U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42137397

Date: APR. 24, 2026

Appeal of Service Center Operations Decision

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

The Petitioner, a lawyer and prosecutor from Brazil, seeks classification under the employment-based, first-preference (EB-1) immigrant visa category as an alien with "extraordinary ability." *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This EB-1 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. Section 203(b)(1)(A)(i) of the Act.

Service Center Operations (SCOPS) denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal pursuant to 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

To qualify for this immigrant visa category, a petitioner must demonstrate that they:

- Have "extraordinary ability in the sciences, arts, education, business, or athletics;"
- Seek to continue work in their field of expertise in the United States; and
- Would substantially benefit the United States as an immigrant.

Section 203(b)(1)(A)(i)-(iii) of the Act.

The term "extraordinary ability" means expertise commensurate with "one that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Unless 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), they must provide sufficient qualifying documentation that meets at least three of the ten lesser evidentiary criteria listed at 8 C.F.R.

§ 204.5(h)(3)(i)–(x). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable evidence if they are 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.

If a petitioner meets these initial evidence requirements, U.S. Citizenship and Immigration Services (USCIS) must 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 Amin v. Mayorkas*, 24 F.4th 383, 391 (5th Cir. 2022) (finding USCIS' two-step extraordinary ability analysis "consistent with the governing statute and regulation"); *see generally* 6 *USCIS Policy Manual* F.2(B), www.uscis.gov/policy-manual.

In addition, the regulation at 8 C.F.R. § 204.5(h)(5) requires that "the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise." The regulation further states that "[s]uch evidence may include letter(s) from prospective employer(s), evidence of pre-arranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." *Id.*

II. ANALYSIS

The Petitioner filed the instant petition in July 2025 claiming that he has sustained national and international acclaim as "a prosecutor, legal academic and public intellectual whose contributions have positioned him at the very top of his field." On the Form I-140, Immigrant Petition for Alien Worker, the Petitioner listed his proposed job title as "Law Teachers, Postsecondary" but his occupation as "Lawyers and Judges."[1] The record indicates that the Petitioner worked as a federal prosecutor in Brazil since 2014, and is currently pursuing a doctoral degree (Ph.D.) in constitutional law and a master of laws (LLM) degree in international human rights law. The Petitioner also included evidence of his teaching engagements at various institutions in Brazil, claiming that through these roles, he has "shaped national training programs for federal prosecutors and jurists."

A. Evidentiary Criteria

Because the Petitioner has not indicated or shown that he 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). The Petitioner claims to have satisfied eight of these criteria, summarized below:

- Receipt of lesser recognized awards or prizes for excellence in the field;
- Membership in associations in the field requiring outstanding achievements of their members;
- Published materials about the person;

[1] The Petitioner submitted the Department of Labor's Occupational Information Network (O*NET) summary for the occupation of lawyers (Standard Occupation Classification (SOC) code 23-1011) as well as O*NET summary of postsecondary law teachers (SOC code 25-1112).

- Participation as a judge of others' work;
- Original contributions of major significance in the field;
- Authorship of scholarly articles;
- Performing leading or critical roles for organizations that have a distinguished reputation; and
- Commanding a high salary in relation to others in the field.

8 C.F.R. § 204.5(h)(3) (i), (ii), (iii), (iv), (v), (vi), (viii), and (ix).

SCOPS concluded that the Petitioner met four criteria at 8 C.F.R. § 204.5(h)(3)(iv) (participation as a judge of others' work in the field), (vi) (authorship of scholarly articles), (viii) (performing leading or critical roles), and (ix) (commanding a high salary). On appeal, the Petitioner summarizes how he meets all of the eight criteria again by resubmitting the initial filing and his response to the request for evidence (RFE).

Before we evaluate the totality of evidence under *Kazarian*, we withdraw SCOPS' initial conclusion that the Petitioner satisfied the evidentiary criterion at 8 C.F.R. § 204.5(h)(3)(ix). To meet this criterion, the Petitioner must demonstrate that his compensation is high relative to that of others working in the field. Such evidence may take many forms and examples may include, but are not limited to, geographical or position-appropriate compensation surveys and organizational justifications to pay above the compensation data. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1), Criterion 9.

