award. Although the Petitioner provided articles about the companies and printouts from the companies' website, the Petitioner does not sufficiently explain or show how the evidence demonstrates the national or international recognition of the specific venture capital funding from [redacted] and [redacted] as a prize or award for excellence in the field.

Accordingly, the evidence does not demonstrate that the Beneficiary meets this criterion.

B. Memberships

The regulation at 8 C.F.R. § 204.5(h)(3)(ii) calls for "documentation of the alien's membership in associations in the field for which classification is sought." In addition, the association must require "outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." Once membership in a qualifying association has been established, we determine whether the association requires those at the alien's level of membership to have attained outstanding achievements in the field. *See generally 6 USCIS Policy Manual* F.2(B)(1).

The Petitioner claims eligibility for this criterion based on the Beneficiary's membership with the [redacted]. The record includes a letter from the co-founder and chief operating

officer of [redacted] and printouts from their website. The letter confirms that the Beneficiary has been a member of [redacted] since 2024. In addition, the letter states that [redacted] "is an invitation-only organization" and "admission is limited to the highest quality members of the technology community." Moreover, the letter and website printouts indicate that the applicant must be a senior level technology executive with a company that has at least one million dollars in annual revenue and/or at least one million dollars in funding and that the applicant will be vetted by a selection committee comprised of founders, partners, and CEOs of technology companies. Neither the website nor the Petitioner provide information about the vetting process. Here, the Petitioner has not shown the requirements for membership with [redacted] reflect outstanding achievements. For instance, the Petitioner does not establish that being a "senior level technology executive," and having at least one million dollars in revenue signifies outstanding achievements consistent with this regulatory criterion. Moreover, the Petitioner does not demonstrate that [redacted] selection committee is comprised of recognized national or international experts in the field.

Therefore, based on the above, the Petitioner does not establish the Beneficiary's eligibility for this criterion.

C. Published Materials

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." These materials must include "the title, date, and author of the material, and any necessary translation." *Id.* The published material should be about the alien and their work, rather than the alien's employer and its work (or about an organization and its work). Professional or major trade publications may be identified by their intended audience, while other major media and major trade publications should have elevated circulation or readership relative to other media in the field. *See generally 6 USCIS Policy Manual*, at F.2(B)(1).

With the initial petition, the Petitioner submitted three publications from *36kr*, *OMR*, and *Greek Park*. While the articles include the title, date, and author of the publication, they do not mention the Beneficiary. Rather, the articles briefly mention the [redacted], and his applications, [redacted] and [redacted]. Thus, the Petitioner has not established that the material is about the Beneficiary and his work.

Moreover, the Petitioner has not demonstrated that any of the publications qualify as professional or major trade publications or other major media. The Petitioner provided *Similarweb* printouts for all three publications, which indicate "Total visits" of 4.2 million for *36kr*, 417.3 thousand for *OMR*, and 310.5 thousand for *Geek Park* in September 2024. However, the Petitioner has not explained how these statistics support a determination that the publications qualify as "major media" by having high circulations or distributions relative to other online publications. Evidence of published material in major media publications about the individual should establish that the circulation (online or in print) or viewership is high compared to other statistics and identify the intended audience. *Id.* Here, the record does not contextualize those statistics, indicate their significance, or elaborate on how that information could establish that the websites are the type of major media contemplated by 8 C.F.R. §

204.5(h)(3)(iii). Moreover, given the lack of information regarding the intended audience of the publications, the record does not establish that they are professional or trade publications.

