U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42232160

Date: APR. 16, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a [redacted] and social media influencer in the field of digital health communications and public health education, 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 (EB-1) classification makes immigrant visas available to aliens who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their fields through extensive documentation.

Service Center Operations (SCOPS) denied the petition, concluding that the record did not establish the Petitioner had satisfied at least three of ten initial evidentiary criteria. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. On appeal, the Petitioner maintains that the evidence supports his eligibility for the EB-1 classification.

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 aliens 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). *See also Onaghise v. Dep't of Homeland Sec.*, No. 3:20-CV-03033-X, 2022 WL 4073344, at *2 (N.D. Tex. Sept. 2, 2022) ("EB-1 petitions, nicknamed Einstein visas, are coveted visas reserved for only the most talented noncitizens with extraordinary ability in the sciences, arts, education, business, or athletics"). 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 recognition of the beneficiary's 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 they must provide sufficient 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). Additionally, if the criteria at 8 C.F.R. § 204.5(h)(3) do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility. 8 C.F.R. § 204.5(h)(4).

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 beneficiary 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

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). SCOPS decided that the Petitioner satisfied two criteria relating to lesser recognized awards and a high salary 8 C.F.R. §§ 204.5(h)(3)(i) and (ix), respectively, but did not satisfy any of the remaining claimed criteria relating to published material, display, a leading or critical role, and commercial successes at 8 C.F.R. §§ 204.5(h)(3)(iii), (vii), (viii), and (x), respectively. After reviewing all the evidence in the record, we conclude that the Petitioner has not demonstrated eligibility for this highly restrictive immigrant classification. While we may not address each piece of evidence individually, we have reviewed and considered each one.

1. "Published 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." 8 C.F.R. § 204.5(h)(3)(iii).

In order to fulfill this criterion, the Petitioner must first establish that the published material was related to him and his specific work in the field for which classification is sought. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual. However, the person and the person's work need not be the only subject of the material; published material that covers a broader

topic but includes a substantial discussion of the person's work in the field and mentions the person in connection to the work may be considered material about the person relating to the person's work. *Id.*

Second, the Petitioner must show that the publication qualifies as a professional publication, major trade publication, or major media publication. *Id.* In evaluating whether a submitted publication is a professional publication, major trade publication, or major media, relevant factors include the intended audience for professional and major trade publications and the relative circulation, readership, or viewership for major trade publications and other major media. *Id.*

The record includes transcripts of interviews where the Petitioner appeared for an interview in television programs, radio talk shows, or podcasts, such as [redacted], and [redacted], and talked about natural medicine and naturology. The interviewers asked questions about natural medicine, and the Petitioner provided answers to those questions. During the interviews, the interviewers mentioned the Petitioner's work as a [redacted] and his research and work on natural and scientific medicine as part of their introductions, reflecting published material about the Petitioner relating to his work. However, the Petitioner did not demonstrate that his interviews were published in major media as claimed. *See* 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner contends that "the record contains substantial evidence of coverage in publications with documented viewership reaching tens of millions." The Petitioner brief provides a summary of these interviews, which include "viewers reach" and a link to the media's website. For example, the Petitioner claims that [redacted]'s viewer reach is "12.1 million." But the record does not include documentary evidence to substantiate the claimed viewers reach or other sufficient evidence to establish that the television program qualifies as a major medium. As another example, the Petitioner claims that a radio talk show in [redacted] has an audience of "104K." The Petitioner provided a printout from the [redacted] website showing that [redacted] is a media and news company in Mexico, and it has "69K likes" and "105K followers." However, the Petitioner has not established the significance of the number of followers or that the radio talk show qualifies as a major medium. For another example, the Petitioner claims that [redacted]'s viewers reach is "4 million." The Petitioner provided general information about [redacted] from Wikipedia providing that [redacted] is the state-owned public broadcaster serving the Mexican state of [redacted], but the record does not include documentary evidence to substantiate the claimed viewer reach or other sufficient evidence to establish that the television program is a major medium.

