U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41852931

Date: APR. 27, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner is a computer engineer 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 received 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). *See also* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739 (stating: "In short, admission under this category is to be reserved for that small percentage of individuals who have risen to the very top of their field of endeavor.").

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 six of the regulatory criteria. SCOPS decided that the Petitioner satisfied two of the criteria relating to judging and the authorship of scholarly articles, but that he had not satisfied the criteria associated with published material, original contributions, performing in a leading or critical role, or a high salary or remuneration. On appeal, the Petitioner maintains that he meets the evidentiary criteria SCOPS denied. After reviewing all the evidence in the record, we conclude that he has satisfied at least one additional requirement in the high salary or other significantly high remuneration criterion.

1. "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).

In making the adverse determination for this criterion, SCOPS found that his job did not properly align with the software developer information he provided and that he should have offered evidence directly related to his job title. SCOPS stated that "[o]pen-source and publicly available data shows that Device Driver Engineer or Device Engineer is a recognized position in the industry with a separate salary information." But on appeal, the Petitioner notes that the U.S. Department of Labor's ETA Form 9035 & 9035E, Labor Condition Application for Nonimmigrant Workers classifies him as a software developer and he explains the similarities between his job's duties and the Occupational Information Network tasks for the Software Developers Standard Occupational Classificational code. We agree that this was an appropriate comparison for this criterion. And we conclude that the Petitioner has demonstrated that his base pay is adequate to meet this criterion's requirements.

As the Petitioner has now satisfied at least three of the criteria, it is unnecessary that we evaluate whether his evidence meets the other claimed criteria.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *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); *Nagaiah v. Allen*, 784 F. Supp. 3d 798, 814 (E.D. Pa. 2025) (finding the regulation "establishes a necessary, not sufficient, evidentiary requirement for a petitioner who seeks an extraordinary ability visa."). *See generally* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policymanual (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification). In this matter, we determine that the Petitioner has not documented his eligibility.

The two-step adjudication process is an interpretive rule that does not violate the Administrative Procedure Act, nor is it a legislative rule. *Nagaiah*, 784 F. Supp. 3d at 810; *Agrawal v. Miller*, No. 4:24CV3143, 2025 WL 2879217, at *12 (D. Neb. Sept. 12, 2025); *Etsy, Inc. v. Jaddou*, No. 4:22CV3022, 2023 WL 3689555, at *23 (D. Neb. May 25, 2023) (citing *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 96 (2015). This approach is rooted in an exhaustive historical review of the congressional record, the governing statutory language, and the comprehensive regulatory scheme intended to ensure only those at the very top of their field receive this classification. To date, no other federal court has offered an alternative framework that is similarly grounded in such a thorough analysis of the legislative and agency history. *See generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(2). *Contra Mukherji v. Miller*, No. 4:24CV3170, 2026 WL 895708, at *6 (D. Neb. Jan. 28, 2026) (concluding the two-step framework was adopted without required notice-and-comment rulemaking). But that appears to misconstrue a conference report—which serves solely to explain how the House and Senate resolved differences between their two versions of the bill—as being more authoritative on this issue than a Judiciary Committee Report, the purpose of which includes guiding the executive branch in implementing the law and assisting the judicial branch in its interpretation.

According to the Petitioner's correspondence, he earned a Master of Science in Computer Engineering from a U.S. institution of higher education, a post-graduate diploma course in cyber security and forensics, and an undergraduate degree in electrical and communications engineering from his home country. He is approaching two decades of experience within the semiconductor software industry. As indicated above, the Petitioner judged others, authored scholarly works, and earned a high salary. The record, however, does not demonstrate that his personal and professional achievements rise to a level of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, at 59 (1990).

Scholarly articles. The Petitioner's evidence was adequate to meet the plain language requirements of the authorship of scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi). But he has not shown that his publication record is illustrative of acclaim on a national or international level. The act of authorship and publication do not automatically place one at the top of the field. *See generally* 6 *USCIS Policy*

Manual, *supra*, F.2(B)(2) (providing that publications should be evaluated to determine whether they were 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).