The Petitioner submitted "Proof of Income Paid and Income Tax Withheld at Source" for 2024 and 2025 from the [redacted] and claimed that his income exceeded that of "senior-level lawyers in large Parana-based companies" shown in the salary survey by Salario BR. However, the record does not sufficiently establish that the salary shown on Salario BR's website printout is the proper basis for comparison and that his position as a federal prosecutor corresponds to senior-level lawyers who work in large companies. Both precedent and case law support this application of 8 C.F.R. § 204.5(h)(3)(ix). *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 Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *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 NHL defensive player to salary of other NHL defensemen).

As the Petitioner did not provide a comparable range of salaries with similar experience and skills, we conclude that he does not satisfy this criterion. Moreover, while the Petitioner indicated that his proposed endeavor is working as a law teacher or professor, he did not provide information regarding his salary as a law teacher in Brazil. Therefore, the evidence is also insufficient to show that he has commanded salary in the teaching area.

Despite this determination, the record demonstrates that the Petitioner has met the required three criteria. Therefore, we will proceed with the final merits determination below.

B. Final Merits Determination

On appeal, the Petitioner asserts that SCOPS erred in its final merits determination by "fragmenting the record instead of assessing [the evidence] as a coherent whole" and ignoring relevant evidence. We acknowledge that SCOPS' final merits determination did not include all evidence submitted in the record. But we nevertheless agree with SCOPS' ultimate conclusion that the Petitioner has not demonstrated he sustained national or international acclaim,[2] he is one of the small percentage at the very top of the field of endeavor, and his achievements have been recognized in the field through extensive documentation. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.

The Petitioner has presented two fields of expertise, one as a lawyer/prosecutor and another as law teacher/academic. Therefore, we must consider his extraordinary ability in both areas: "[t]o qualify as a person with extraordinary ability, the beneficiary must intend to continue to work in the area of his or her expertise." *See generally 6 USCIS Policy Manual*, *supra*, at F.2(A)(2) (discussing whether the person's intended employment falls sufficiently within the bounds of his or her area of extraordinary ability with an example of a person who is transitioning career, e.g., an acclaimed athlete who intends to be employed as an athletic coach). Under this policy guidance, the Petitioner's evidence of acclaim as a prosecutor cannot suffice by itself to establish extraordinary ability as a law teacher, but we may give proportionate weight to such when the record also shows that the acclaim as a practicing lawyer has continued into the transitioned career in teaching. This interpretation has been upheld in federal court. In *Lee v. Ziglar*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

> It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918; *see also Mussarova v. Garland*, 562 F.Supp.3d 837 (C.D. Ca. 2022) (determining that the plaintiff's awards as a water polo player were not awarded as a water polo coach); *Integrity Gymnastics & Pure Power Cheerleading, LLC v. USCIS*, 131 F.Supp.3d 721 (S.D. Oh. 2015) (concluding that the AAO's reasoning, relevant statutory and regulatory language, and case law was not arbitrary, capricious, or otherwise not in accordance with the law in finding that an Olympic gold medal gymnast must meet the extraordinary ability classification through her achievements as a coach, her intended area of expertise).

With this background, we evaluate the totality of the evidence and conclude that the record does not show that the Petitioner's teaching activities, in addition to his career as a lawyer and prosecutor, have been at a level consistent with sustained national or international acclaim in the context of a final merits determination.

[2] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(A)(1) (stating that such acclaim must be maintained and providing *Black's Law Dictionary's* definition of "sustain" is "to support or maintain, especially over a long period of time . . . To persist in making (an effort) over a long period of time").

We will first review the evidence related to the Petitioner's activities as a federal prosecutor in Brazil, such as his memberships, published news articles that discuss prosecution of a notorious Brazil-based criminal organization member, letters from the prosecutor's office, and proof of his salary as a prosecutor. Although we acknowledge that the Petitioner has successfully worked on important criminal cases and performed leading or critical roles in the prosecutor's office, the record does not sufficiently demonstrate that his recognition went beyond accomplishing standard duties of a prosecutor.