The Petitioner provided a letter from a partner director at [redacted], a communications consultancy in Latin America, generally asserting that "[redacted] and [redacted]" qualify as major media based on audience reach, viewership or listenership, prominence, mainstream status, and influence. But the letter does not offer sufficient information and evidence to substantiate the claim. Nor does the record contain sufficient documentary evidence of the relative circulation, viewership, or listenership for these media outlets. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(1).

The Petitioner also submitted internet articles from various websites, such as [redacted] and [redacted]. The internet articles are about the Petitioner and discuss natural medicine and his work as a [redacted] and influencer. While two of these articles provide the date of

the article, none of these articles provide the author. Therefore, these internet articles do not comply with the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requiring "the title, date, and author of the material, and any necessary translation." Moreover, the record lacks sufficient documentary evidence of the relative circulation, readership, or viewership for these websites to support the Petitioner's claim that the publications qualify as major media publications. *See* 8 C.F.R. § 204.5(h)(3)(iii). For example, the Petitioner claimed that [redacted] has viewers reach of "25.2K" and provided a printout from [redacted]'s social media page on Instagram showing that it has "25.2K followers" on Instagram. The Petitioner did not adequately explain how the number of followers on Instagram establishes [redacted] as a major medium.

The Petitioner's documentary evidence does not reflect published material about him relating to his work in professional or major trade publications or other major media. *See id.* Accordingly, the Petitioner does not meet this criterion.

2. "Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." 8 C.F.R. § 204.5(h)(3)(viii).

First, we determine whether the Petitioner has performed in a leading or critical role for an organization or establishment. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(1). For a leading role, we look at whether the evidence establishes that the Petitioner was a leader within the organization or establishment or a division or department thereof. *Id.* For a critical role, we look at whether the evidence establishes that the Petitioner 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. *Id.*

Second, we determine whether the organization or establishment for which the Petitioner held a leading or critical role has a distinguished reputation. *Id.* The relevant size or longevity of an organization or establishment is not a determining factor but is considered together with other information to determine whether a distinguished reputation exists. *Id.* Other relevant factors for evaluating the reputation of an organization or establishment include the scale of its customer base or relevant media coverage. *Id. Merriam-Webster.com Dictionary* defines "distinguished" as "marked by eminence, distinction, or excellence" or "befitting an eminent person." *Distinguished*, Merriam-Webster.com, www.merriam-webster.com.

The Petitioner claims that he meets this criterion based on (1) his critical role for [redacted] and (2) his leading and critical role for [redacted]. The Petitioner contends that [redacted] is one of the world's most recognized platforms, and he ranks in the top 0.01% of all creators globally. Regarding his critical role for [redacted], the Petitioner established that [redacted] has a distinguished reputation as an online video sharing platform owned by [redacted]. However, the documentary evidence does not reflect that the Petitioner's role for [redacted] was or is critical. *See* 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner asserted that he has performed in a critical role for [redacted] based on his [redacted] channels in three languages (English, Spanish, and Portuguese) with over 6.52 million subscribers, placing him within the top 0.032% of all [redacted] channels globally. He claimed that "his content generates significant advertising revenue for [redacted], drives user retention, and enhances the

platform's reputation for credible health information, making his contributions of significant importance to the outcome of the organization's activities." The Petitioner referenced a statistical analysis of [redacted] channel data by a professor at [redacted], which provides that "the top 3% most viewed channels upload at least 20% of all videos and receive the vast majority of all views, up to nearly 90% in 2016." The Petitioner also referenced a report provided by Statista indicating that "as of 2024, [redacted] reported over 2.7 billion monthly active users worldwide, generating $36.1 billion in adverting revenue."