Evaluating his published material, the record reflects that the Petitioner has authored 20 published works, but only 5 have garnered any citations, and only one of them received more than 3 cites. That level of acclaim runs counter to the Petitioner's assertions on appeal that this record "strongly demonstrate[s] the depth of [his] influence, the trust the field places in his expertise, and the sustained nature of his national and international acclaim." And we disagree with him that this represents "an extensive, coherent body of scholarship rather than isolated or incidental publications." The Petitioner simply offers inadequate analysis to corroborate the claims that his limited publication record places him among those near the top of his field. Further, the Petitioner did not demonstrate how his limited publication record is consistent with having a career of acclaimed work and sustaining national or international acclaim.

We also note that this record does not measure up to some of the individuals who submitted letters on his behalf. For instance, the Petitioner published a 2016 paper with [redacted]. [redacted] has more than "160 referred papers in top-tier journals and conferences" garnering hundreds of citations. The Petitioner did not show the significance of his authorship or how his publications compare to others who are viewed to be at the very top of the field. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act.

Judging. For his judging experience, the Petitioner claims his performance exceeds nominal participation. In support, he names the [redacted] where he serves as a reviewer. As evidence of this journal's impact factor to demonstrate its ranking, the Petitioner provided a printout from the [redacted] website, but no information about what entity provided that number or how it was calculated. USCIS is not required to rely on the self-promotional material of a publisher and "we may require more than the publication's own say-so that it is" a qualifying one. *See Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 185 (D.N.J. 2021) (citing *Braga v. Poulos*, No. CV 06-5105 SJO FMOX, 2007 WL 9229758, at *7 (C.D. Cal. July 6, 2007) *aff'd*, 317 F. App'x 680 (9th Cir. 2009) (concluding that we did not have to rely on a company's self-serving assertions on the cover of a magazine as to the magazine's status as major media)).

We attempted to access information about [redacted] on the Web of Science but the publication is not listed in that resource and the one website that aligns with the journal's self-proclaimed impact factor has reliability issues.[1] At any rate, the Petitioner has not demonstrated the [redacted] is a quality journal whose impact factor can be reliably compared with other highly ranked journals to corroborate the Petitioner's claims of prestige or acclaim associated with peer review for this publication. We have similar questions about another journal the Petitioner claims, the [redacted].

The Petitioner did not demonstrate how his judging experience differentiates him from others in the field, shows the significance of reviewing manuscripts for the claimed entities, or otherwise provides

[1] See [redacted], Scientific Journal Impact Factor (Apr. 23, 2026), [redacted]

context regarding his service as a peer reviewer. *See Hamal v. DHS*, No. 21-5160, 2023 WL 1156801, at *2 (D.C. Cir. Jan. 31, 2023) (finding that the petitioner did not provide needed context for his judging experience and the response to his work). The context of the Petitioner's judging experience is relevant. Reviewing manuscripts for journals that select peer reviewers based on subject-matter expertise, without more, does not provide strong support for the petition in a final merits determination. Possessing expertise in a field is a considerably lower threshold than having sustained acclaim at the very top of the field. The issue here is the extent to which the Petitioner's peer review activities have required, reflected, or resulted in his national or international acclaim. He has not shown that the type of peer review he performed contributes to establishing his sustained national or international acclaim or places him among that small percentage at the very top of his field of endeavor. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

Salary or remuneration. Although we decided that the Petitioner met the high salary criterion, it is unclear where he derived his figures expressed in the appeal and we do not agree with his implication that he has earned a disproportionately high compensation persisting over multiple years that are corroborated by external labor-market benchmarks. While his base salary was adequate to place him among the upper percentages of those performing similar work in the same geographic region, it was not so high to place him at or near the very top. *See Bodhankar v. USCIS*, No. 119CV706MADCFH, 2020 WL 777211, at *5 (N.D.N.Y. Feb. 18, 2020) (finding that the alien's high salary was not so high as to indicate that he has risen to the very top of the field). *See also Hamal*, 2023 WL 1156801, at *2 (finding that earning a high salary alone was not sufficient to establish a singularly extraordinary artist). Even if the Petitioner's base salary was in the top 10 percent—which it was not—that is not adequate to show sustained acclaim on a national or international level. *Jafarov v. USCIS*, No. 23 CIV. 3372 (PAE), 2024 WL 69056, at *9 (S.D.N.Y. Jan. 5, 2024) (finding the petitioner's salary in the top 10 percent of employees was not so impressive as to place him at the very top of the field of endeavor).

And even though he provided material representing his remuneration beyond his base salary, lacking from the record is comparable figures relating to those at or near the top of the field. The Petitioner has not provided information that would enable us to provide a proper determination of whether his salary is reflective "of that small percentage who have risen to the very top of the field of endeavor."

