U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37698721

Date: APR. 17, 2025

Appeal of Service Center Operations Directorate (SCOPS) Decision

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

The Petitioner is a mixed martial arts competitor 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 four of the regulatory criteria. SCOPS decided that the Petitioner satisfied one of the criteria relating to published material, but that he had not satisfied the criteria associated with prizes or awards, membership, or judging. On appeal, the Petitioner maintains that he meets the evidentiary criteria relating to those same areas. After reviewing all the evidence in the record, we conclude the Petitioner has not demonstrated eligibility for this restrictive immigrant classification.

1. "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 provided a letter from the Executive Director of the [redacted] reflecting he was appointed as the federation's representative for the state of [redacted] where he would "play a crucial role in advancing [the federation's] mission to create a global community of [redacted] by promoting high-quality education, fostering networking opportunities, and teaching effective self-defense techniques." SCOPS determined that the Petitioner did not meet the requirements of this criterion.

In making that determination, SCOPS concluded:

> [T]he evidence does not demonstrate that you have membership in associations, that the association is in your field, that that the association requires outstanding

achievements of their members, and that membership eligibility is judged by recognized national or international experts in their disciplines or fields. Furthermore, you did not provide the section of the association's constitution or bylaws which discuss the criteria for membership.

SCOPS then referred back to the eligibility assertions made within the petition cover letter, and they noted that going on record without supporting evidence fell short of meeting the Petitioner's burden of proof.

On appeal, the Petitioner only contests the portion of SCOPS's denial relating to going on record and his burden of proof. He makes no argument relating to the regulation's requirements SCOPS found was lacking—the association's requirements for membership as well as what caliber of experts the entity uses to judge such achievements. We also question whether appointment as a [redacted] representative constitutes membership in accordance with the regulation at 8 C.F.R. § 204.5(h)(3)(ii). But as the Petitioner's arguments and evidence fall short on other grounds, it is unnecessary that we analyze that issue any further.

2. "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.

The Petitioner provided a letter from the President of The [redacted] indicating he served as part of a judging panel for the finals of the [redacted] Championship in 2022. SCOPS issued a request for additional evidence (RFE) noting while the letter reflected the Petitioner participated as a judge at [redacted] events, "no supporting documentation was provided to support these claims" and again put him on notice that he cannot make assertions in correspondence that is not supported by substantive evidence. SCOPS's RFE further indicated the letter lacked sufficient clarity in exactly what duties he performed in the role of a judge.

In response to the RFE, the Petitioner placed significant focus on SCOPS's language regarding the lack of supporting evidence, surmising the letter from the president of [redacted] was sufficient to meet this criterion's requirements. The Petitioner's response stated that "a person who judges an event and who scores the result by assigning points to each [redacted]" meets the relevant definition of a judge. But his RFE response did not address the shortcoming SCOPS delineated in their notice and SCOPS ultimately determined that the Petitioner did not meet the requirements of this criterion.

The Petitioner's appellate arguments do not fare any better. The brief again focuses heavily on the portion of SCOPS's decision about going on record without offering supporting evidence, but not on the aspect where SCOPS noted he fell short of meeting the criterion's actual requirements. As the Petitioner did not present evidence before SCOPS satisfying all of this criterion's requirements, and

he repeated that shortcoming on appeal, we conclude he has not shown eligibility under this regulatory provision.

3. We Reserve the Petitioner's Remaining Claim on Appeal

We conclude that although the Petitioner satisfies the published material criterion, he does not meet the criteria regarding membership or judging. While he argues and submits evidence for one additional criterion on appeal relating to awards at 8 C.F.R. § 204.5(h)(3)(i), it is unnecessary that we make a decision on this additional ground 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 the remaining issue. *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 has not submitted the required initial evidence of either a 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.

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.