The Petitioner provided printouts from the [redacted] website showing his three [redacted] channels and receipts of the [redacted] or [redacted] and the [redacted] or [redacted]. [redacted]'s Forms 1099-MISC (Miscellaneous Information) issued by [redacted], which the Petitioner claims to be [redacted]'s payment entity, show that [redacted] of which the Petitioner is 99% owner received $436,743 in 2023 and $410,842 in 2024 from [redacted]'s payment entity. The Petitioner explains that "[redacted] does not create content; it relies on creators to generate the inventory (videos) that it sells to advertisers. Therefore, the top creators are the organization's critical production engines." To support this claim, the Petitioner provided a letter from a professor of marketing at the [redacted]. The professor asserts that "creators in the top 0.1% are critical to [redacted]'s ecosystems, and a channel with over 7 million subscribers has a demonstrably distinguished reputation."

A [redacted] channel with 7 million subscribers may show its popularity among [redacted] viewers, but the Petitioner has not sufficiently shown how popularity equates to "a distinguished reputation" or a reputation "marked by eminence, distinction, or excellence." *See* 8 C.F.R. § 204.5(h)(3)(viii). The letter does not offer sufficient information and evidence showing that the Petitioner has performed in a critical role for [redacted] or that his [redacted] channels constitute "an organization or establishment" to establish that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

In addition, the Petitioner references data from [redacted]'s official blog, which provides that as of January 2026, there were total 115,000,00 channels on [redacted], about 619,000 channels with 100,000 subscribers, about 69,000 channels with 1,000,000 subscribers, about 2,600 channels with 10,000,000 subscribers, and 15 channels with 100,000,000 subscribers. The numbers of active users, channels, and subscribers and its annual advertising revenue may demonstrate the scale of its user base, the success of its business activities, and its reputation as a global social media platform. However, the record does not appear to identify sufficiently how much of [redacted]'s profits could be attributed to the Petitioner's channels. The record does not contain sufficient evidence from [redacted] showing how critical his role has been to [redacted]. *See id.*

The number of likes and subscribers of the Petitioner's [redacted] channels and the income received by [redacted] from [redacted]'s payment entity establish popularity of his channels among [redacted] viewers and his successful career as a [redacted] and content creator in the field of digital health communications and public health education. However, the Petitioner has not sufficiently demonstrated how the number of subscribers for his channels or advertising revenue generated from his channels has contributed in a way that is of significant importance to the outcome or standing of [redacted] as an online video sharing platform or the success of its business activities. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(1).

With respect to the Petitioner's leading and critical role for [redacted], the Petitioner asserts that he holds a leading role as the founder and executive director of [redacted]. [redacted]'s operating agreement and certificate of incumbency establish that the Petitioner holds a leading role for [redacted] as the managing member and 99% owner of the company. However, the Petitioner has not established that [redacted] has a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(viii). The Petitioner claims that "[a]n LLC that manages a media property ranked in the top 0.01% of global media channels has a reputation for excellence in the digital health field."

While the Petitioner provided documentation showing that his Spanish [redacted] channel has 6.01 million subscribers and his English [redacted] has 705,000 [redacted], he did not submit sufficient independent, objective evidence demonstrating that [redacted] has a distinguished reputation. The burden is on the petitioner to establish that they meet every element of this criterion. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. While we acknowledge that the Petitioner's channels have a high number of subscribers, it cannot be presumed that every company owned by or associated with content creators with a high number of [redacted] on [redacted] has a distinguished reputation. The Petitioner did not provide, for instance, documentary evidence distinguishing [redacted] from other medical professional services providers, so as to establish that it has "a distinguished reputation" pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii). We note that [redacted]'s Form 1120 (U.S. Corporate Income Tax Return) for 2024 lists "medical professional services" as the company's business activity.

Without documentary evidence demonstrating that the Petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, the Petitioner has not established that he meets the plain language of this regulatory criterion. *See id.*

3. "Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." 8 C.F.R. § 204.5(h)(3)(ix).

To meet this criterion, the Petitioner must establish that his salary or remuneration is high relative to the compensation paid to others working in the field. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(1). Evidence relevant to demonstrating high remuneration may include: (1) tax returns, pay statements, or other evidence of past salary or remuneration for services, (2) contract, job offer letter, or other evidence of prospective salary or remuneration for services, and (3) comparative wage or remuneration data for the person's field, such as geographical or position appropriate compensation surveys. *Id.* Evidence regarding whether the person's compensation is high relative to that of others working in the field may include: (1) geographical or position appropriate compensation surveys and (2) organizational justifications to pay above the compensation data. *Id.*

SCOPS determined that the Petitioner established eligibility for this criterion. A review of the record of proceeding, however, does not reflect that the Petitioner submitted sufficient documentary evidence establishing that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix).