The Petitioner provided evidence of his membership in the National Association of Members of the Federal Public Prosecutor's Office (AMPF) and in [redacted] but he did not show how his memberships resulted in sustained national or international acclaim or a career of acclaimed work. *See Donskoy v. United States Citizenship & Immigr. Servs.*, No. 21-CV-04757-CRB, 2021 WL 5240224, at *5 (N.D. Cal. Nov. 11, 2021) (upholding the petitioner's membership did not demonstrate the requisite level of achievement or sustained acclaim to establish extraordinary ability). The Petitioner did not demonstrate how his membership in AMPF reflects that he has risen to the very top of the field of endeavor as AMPF bylaws indicate that such membership is given to all prosecutors. Furthermore, the Petitioner's membership in [redacted] began in November 2024 and does not reflect his sustained acclaim. The record does not contain evidence indicating that he received national or international recognition based on his membership with any of these associations.

The Petitioner also did not claim that he received any honors or other awards distinguishing him above others in the field or that he was featured in published materials as a lawyer, aside from his name being cited in news articles as one of the prosecutors assigned to the high-profile criminal case. The Petitioner requested that we accept the news articles featuring the criminal case as comparable evidence under 8 C.F.R. § 204.5(h)(4) as prosecutors themselves generally do not receive public media coverage. However, the general coverage of the trial does not translate to wider recognition of the Petitioner individually, which is what the statue and regulations require, and the Petitioner has not sufficiently demonstrated that published materials about this trial set him above other prosecutors who worked in the case and places him at the top of the field.

Additionally, the Petitioner did not establish that he commanded earnings commensurate with sustained national or international acclaim. He did not demonstrate, for example, how his salary compares to others at the very top of the field or other renowned prosecutors or lawyers who hold public positions and perform similar duties, or that he received notoriety or attention based on his salary separating himself from others in the field or placing him in the upper echelon. *See Bodhankar v. United States Citizenship & Immigr. Servs.*, No. 119CV706MADCFH, 2020 WL 777211, at *5 (finding that the plaintiff's high salary was not so high as to indicate that he has risen to the very top of the field). Moreover, the Petitioner did not show that he consistently earned high wages throughout his career rather than providing salary information for the last two-year period before filing of the petition. *See Jafarov v. United States Citizenship & Immigr. Servs.*, No. 23 CIV. 3372 (PAE), 2024 WL 69056, at *9 (finding the failure to show consistent high wage earnings did not reflect sustained national or international acclaim and a single year's, or even a few years', worth of salary data unlikely to satisfy this requirement).

[3] The declaration of the association indicates that this is "a not to profit civil association, . . . focused on promoting the Rule of Law, individual freedom, and institutional integrity."

Therefore, the record does not sufficiently establish that the Petitioner's career as a lawyer/prosecutor has risen to that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

Next, we evaluate the evidence related to his accomplishments and experience as a teacher or professor in law. The Petitioner indicated that he has been pursuing a Ph.D. in constitutional law at the [redacted] since 2023 and LLM degree in international human rights at the [redacted] since 2024 but had not completed these programs at the time of filing.[4] The Petitioner also provided an enrollment confirmation letter from the [redacted] indicating that he held status as "Recognised Student with the Faculty of Law" from October 2021 to January 2022,[5] without providing additional information regarding the type of research he performed and the research's impact in the field.

The Petitioner further provided several certificates verifying that he taught legal courses at [redacted] and [redacted] in Brazil, but they appear to be short-term teaching positions. For instance, the attestation letter from the [redacted]s law school coordinator indicates that the Petitioner was "a lecturer" from February 201 to July 2018, teaching one course (70 hours) per semester. The certificates from [redacted] indicates that the Petitioner taught constitutional law "with a workload of 30 (thirty) class hours" from 2018 to 2021. The record also shows that the Petitioner taught legal courses (10-12 hours a year) at the [redacted] while serving as an academic advisor from 2021 to 2022 and supervised the academic activities of the office as a teaching coordinator from 2022 to 2023. However, these intermittent and temporary teaching appointments do not support that the Petitioner's teaching career has sustained acclaim or that he is at the top of his field.

The evidence of the Petitioner's judging activities, all occurred during this teaching period from 2017 through 2022, is limited to his participation as "Examining Member" or "Evaluating Professor" in defense panels specifically developed to judge students who are presenting their honors thesis. The record does not show that he judged works of other legal scholars who have more knowledge and experience in the field. The Petitioner also claimed that he was awarded a [redacted] by the [redacted] for the 2024-25 academic year while pursuing a LLM degree at [redacted]; however, this award is limited to the Latin American students enrolled in the LLM program at the university and does not appear to be an award that has a wide-spread reach and fame in the legal field overall, and is reflective of sustained acclaim that sets him apart from others in his field.