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

D. Authorship

The regulation at 8 C.F.R. § 204.5(h)(3)(vi) calls for "evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." In academia, a scholarly article reports on original research, experimentation, or philosophical discourse, is generally peer reviewed, and may be published in professional or scientific journals or conference presentations. In other fields, a scholarly article should be written for others having profound knowledge in the field. *Id.*

To determine whether the publication qualifies as a professional or major trade publication or other major media, we consider such relevant factors as the circulation or readership relative to other media in the field and the intended audience (for professional journals). *Id.*

In support, the Petitioner submitted an article entitled "[redacted]" published in [redacted]. While [redacted] is a major media publication, the record does not establish the Beneficiary's writing as a scholarly article as considered in the academic arena. It lacks footnotes, endnotes, or bibliographies and does not demonstrate its pre-publication review by experts in the field of technology entrepreneurship. For other fields, a scholarly article should be written for learned persons in that field. *Id.* Learned persons include all persons having profound knowledge of a field. *Id.* Here, the Petitioner also does not show that the Beneficiary's article was written for learned persons in the field of technology entrepreneurship or for other particular learned persons.

The Petitioner, therefore, has not established that the Beneficiary meets this regulatory criterion.

E. Leading or Critical Role

The regulation at 8 C.F.R. § 204.5(h)(3)(viii) calls for "evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." The role may be shown to be leading or critical for a division or department of an organization or establishment, or for the organization or establishment overall. Evidence of a leading role should show that the alien was a leader for the claimed component, and a job title with matching duties may help to establish that a role was leading. For a critical role, evidence should show that the alien 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. In determining whether the organization or establishment, or a department or division thereof, has a distinguished reputation, relevant factors include its size, longevity, scale of its customer base, and relevant media coverage. *See generally 6 USCIS Policy Manual* F.2(B)(1). SCOPS determined the Petitioner submitted sufficient evidence to satisfy this criterion. However, we disagree and withdraw SCOPS' conclusion.

The Petitioner claims eligibility for this criterion based on the Beneficiary's leading and critical roles as head of product at [redacted] and [redacted]. The record establishes that the Beneficiary holds a leading role at [redacted]. Specifically, the Petitioner submitted letters from [redacted]'s co-founder and CEO outlining the Beneficiary's duties and accomplishments. The next question is whether [redacted] has a distinguished reputation, defined as "marked by eminence, distinction, or excellence or befitting an eminent person." *Id.*

Here, the Petitioner has not presented evidence showing that [redacted] has a distinguished reputation. Although the Petitioner submitted evidence about [redacted], such as printouts from its website and venture capital funding from [redacted] and [redacted], the Petitioner does not point to any corroborating evidence in the record showing [redacted]'s eminence, distinction, or excellence.

Because the documentation in the record does not establish the distinguished reputation of [redacted], the Petitioner has not demonstrated that the Beneficiary meets the requirements of this criterion.

Considering the above conclusions, the Petitioner does not meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the remaining claimed criterion at 8 C.F.R. § 204.5(h)(3)(ix), relating to high salary cannot change the outcome of this appeal. Therefore, we reserve this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

F. The Petitioner's O-1A Visa

We acknowledge the Beneficiary has an approved O-1A nonimmigrant visa petition, and that this classification is reserved for nonimmigrants of extraordinary ability. However, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different statute, regulations, and case law. Moreover, each petition is separate and independent and must be adjudicated on its own merits, under the corresponding statutory and regulatory provisions.

III. CONCLUSION

Congress set a very high benchmark for aliens of extraordinary ability by requiring the petitioner demonstrate "sustained national or international acclaim" and present "extensive documentation" to show his or her achievements have been recognized in the field. Section 203(b)(1)(A)(i) of the Act. Here, because the Petitioner has not satisfied the threshold "initial evidence" requirements at 8 C.F.R. § 204.5(h)(3), we cannot conclude that the Beneficiary is an alien of extraordinary ability and need not further analyze the merits under the statute. *See Kazarian*, 596 F.3d at 1119-20; *see also Nagaiah v. Allen*, -- F.Supp.3d ---, 2025 WL 1508028, at *10 (E.D. Pa. May 27, 2025) (finding the regulation "establishes a necessary, not sufficient, evidentiary requirement for a petitioner who seeks an extraordinary ability visa."). Therefore, we decline to reach and hereby reserve any final merits determination in this matter. *See INS v. Bagamasbad*, 429 U.S. at 25.

For the reasons discussed above, the Petitioner has not demonstrated the Beneficiary's eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.