As evidence of his earnings, the Petitioner provided Form 1120 (U.S. Corporate Income Tax Return) of [redacted] for 2024, which lists medical professional services as the company's business activity. He also provided a certificate of incumbency of [redacted] showing that

the Petitioner is the director, chief executive officer, and 100% owner of the company. In addition, the Petitioner submitted Form 1120 of [redacted] for 2024, which lists medical professional services as the company's business activity. The record also includes a certificate of incumbency of [redacted] indicating that the Petitioner is the managing member and 99% owner of the company. The Petitioner also provided [redacted]'s Form 1099-MISC (Miscellaneous Information) issued by [redacted] for 2023 and 2024. The Petitioner claims that [redacted] is [redacted]'s payment entity. As discussed in *Matter of Soffici*, 22 I&N Dec. 158, 162 (Assoc. Comm'r 1998), a corporation and an individual are two separate legal entities. This is true even if the individual is the sole shareholder of the business. *See id.* at 161-63. As such, we find that the income of two companies that provide medical professional services does not accurately reflect the Petitioner's personal income as a [redacted] and social media influencer. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(1).

The Petitioner's Form 1099-NEC (Nonemployee Compensation) issued by [redacted] for 2025 shows that he received a total of $780,000 from [redacted] in 2025, and this document establishes the Petitioner's personal income in 2025. However, the Petitioner has not provided sufficient objective earnings data showing that he has earned a "high salary" or "significantly high remuneration" in comparison with those performing similar work as a [redacted] or social media influence in the field of digital health communications and public health education. *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 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 a NHL defensive player to salary of other NHL defensemen).

The Petitioner provided his estimated annual earnings ($89.2K to $1.4M) and estimated annual earnings of several other individuals, including as [redacted] ($40.8K to $653K), [redacted] ($17.8k to $285.1K), [redacted] ($64K to $1M), and [redacted] ($62.7K to $1M) from [redacted].[1] The Petitioner asserts that these individuals are other niche [redacted]. The Petitioner's submission of estimated annual earnings from a limited and specific selection does not demonstrate that he has commanded a high salary when compared to other [redacted] or social media influencers in his field. *See* 8 C.F.R. § 204.5(h)(3)(ix). While the documentary evidence reflects that the Petitioner is estimated to earn a higher salary than the submitted few examples of other niche [redacted], the Petitioner did not demonstrate that he has commanded a high salary when compared to other [redacted] or social media influencers in the field of digital health communications and public health education as a whole rather than a selective list of other niche [redacted] with estimated salaries that are lower than the Petitioner's estimated salary.

As comparative wage data, the Petitioner also provided wages for "public relations specialists" in [redacted], Texas, from various websites, including Career One Stop (high earners' annual wage between $105,980 and $126,220), O*NET OnLine (public relations specialists' annual wage between $38,860 and $105,980) Salary Expert (seniors' median base salary of $94,553), ZipRecruiter (high earners' annual wage of $96,643), Glassdoor (high earners' salary of $76,000 and bonus of $6,000), and Salary.com (high earners' salary of $153,990 and bonus of $166,240). While these wage data show that the Petitioner's income of $780,000 from [redacted] in which the Petitioner is the chief executive

[1] The Petitioner claims that [redacted] is "a tool validated by its consistency with platform-native analytics."

officer and sole owner far exceeds the annual wage of the majority of public relations specialists in [redacted], Texas, this evidence does not show that he has earned a "high salary" or "significantly high remuneration" in comparison with those performing similar work as a [redacted] or social media influence in the field of digital health communications and public health education. *See id.*

The Petitioner asserts that "public relations specialists" are the most appropriate classification for comparative purposes because these "professionals, like [the Petitioner], promote or create an intended public image for individuals, groups, or organizations and may specialize in using social media," citing the definition of "public relations specialists" provided by the U.S. Department of Labor's O*NET database. To support this claim, the Petitioner provided a letter from a professor of marketing at the [redacted]. The professor asserts that "[redacted] influencer work is a highly specialized form of public relations. The selectivity of success, substantial economic value, and recognized influence support the characterization of this work as an elite professional discipline."

