U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42215936

Date: APR. 28, 2026

Appeal of Service Center Operations Decision

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

The Petitioner, a pediatric cardiologist/advanced imaging, 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.

Service Center Operations (SCOPS) denied the petition, concluding the record did not establish that the Petitioner had a major, internationally recognized award, nor did it demonstrate that he met at least three of the ten regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). The matter is now before us on appeal. 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 withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

Section 203(b)(1)(A) of the Act makes visas available to immigrants 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). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate 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 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is 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.

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 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 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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner is a pediatric cardiologist at [redacted], Louisiana. He explained that he established the first fetal cardiac MRI program in Louisiana and that he is starting a stress cardiac MRI program as well. Because the Petitioner has not indicated or established 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 initially claimed six criteria relating to awards, published materials, judging, contributions, scholarly articles, and leading or critical role. SCOPS determined the Petitioner established two of the regulatory criteria relating to judging and scholarly articles. Because SCOPS granted only two of the claimed initial criteria, SCOPS did not undertake a final merits determination. On appeal, the Petitioner asserts he meets the evidentiary criteria relating to published materials, contributions, and leading or critical role.[1]

Upon de novo review, we agree with SCOPS that the Petitioner has satisfied the criteria relating to judging and scholarly articles. However, as discussed below, we disagree with SCOPS and conclude that the Petitioner has demonstrated that he meets the criterion relating to published materials. Therefore, the Petitioner satisfies the initial evidence requirements for this classification.

[1] Although the Petitioner previously claimed to meet the criteria relating to awards, he does not contest SCOPS' decision relating to this criterion on appeal or otherwise refer to it in his appeal brief. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330,336 n.5 (BIA 2021) (*citing Matter of R-A-M-*, 25 I&N Dec. 657,658 n.2 (BIA 2012)).

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished 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." These materials must include "the title, date, and author of the material, and any necessary translation." *Id.* The published material should be about the alien and their work, rather than the alien's employer and its work (or about an organization and its work). Professional or major trade publications may be identified by their intended audience, while other major media and major trade publications should have elevated circulation or readership relative to other media in the field. *See generally 6 USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual.

In response to SCOPS' request for evidence, the Petitioner provided an editorial article about his published research entitled "*Editorial for* [redacted]" published in the Journal of Magnetic Resonance Imaging (JMRI). The editorial article discusses the Petitioner's work on cardiac Magnetic Resonance Imaging (MRI) on developing fetuses. Moreover, the Petitioner provided information about JMRI which shows that it is a professional publication.

Therefore, we withdraw SCOPS' determination that the Petitioner did not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner has satisfied at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) and therefore meets the initial evidence requirements for this classification. We therefore need not address whether the Petitioner meets any additional evidentiary criteria. *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).

However, granting the third initial criterion does not suffice to establish the Petitioner's eligibility for the classification he seeks. USCIS must now make a final merits determination based on a review of the totality of the evidence the Petitioner provided. SCOPS did not make such a finding. Rather than make this determination in the first instance, we will remand the matter to SCOPS.

On remand, SCOPS must analyze the Petitioner's accomplishments and weigh the totality of the evidence, including the evidence and arguments provided on appeal, to determine if he established his extraordinary ability in his field of endeavor based on the statutory and regulatory standards. *See* section 203(b)(l)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119- 20. SCOPS should consider any potentially relevant evidence of record, even if it does not fit one of the evidentiary criteria or was not presented as comparable evidence. *See generally 6 USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policy-manual. The type and quality of evidence should determine the petition's approval or denial. *Id.*

By a preponderance of the evidence, the Petitioner has satisfied three initial evidentiary criteria. We will remand the matter to SCOPS for a final merits determination.

ORDER: The decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.