U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37525496

Date: APR. 21, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner is a marketing and communications strategist 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 she demonstrate that she 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 she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). SCOPS decided the Petitioner satisfied one of the criteria relating to published material, but that she had not fulfilled the criteria associated with original contributions, authorship of scholarly articles, display of her work, and her performance in a leading or critical role. After reviewing all the evidence in the record, we conclude the Petitioner has not demonstrated eligibility for this highly restrictive immigrant classification.

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).

The Petitioner did not claim eligibility under this criterion when she filed the petition. In response to SCOPS' request for evidence (RFE), she then claimed this criterion and provided three articles. SCOPS made a favorable determination under this criterion.

The Petitioner claimed that two of the articles originated from the same publication, [redacted] and the third article was from [redacted] The only article that reflected the publication name was titled, [redacted] from [redacted] By failing to demonstrate the publication name for two articles, the Petitioner has not shown those two forms of evidence can meet this criterion's requirements.

Regarding the article titled, [redacted] the Petitioner did not indicate what publication type (i.e., professional or major trade publications or other major media) was associated with material from [redacted] The only indication of any publication type for the Petitioner's evidence before SCOPS was her statement relating to the [redacted] which we already noted is deficient evidence that cannot meet this criterion's requirements as the evidence did not reflect what source that article originated from. Additionally, the foreign language version of this article from [redacted] is not legible; only the certified English translation is legible.

Illegible documents do not satisfy the Petitioner's burden of proof. *See* 8 C.F.R. § 204.5(g)(1) (requiring the submission of legible copies of required documents).

Setting aside those shortcomings, the Petitioner still has not met this criterion's requirements. The evidence the Petitioner presented regarding [redacted] was a printout from RocketReach that reflected [redacted] employed nine personnel, held a web ranking of 424,482, with 118,980 web visits, and listed some of their competitors. She also offered material from Similarweb about [redacted] reflecting their website received 24,469 total visits in the previous month, held a global rank of 1,355,220, a country rank of 106,421, and an industry rank of 4,273.

If we presume this material was to demonstrate [redacted] was a form of major media, she did not identify the circulation figures for other publications in her home country by which it can be determined through comparison that [redacted] qualifies as other major media. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual (noting when USCIS evaluates whether a submitted publication is other *major* media, relevant factors include the relative circulation, readership, or viewership that should be compared to other similar statistics). The phrase "other major media" is generally accepted to mean a publication with significant reach and recognition, and it follows that we may reasonably require evidence of the same type of reach and recognition through circulation data. *Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 185 (D.N.J. 2021).

Accordingly, we withdraw SCOPS' favorable determination as it relates to this criterion.

2. "Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." 8 C.F.R. § 204.5(h)(3)(vi).

This criterion contains multiple evidentiary elements the Petitioner must satisfy through the submission of evidence. The first element is that the Petitioner is an author of scholarly articles in her field in which she intends to engage once admitted to the United States as a lawful permanent resident. We consider these articles to fall within two distinct areas.

One area is within the academic arena in which a scholarly article reports on original research, experimentation, or philosophical discourse. It is written by a researcher or expert in the field who is often affiliated with a college, university, or research institution. In general, it should have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts expressed in the article. The next area lies outside of the academic arena in which a scholarly article should be written for learned persons in that field. "Learned" is defined as "having or demonstrating profound knowledge or scholarship." Learned persons include all persons having profound knowledge of a field. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

The second evidentiary element this criterion requires is that the scholarly articles appear in one of the following: (1) a professional publication, (2) a major trade publication, or (3) in a form of major media. Relevant factors a petitioner should demonstrate include the intended audience (for professional and major trade publications) and the relative circulation, readership, or viewership are high relative to similar publications (for major trade publications and other major media). *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). The Petitioner must submit evidence satisfying each of these elements to meet the plain language requirements of this criterion.

The Petitioner provided evidence of pieces she authored on LinkedIn and a book she authored. SCOPS determined that the Petitioner did not meet the requirements of this criterion. SCOPS determined her evidence failed on two fronts. First, she didn't establish her material was scholarly in nature, and second was her failure to show she published those in one of the required publication types.

On appeal she claims that LinkedIn is a professional platform and this website along with her published book "are widely referenced within the professional community and demonstrate [her] role as a thought leader." She continues noting that "while [her evidence is] not academic in the traditional sense, these materials satisfy the regulatory requirement for professional contributions that advance knowledge within the marketing field, as recognized in USCIS Policy Manual Chapter 2."

First, the USCIS Policy Manual is not simply divided into chapters, and it is unclear what portion of the manual the Petitioner references here. Second, the regulation does not focus on whether the material is referred to in the professional community and instead it requires a particular type of publication in which the articles must appear. And finally, the Petitioner's assertion that her evidence satisfies the regulatory requirements without engaging in a discussion of how each of the criterion's elements have been met falls short of meeting her burden of proof on appeal. A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998). Further, unsupported assertions 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).

As it stands, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

3. "Evidence of the display of the alien's work in the field at artistic exhibitions or showcases." 8 C.F.R. § 204.5(h)(3)(vii).

Various forms of artistic display may satisfy this criterion's requirements, and we evaluate the nature of the display. The regulation's plain language requires the exhibition or showcase to be artistic in nature. The arts may include visual art, the performing arts, music, graphic art, and other examples of the fine arts. And, just as the event must be artistic, the evidence must also demonstrate the artistic nature of a petitioner's work displayed at the event. It is not necessary for a petitioner to show that their work was specifically highlighted in any promotional materials or credits; only that the work was on display, and that both the work and the event were artistic in nature.

The Petitioner did not claim this criterion within the initial filing and in the RFE response claimed her participation in what appears to be a panel, [redacted]. The only supporting evidence she provided was an advertisement bearing her and other individuals' names. The advertisement appears to convey the event is related to ArtBrazil, but the Petitioner has not offered any material related to that entity. Nor did she submit supporting evidence to establish she actually displayed her work at any artistic exhibition or showcase as opposed to simply being invited to the event. SCOPS determined that the Petitioner did not meet the requirements of this criterion.

In the appeal brief, the Petitioner—through counsel—explains she showcased her expertise in social changes and visual branding during the panel. She further claims the event was a recognized academic and professional platform that highlights significant contributions to the field of marketing and branding. But nothing in the record supports those statements. In fact, the Petitioner did not offer anything more relating to this panel. Without documentary evidence to support the claims, counsel's assertions in a brief do not constitute evidence nor will they satisfy the Petitioner's burden of proof. *Matter of Arambula-Bravo*, 28 I&N Dec. 388, 396 (BIA 2021); *Matter of J.J. Rodriguez*, 27 I&N Dec. 762, 765–66 (BIA 2020). The unsupported statements of counsel are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188–89 n.6 (1984); *Mendias-Mendoza v. Sessions*, 877 F.3d 223, 228 n.3 (5th Cir. 2017); *Barragan-Ojeda v. Sessions*, 853 F.3d 374, 383 (7th Cir. 2017).

The Petitioner has not established her work was displayed at an artistic exhibition or showcase, and she has not met this criterion's requirements.

4. We Reserve the Remaining Claimed Criteria

We conclude that although the Petitioner claims she meets two additional criteria, because her arguments fail on any criterion discussed above, that means she cannot numerically meet the required number of at least three criteria. It is therefore unnecessary for us to make a decision on these additional grounds because she 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. *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).

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. 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.

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 her 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.