While we recognize that the Petitioner may specialize in using social media, particularly [redacted], the record reflects that with his medical education and background, the Petitioner researches natural and scientific medicine, creates videos on various health topics relating to natural medicine and recommends vitamins and health supplements sold by his company, [redacted], during his presentations, and posts these videos daily on his [redacted] channels in three languages, English, Spanish, and Portuguese. The record does not reflect that the Petitioner's professional activities are related to public relations or that he promotes or creates an intended public image for any other individuals, groups, or organizations. Therefore, we do not find that wage data for public relations specialists from various websites are position appropriate compensation surveys. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(1). Rather, it appears that the Petitioner's professional activities are related to those of contents creators for social media, [redacted], or social medial influencers in the field of digital health communications or public health education.

Because the evidence the Petitioner submitted does not sufficiently demonstrate that he has received a high salary or other significantly high remuneration for services in relation to others working in the field, we determine that the Petitioner does not satisfy this criterion. *See* 8 C.F.R. § 204.5(h)(3)(ix). As such, we withdraw SCOPS' favorable determination regarding this criterion.

4. "Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales." 8 C.F.R. § 204.5(h)(3)(x).

In order to satisfy this criterion, the Petitioner must establish that he has enjoyed commercial successes in the performing arts. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(1). This criterion focusses on volume of sales and box office receipts as a measure of the person's commercial success in the performing arts. *Id.* The evidence must show the volume of sales and box office receipts reflect his commercial success relative to others involved in similar pursuits in the performing arts. *Id.*

First, throughout the instant visa petition proceeding, the Petitioner described himself as "a digital content creator," "[redacted]," or "influencer in the field of digital health communications and public health education." The ten criteria in the regulations are designed to cover different areas and not every criterion will apply to every occupation. As the Petitioner's occupation is not "in the performing arts," such as an actor or a singer, the Petitioner's evidence does not meet the plain language of the

regulation at 8 C.F.R. § 204.5(h)(3)(ix). Second, this regulatory criterion requires evidence of commercial successes in the form of "box office receipts" or "sales." *See id.* The burden is on the petitioner to establish that they meet every element of this criterion. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. Here, the Petitioner has not met this burden. The Petitioner claims that "the [redacted] revenue is not separate from [his] performing arts work; it is direct commercial consequence of it. His [redacted] videos educate audiences about health and wellness topics, creating trust in his expertise. That trust translates into product sales when audiences purchase vitamins and supplements he recommends." But the record does not sufficiently establish how he is performing arts or he is a performing artist when he educates audiences about health and wellness topics and recommends vitamins and health supplements sold by his company during his educational video sessions.

For the reasons set forth below, the Petitioner's submission of evidence reflecting his creation of videos on various health topics relating to natural medicine and recommendation of vitamins and health supplements sold by his company during his presentations, his [redacted] monetization revenue paid by advertisers based on the number of views of his videos, and his income received by his company, [redacted], based on the sale of products sold by his company do not meet the plain language of this regulatory criterion. *See* 8 C.F.R. § 204.5(h)(3)(x).

