U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37760312

Date: APR. 29, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a general and operations manager, 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 Petitioner did not satisfy at least three of the initial evidentiary criteria. In addition, SCOPS found the Petitioner did not show he seeks to enter the United States to continue work in his area of expertise and his entry will substantially benefit prospectively the United States. 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 dismiss the appeal.

Section 203(b)(1)(A)(ii) of the Act requires "the alien to enter the United States to continue work in the area of extraordinary ability." In addition, the regulation at 8 C.F.R. § 204.5(h)(5) states 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."[1] Further, section 203(b)(1)(A)(iii) of the Act requires "the alien's entry into the United States will substantially benefit prospectively the United States."[2] The record reflects that as part of request for evidence, SCOPS instructed the Petitioner to submit evidence relating to his intent to continue work in the United States and his entry would substantially benefit the United States. Specifically, SCOPS stated:

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[1] *See also generally* 6 USCIS Policy Manual F.2(A)(2), https://www.uscis.gov/policymanual (providing that to qualify as an alien of extraordinary ability, the beneficiary must intend to continue to work in the area of expertise).

[2] *See also generally* 6 USCIS Policy Manual, *supra*, F.2(A)(3) (indicating that there is not standard rule as to what will substantially benefit the United States, and in some cases, a request for evidence may be appropriate if USCIS is not yet satisfied that the petitioner has not met this requirement).

> It must be shown how the beneficiary will continue working in the United States in the claimed area of expertise. The petition does not indicate that the beneficiary has prearranged commitments for working in this field. The petitioner indicates that the beneficiary will work as a General and Operations Manager, whereas the documents that were submitted suggest instead that the beneficiary may be working [ ] as a Chief Executive Officer (CEO) and/or Chief Operations Officer (COO).
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> Work as a CEO would not be in the field of endeavor, as a General and Operations Manager's responsibilities would be more limited than a CEO and/or COO, and if—for example—the petitioner were to attempt to provide salary data for a General and Operations Manager, then the beneficiary's income acting as a CEO and/or a COO would not meet the criterion because the two positions do not have the same responsibilities and would therefore have different pay ranges.
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> It must be shown how the beneficiary's entry will substantially benefit prospectively the United States. The petition does not indicate that the beneficiary's entry will substantially benefit prospectively the United States. The beneficiary has not met at least three (3) of the criteria; as such, it appears that he does not have sufficient acclaim to justify the assertion that his entry as a permanent resident to the United States would positively affect the country on a national level.

In response, the Petitioner's cover letter did not address any of these issues. Moreover, the Petitioner resubmitted his intent to work letter without providing any additional documentation relating to these statutory requirements. In denying the petition, SCOPS determined that "no new documents were submitted to address th[e]s[e] issue[s]."

On appeal, the Petitioner submits a brief addressing only one of the three grounds for the SCOPS' denial. Specifically, the Petitioner contends that he satisfied five categories of evidence. The Petitioner does not address or dispute SCOPS' decision regarding his intent to continue work in his area of expertise and his entry would substantially benefit the United States.

Accordingly, we will not further address these uncontested grounds on appeal, and we deem them to be waived. Any ground of ineligibility that is not raised on appeal is waived. *See 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 202)). If the affected party does not address issues raised in the decision, and those issues are dispositive of the case, the appeal will be dismissed based on those waived issues. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009); *see also Sarin v. United States*, No. 2:22-CV-07498-SVW-JS, 2023 WL 5667531, at *9 (C.D. Cal. July 27, 2023) (finding the plaintiff waived the issue of his intent to continue to work in the United States when he did not raise or contest it in his brief, and the AAO properly dismissed the appeal because the waived issued was dispositive). Since the Petitioner waived two of the three statutory requirements under section 203(b)(1)(A)(ii) and (iii) of the Act and those are dispositive in establishing eligibility as an alien of extraordinary ability under section 203(b)(1)(A) of the Act, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his

possession of extraordinary ability under section 203(b)(1)(A)(i) of the Act.[3] *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).

The Petitioner waived the statutory requirements relating to his intent to continue to work in his area of expertise and his substantial benefit to the United States. 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.

[3] In the alternative, we would have summarily dismissed the Petitioner's appeal. An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v). The Petitioner's brief restates his eligibility for five categories of evidence without claiming how SCOPS misapplied law or misstated a fact in its analysis of the evidentiary criteria. Moreover, the brief does not address or contest SCOPS' specific findings for any of claimed criteria or explain how SCOPS otherwise committed legal or factual error.