Likewise, authorship and publication do not automatically place one at the top of the field.[6] The Petitioner submitted excerpts from his book, [redacted]" ("[redacted]") published in 2022 and his dissertations for his postgraduate program at the [redacted] in 2023. Although the record includes a recommendation letter from a professor

[4] The Petitioner earned a bachelor's degree in law from [redacted] in 2008 and a master's degree in public law from [redacted] in 2022.

[5] A separate letter from the Graduate Studies Officer at the [redacted] indicates that "Recognised Students . . . do not receive an [redacted] qualification or any formal accreditation to their studies at [redacted]."

[6] *See also generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1) (indicating that the second step requires USCIS to evaluate the person's publications to determine whether it is indicative of being one of that small percentage who has risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

at [redacted], claiming that his work "has already been widely cited in legal academia . . . and has influenced debates about judicial reform and constitutional interpretation," the record does not provide corroborating evidence and demonstrate major significance within the legal field. A letter from a professor at [redacted] attests to the Petitioner's "intellectual discipline, critical independence, work ethic, and scholarly maturity" but does not elaborate on how the book or his dissertation has impacted the legal field or jurisprudence. The Petitioner provided several journal articles that cite to his book but did not show the significance of his authorships or provide comparison tools to show that his citations are relatively high compared to others who are viewed to be at the very top of the field. *See Jafarov v. United States Citizenship & Immigr. Servs.*, No. 23 CIV. 3372 (PAE), 2024 WL 69056, at *9 (finding it reasonable for USCIS to focus on the fact that a publication record of six publications over seven years inconsistent with a career of acclaimed work and sustained national or international acclaim).

The overall evidence demonstrates that the Petitioner has held a successful career as a federal prosecutor, but his duties do not appear above someone who achieved a career that meets the high standard set for aliens of extraordinary ability. Similarly, while the evidence shows that the Petitioner engaged in teaching legal courses, judged students' work, and published a book on judicial activism, such evidence shows limited accolades, exposure, and activities in the teaching field and does not demonstrate that he is one of that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

Beyond SCOPS' decision, we also note here the Petitioner has not shown "by clear evidence" that he is coming to the United States to continue work in the area of expertise. 8 C.F.R. § 204.5(h)(5). The Petitioner claimed that he "intends to continue his professional trajectory in the academic field of constitutional law and prosecutorial ethics," that he has "already established professional relationships with leading U.S. legal scholars and has been invited to present research at [redacted]," and that his work will focus "research, teaching, and public engagement addressing the balance between judicial power and democratic legitimacy."

However, the Petitioner did not include letters from prospective employers, evidence of prearranged commitments or contracts, or more detailed plans on how he intends to continue his work in the United States as a postsecondary teacher. *Id.* Instead, the Petitioner provided an email dated October 8, 2025, from the [redacted] indicating that his paper was accepted for presentation at the [redacted] in March 2026 and he will receive $1,500 honorarium with travel expenses. Aside from this email printout, the Petitioner has not offered other evidence showing the significance of such invitation or persuasively explained how this one-time presentation constitutes a plan for his continuing research and teaching activities in the United States. Additionally, the invitation occurred after filing of the petition and we cannot consider "facts that come into being only subsequent to the filing of a petition." *Matter of Izummi*, 22 I&N Dec. at 176 (citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981). The Petitioner must be eligible as of the date of filing. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

Accordingly, the record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought.[7] The Petitioner has not demonstrated that his achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).[8] Here, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Amin v. Mayorkas*, 24 F.4th at 394 (stating that extraordinary ability is such an elite level of accomplishment); *Lapteva v. Schuurmans*, No. 8:24CV83, 2025 WL 815087, at *1 (D. Neb. Mar. 10, 2025) (stating that EB-1 visa are intended to be available to only an exceedingly small amount of individuals with extraordinary ability). In this case, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or it is consistent with a career of acclaimed work in the field. *See* Section 203(b)(1)(A) of the Act. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, the record is insufficient to demonstrate that he is among the small percentage at the top of his field. *See* 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

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

[7] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (providing that some evidence weighs more favorably on its own, while other evidence is more persuasive when viewed with other evidence).

[8] The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provides that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991).