The Petitioner discusses data on the state of the U.S. music and recorded media industry published by the Recording Industry Association of America in 2025 to illustrate how physical formats have become statistically irrelevant as primary revenue drivers in the music and recorded media industry and that the standard regulatory criterion is obsolete for contemporary market analysis. While we acknowledge the Petitioner's arguments, we cannot address arguments on the validity of laws enacted by Congress or on its implementing regulations. *See, e.g.*, *Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992) (holding that the Immigration Judge and Board of Immigration Appeals lacked jurisdiction to rule upon the constitutionality of the Act and its implementing regulations); *Matter of Hernandez-Puente*, 20 I&N Dec. 335, 339 (BIA 1991) ("It is well settled that it is not within the province of this Board to pass on the validity of the statutes and regulations we administer.") (citations omitted). While the regulatory language may not reflect the state of rapidly evolving, modern music and recorded media industry, we lack the authority to waive or disregard any of the Act's requirements, as implemented by regulation. *See United States v. Nixon*, 418 U.S. 683, 695 (1974) ("So long as this regulation is extant it has the force of law.").

The Petitioner contends that this criterion concerning commercial successes in the performing arts simply does not apply to his occupation because he is "a digital content creator" and "does not manufacture cassettes, does not press compact disks, and does not sell physical video products." He claims that "[redacted] monetization revenue functions as the modern equivalent of video sales."

The regulation at 8 C.F.R. § 204.5(h)(4) provides petitioners with the opportunity to submit comparable evidence to establish the person's eligibility, if it is determined that the evidentiary criteria described in the regulations do not readily apply to the person's occupation. When evaluating such comparable evidence, we consider whether the regulatory criteria are readily applicable to the person's occupation and, if not, whether the evidence provided is truly comparable to the criteria listed in that regulation. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(1). A general unsupported assertion that the listed evidentiary criterion does not readily apply to the person's occupation is not probative. *Id.* If a petitioner demonstrates that a particular criterion does not readily apply to the

person's occupation, the petitioner may submit evidence that is of comparable significance to that criterion to establish sustained acclaim and recognition. *Id.*

Here, because the record reflects that the Petitioner creates videos on various health topics relating to natural medicine and posts these videos on [redacted], the Petitioner has not shown why he would be unable to sell his videos in physical or digital formats to show that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix). The Petitioner did not adequately explain why he cannot offer evidence that meets this criterion. Therefore, we find the Petitioner's mere assertion that he does not manufacture cassettes, press compact disks, or sell physical video products is not persuasive or sufficient to establish that this criterion is not readily applicable to his occupation. *See* 8 C.F.R. § 204.5(h)(4). The fact that the Petitioner provided documentation that does not meet at least three criteria is not evidence that a digital content creator, [redacted], or social media influencer could not do so.

Furthermore, the Petitioner has not demonstrated that his [redacted] monetization revenue is truly comparable to this criterion. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(1). The Petitioner asserts that [redacted]'s Forms 1099-MISC issued by [redacted]'s payment entity in 2023 and 2024 show his annual revenue generated by "approximately 30 million monthly views" of his videos, and this annual revenue is "approximately 700% higher than industry benchmarks for similarly-sized channels." The record includes a letter from a professor of marketing at the [redacted], which asserts that "monetizing [redacted] through advertising revenue serves as a functional and economic equivalent to traditional video sales in the digital age." The professor explains that "[redacted]'s advertising-based monetization model operates identically to traditional video sales in its essential economic structure: audience members access content, payment is triggered per view through advertiser purchases of that access, and the creator receives direct compensation proportional to consumption volume."

This regulatory criterion requires evidence of commercial successes in the form of "box office receipts" or "sales." *See* 8 C.F.R. § 204.5(h)(3)(ix). In the case of traditional sales, such as box office receipts or record, cassette, compact disk, or video sales, the revenue comes from direct consumer payment for each purchase. On the other hand, in the case of [redacted] monetization model, viewers access videos free of charge, unless they subscribe to a premium service with no advertisements, and the revenue comes from advertiser payment based on the number of views of the videos, not from direct consumer payment for each purchase. While we agree that viewers' consumption of content generates revenue for the creator, because [redacted] content creators are compensated from a source (advertisers) different from the source identified in the regulation, we do not find that the Petitioner's [redacted] monetization revenue is truly comparable to the criterion as originally envisioned by the lawmakers. *See* 8 C.F.R. § 204.5(h)(3)(x).