Published material. While the Petitioner provided media coverage that was about him and his work in the field, he did not illustrate how this coverage rose to the level illustrating he was among those in the top of his field. General recognition for his work efforts does not categorically place him among the top echelon of his field. *See Hamal v. DHS*, No. CV 19-2534 (RC), 2021 WL 2338316, at *4 (D.D.C. June 8, 2021), *aff'd sub nom. Hamal v. DHS*, 2023 WL 1156801 (upholding the determination that the filing party did not show his press coverage was indicative of a level of success consistent with being at the top of his field). The Petitioner has not explained how seven articles over the most recent three-year period prior to the petition filing date demonstrates his sustained national or international acclaim necessary for this highly restrictive classification when his career spans nearly over two decades. *See* section 203(b)(1)(A) of the Act. Therefore, the Petitioner did not establish that the media reporting on him and his work activities reflects a career of acclaimed work in the field or that it was indicative of the very high standard to present more extensive documentation. *See* H.R. Rep. No. 101-723, at 59 (1990); 56 Fed. Reg. at 30703, 30704 (July 5, 1991).

Contributions. The Petitioner characterizes his contributions to the field around four claims: (1) an over the air (OTA) software solution at an augmented reality company, (2) a device lifecycle and service management platform at an electronic payment solutions company, (3) input/output (IO) self-testing software, and (4) his work on a USB forum. We observe a common thread that runs through three of the four claims in the form of the Petitioner adopting an existing information technology concept someone else created, then applying that to a new situation. The Petitioner was not applying concepts that were foreign to the information technology industry and instead was simply modifying a common process. Without distinct changes to what already existed in combination with an alteration in how it was applied, that process arguably lacks originality on the Petitioner's part.

For the OTA updates to a device's lifecycle and security, that effort might have been critical to the device's infrastructure, but he has not demonstrated that OTA updates was a concept he devised rather than one that existed in the industry long before he simply adopted it while working at an augmented reality company. Similarly, his work at an electronic payment solutions company involved him developing solutions to architecture issues. The claims for his work relating to this company are better placed under the leading or critical role for distinguished organizations or establishments than they are as original contributions to the field. Regarding his work on USB4 initiatives, he applied software principles from other areas in the form of input/output (IO) testing methods used to determine how much a system can deviate from its ideal operating conditions before failing.

And finally, his work on the IO self-testing software, the claim that this was originally his creation is in question due to conflicting evidence in the record. Within the letter from the Senior Director of Software Engineering at the Petitioner's employer that he submitted with the initial filing, they stated that although the Petitioner played an essential role in, and was the original developer working on, the self-testing tool, it was a group of over 25 personnel who actually performed the bulk of the work and completed the tool under his leadership. He was identified as the individual who maintains the tool, but from the Senior Director's letter, it is not apparent that this was an original contribution of major significance that can be fully attributed to the Petitioner. This conflicts with information in other support letters that asserted he "envisioned, designed, developed, and deployed" the claimed software tool. The Petitioner has submitted at least two forms of evidence that put forth conflicting facts. Consequently, he has created a visible friction within the record, which he must resolve through some form of evidence that preponderantly establishes where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591–92 (BIA 1988).

The record may show that an alien's work had practical impact—such as successful deployment in a product, performance gains, or commercial benefits—but the evidence may not demonstrate that this impact stemmed from a substantially original intellectual contribution. The underlying techniques or processes may have been well established in the field before the alien's involvement, and their role may have consisted primarily of implementing, adapting, or incrementally optimizing those existing methods for a new device or context. That type of adaptation can reflect notable scientific work, but it does not necessarily reflect a new algorithm, framework, or conceptual approach that meaningfully departs from prior work. Taken together, the record can reasonably be viewed as demonstrating the Petitioner's impactful, professional work that applies and refines known techniques, but not as establishing that his individual efforts amount to original contributions of major significance to the field.

Because his work might have been original to the situation, but was not conceptually originally his work, it is much less persuasive. Without a showing of originality, the Petitioner has not illustrated how his

claimed efforts place him among that small percentage who has risen to the very top of the field of endeavor and has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2). The record must demonstrate that the Petitioner's individual or combined contributions led to sustained national or international acclaim, and that is not present in this case. *Nagaiah v. Allen*, 784 F. Supp. 3d at 820–21.