Without documentary evidence reflecting the commercial successes of the Petitioner in the performing arts in the form of "box office receipts" or "sales," the Petitioner did not establish that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(x). Accordingly, he does not meet this criterion, including through the submission of comparable evidence.

5. We Reserve the Remaining Claimed Criteria

We conclude that although the Petitioner claims he meets two additional criteria relating to lesser recognized awards and display at 8 C.F.R. §§ 204.5(h)(3)(i) and (vii), respectively, because his arguments fail on any criterion discussed above, that means he cannot numerically meet the required number of at least three criteria. It is, therefore, unnecessary for us to decide on these additional grounds because he cannot numerically meet the required number of criteria. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve these issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

B. Final Merits Determination

The Petitioner has not submitted the required initial evidence of either a major, one-time achievement or documents that meet at least three of the ten criteria. As a result, we do not need to 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 it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

Finally, the Petitioner states that in January 2026, the United States District Court for the District of Nebraska issued a decision in *Mukherji* v. *Miller*, No. 4:24-CV-3170 (D. Neb. Jan. 28, 2026), that invalidated U.S. Citizenship and Immigration Services (USCIS)' two-step final merits determination framework as unlawfully adopted without notice and comment rulemaking and ordered USCIS to approve the petitioner's petition. The Petitioner provides a copy of the decision and asks us to consider this ruling when evaluating his petition and apply the legal standards as interpreted by the court.

Here, in contrast to the precedential authority of the case law of a United States circuit court, we are not bound to follow a decision of a United States district court. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Moreover, while we may consider the court's reasoning when it is properly before us, unpublished opinions are not considered binding precedent. *See Suchite-Salguero v. Att'y Gen. United States*, 147 F.4th 355, 359-60 (3d Cir. 2025) ("[W]e have cautioned over and over again that non-precedential opinions carry little to no weight for future cases."); *Wang v. Holder*, 569 F.3d 531, 538 n.5 (5th Cir. 2009); *cf. Matter of K-S-*, 20 I&N Dec. 715, 719 (BIA 1993) (considering the reasoning of district court decisions). Accordingly, we determine that SCOPS did not err in its analysis of the instant visa petition under the current two-step review framework provided in *Kazarian* and that we are not bound by the ruling of *Mukherji* v. *Miller* in the instant case. *See Kazarian v. USCIS*, 596 F.3d at 1115.

C. O-1 Nonimmigrant Status

The Petitioner indicated on his Form I-140 that he was last admitted to the United States on October 12, 2024 as an O-1 nonimmigrant of extraordinary ability. Although the words "extraordinary ability" are used in the Act for classification of artists under both the nonimmigrant O-1 and the first preference employment-based immigrant categories, the statute and regulations define the term differently for each classification. Section 101(a)(46) of the Act states that "[t]he term 'extraordinary ability' means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction." The O-1 regulation reiterates that "[e]xtraordinary ability in the field of arts means distinction." 8 C.F.R.

§ 214.2(o)(3)(ii). "Distinction" is a lower standard than that required for the immigrant classification, which defines extraordinary ability as "a level of expertise indicating that the individual is one of that small percentage who has risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The evidentiary criteria for these two classifications also differ in several respects, for example, nominations for awards or prizes are acceptable evidence of O-1 eligibility, 8 C.F.R. § 214.2(o)(3)(iv)(A), but the immigrant classification requires actual receipt of nationally or internationally recognized awards or prizes. 8 C.F.R. § 204.5(h)(3)(i). Given the clear statutory and regulatory distinction between these two classifications, the Petitioner's receipt of O-1 nonimmigrant classification is not evidence of his eligibility for immigrant classification as an alien with extraordinary ability.

Further, an approval of a nonimmigrant visa does not mandate the approval of a similar immigrant visa. Each case must be decided on a case-by-case basis upon review of the evidence of record. Many Forms I-140 are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the alien's qualifications).

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. at 954. In this case, the Petitioner has not shown the significance of his 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) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field and that 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; 8 C.F.R. § 204.5(h)(2).

For the reasons we have 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.

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.