Leading or critical role. The Petitioner claims he performed in both a critical and a leading role for [redacted]. His critical work at that organization relates to the IO self-testing software. The Senior Director of Software Engineering at [redacted] confirmed he played an essential role in developing the self-testing tool. What is lacking from the record is an adequate illustration of how the recognition the Petitioner received from his specific work on the IO self-testing software at [redacted] extends well beyond the company to demonstrate attainment of sustained national or international acclaim resulted from his success. *See Joseph v. USCIS*, No. 4:22-CV-00973-SDJ-AGD, 2024 WL 1299065, at *7 (E.D. Tex. Mar. 12, 2024), *report and recommendation adopted*, No. 4:22-CV-00973-SDJ-AGD, 2024 WL 1289452 (E.D. Tex. Mar. 26, 2024), *aff'd*, No. 24-40249, 2025 WL 458001 (5th Cir. Feb. 11, 2025) (finding the filing party did not show how his success in a company resulted in national or international acclaim).

For his leading role with [redacted], the Petitioner notes the organizational chart places him at the center of cross-functional coordination among IO standards teams. While it appears the Petitioner could meet the leading or critical role's criterion requirements, it is less apparent that he has shown his leadership at [redacted] resulted in his placement among those at the top of his field or that it led to sustained national or international acclaim, rather than simply holding a high-ranking position within a notable company. *See Nagaiah v. Allen*, 784 F. Supp. 3d at 820; *Mishra v. Richardson*, No. 120CV991LMBTCB, 2021 WL 1566071, at *4 (E.D. Va. Apr. 20, 2021) (rejecting plaintiff's argument that working in a leadership position for a recognized and famous company automatically shows he has risen to the top of the field and sustained acclaim).

The Petitioner attempts to extend his work with IO self-testing software in other areas that are unrelated to [redacted] to surmise that he has achieved "sustained recognition from one of the most elite employers in the global semiconductor industry." But that is not what's at issue here: whether his leading or critical roles with distinguished organizations has illustrated he meets the highly difficult standard that this immigrant classification demands.

Courts emphasize that evidence must demonstrate how a role resulted in a reputation commensurate with being at the very top of the field, reflecting that the impact of a petitioner's work was viewed by the field as unusually influential or significantly important. *Agrawal*, 2025 WL 2879217, at *24 (upholding that alien's evidence failed to describe how they had garnered sustained national or international reputation through their roles); *Bodhankar*, 2020 WL 777211, at *5 (finding that the filing party's work for organizations did not result in national or international acclaim). Without specific documentation linking organizational success to personal, sustained recognition, high-ranking positions do not inherently satisfy this standard. *Joseph*, 2024 WL 1299065, at *7, *report and recommendation adopted*, 2024 WL 1289452, *aff'd*, 2025 WL 458001 (upholding the determination that the alien's leading role in a successful company does not necessarily demonstrate a sustained career or the impact of his work has risen to the level where it places him at the very top of the field).

For [redacted], the Petitioner claims he played a critical role as a senior embedded software engineer. In that effort is where he worked on the OTA infrastructure process of delivering firmware and other updates to the company's commercial devices. The Petitioner focused his work on ensuring the organization's products received "real-time updates, stability, and user trust in a nascent but strategically significant industry." Absent is a depiction of this work equating or sufficiently contributing to a career of acclaimed work. *Agrawal*, 2025 WL 2879217, at *24 (finding the evidence fails to describe how a filing party has garnered sustained national or international reputation through their roles). And that is the extent of the Petitioner's leading or critical role claims in the appeal that might place him among those at the top of his field.

While the Petitioner may be an accomplished solutions architect, that does not necessarily translate into him attaining a career of acclaimed work among those at the top of his field. Considering the full measure of the Petitioner's ability and achievements, the level of his national or international recognition, and the extent to which his achievements have been recognized in the field are not indicative of a record of sustained acclaim at the national or international level. The Petitioner has shown notable success through his performance of a leading or critical role for organizations or establishments with a distinguished reputation, and some successes through his contributions to the field. The remaining evidence, however, does not place him among that small percentage who have risen to the very top of the field of endeavor. We make this overall determination even when we consider all of his claims in a collective manner. Ultimately, the Petitioner has not established that he currently qualifies for this classification.

III. CONCLUSION

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. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden here.

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.