U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41622883

Date: APR. 30, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a management analyst, seeks classification as an alien of extraordinary ability. *See* section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those aliens who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. *Id.*

Service Center Operations (SCOPS) denied the petition, concluding the Petitioner was not the recipient of a major, internationally recognized award, and, did not satisfy at least three of the ten evidentiary criteria to meet the initial evidentiary requirements of the classification. 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

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability if: they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry will substantially benefit the United States prospectively. 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 a multi-part analysis of the evidence to determine whether a petitioner has sustained national or international acclaim and whether their achievements have been recognized in the field. First, a petitioner can provide evidence of either "a

major, international recognized award," or satisfaction of at least three of ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3).

Where a petitioner meets these initial evidence requirements, U.S. Citizenship and Immigration Services (USCIS) then considers the totality of the material provided in a final merits determination and assesses 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 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); *see generally* 6 *USCIS Policy Manual* F.2(B), www.uscis.gov/policy-manual (providing, as guidance, USCIS' two-step extraordinary ability analysis).

II. ANALYSIS

The Petitioner has not indicated or established that he has received a major, internationally recognized award under 8 C.F.R. § 204.5(h)(3). He must therefore satisfy at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Based on our de novo review, the Petitioner has not met this showing.

A. Evidentiary Criteria Waived

The Petitioner did not assert in the record below or on appeal that he meets the criteria at 8 C.F.R. § 204.5(h)(3)(i), (vi), (vii), or (x) regarding receipt of lesser nationally or internationally recognized prizes or awards, authorship of articles, display of his work, and commercial successes in the performing arts. We therefore deem the Petitioner's eligibility under these four criteria 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 2012))(An eligibility ground that is not raised on appeal is waived.)

B. Evidentiary Criterion Established

SCOPS determined the Petitioner met the criterion at 8 C.F.R. § 204.5(h)(3)(iv), which requires evidence of his participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. We agree.

C. Evidentiary Criterion Withdrawn

SCOPS also found the Petitioner established the criterion at 8 C.F.R. § 204.5(h)(3)(viii), which requires evidence that he performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The Petitioner submitted supporting letters and contracts demonstrating that he served as an advisor for three agricultural technology (AgTech) companies, two of which the evidence identifies as startups. However, the Petitioner did not provide sufficient evidence of the distinguished reputation of these companies. Distinguished is defined as "marked by eminence, distinction, or excellence" or "befitting an eminent person." *See* Distinguished, Merriam-Webster.com, www.merriam-webster.com. For a startup business, we may consider evidence that the business has received significant funding from government entities, venture capital

funds, angel investors, or other such funders commensurate with funding rounds generally achieved for that startup's stage and industry, as a positive factor regarding its distinguished reputation. *See generally* 6 *USCIS Policy Manual, supra,* at F.2(B)(1). Other relevant factors for evaluating the reputation of an organization or establishment can include the scale of its customer base or relevant media coverage. *Id.* While the Petitioner provided online articles discussing the two start-up companies, their work, and that they secured funding, neither the articles nor the other evidence in the record provide context for the funding amounts achieved by the companies for us to understand whether their funding is significant commensurate with other startups within their stage and within the AgTech industry. In addition, the Petitioner did not provide information on the scale of any of the companies' customer base and how their base compares to other similar AgTech companies. The Petitioner also submitted a letter indicating he served as the vice president of a board that represents a coalition of companies from various industries. Other than the letter describing the Petitioner's membership in the coalition, the record did not contain any information about the distinguished reputation of the coalition. We therefore disagree with SCOPS that the Petitioner provided sufficient evidence to demonstrate the distinguished nature of the establishments to meet the requirements of this criterion and withdraw SCOPS' determination to the contrary.

D. Remaining Evidentiary Criteria

1. Criteria Not Established

SCOPS determined the Petitioner did not establish the criteria at 8 C.F.R. § 204.5(h)(3)(ii) and (ix) and we agree.

The criterion at 8 C.F.R. § 204.5(h)(3)(ii) requires the Petitioner establish his membership in associations in the field for which classification is sought. In addition, the Petitioner must establish that the association requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii); *see generally* 6 *USCIS Policy Manual, supra,* at F.2(B)(1). The Petitioner established that he is a member of the Brazilian Institute of Corporate Governance (IBGC) and its "GT Agro" division. However, as SCOPS explained both in its Request for Evidence (RFE) and in its decision, the documents, including the IBGC's bylaws and policies, did not establish that outstanding achievements were required of its members or that members were judged by national or international experts in their fields.

On appeal, the Petitioner argues SCOPS' RFE did not provide notice to the Petitioner of the deficiencies in his evidence with respect to this criterion. As discussed above, SCOPS provided proper notice in its RFE and explained in its decision that the Petitioner did not sufficiently explain how meeting the requirements for membership amounts to outstanding achievements.

The Petitioner also argues that SCOPS did not thoroughly review the evidence, specifically identifying several articles in IBGC's bylaws, and claims that IBGC membership candidates go through evaluation such as background investigations and ethical screenings and are thereby assessed by governance specialists. But the documents and this explanation do not support that the IBGC, or any division within, requires outstanding achievements as judged by recognized national or international experts in the field. The Petitioner also highlights his position in other organizations but does not connect how being, for example: a member of a board of directors, a senior executive, an expert in

corporate governance matters, a partner for a business, where he adhered to good ethics and corporate government practices, meet the requirements of being a member in an association requiring outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields. The Petitioner has therefore not demonstrated this criterion.

The criterion at 8 C.F.R. § 204.5(h)(3)(ix) requires the Petitioner establish that he commanded a high salary or other significantly high remuneration for services, in relation to others in the field. A credible employment contract or job offer may establish that an alien "has commanded" such salary or remuneration, as may evidence of past earnings such as tax returns and pay statements. *See generally* 6 *USCIS Policy Manual, supra,* at F.2(B)(1). Comparative wage or remuneration data that is appropriate for the alien's occupation and location should be submitted to establish that their compensation is high relative to others working in the field. *Id.* According to the Petitioner's initial filing, he does not receive a conventional fixed salary as "his earnings derive from advisory agreements, variable project-based remuneration, investment returns, and profit distributions." In support of his remuneration, the Petitioner submitted a table from an accountant listing his "annual value" and "monthly average" income from 2014 to 2023. The Petitioner also submitted salary data for business management consulting analysts as comparative wage data. In response to SCOPS' RFE, the Petitioner again stated that his "earnings derived not from a fixed wage but from profit participation and consulting remuneration in startup governance and investment roles, consistent with high-level positions in venture capital, agribusiness consulting, and advisory boards." In its decision, SCOPS explained that because the record did not specifically identify what portion of his income qualified as a salary, which was the type of comparative data he provided to establish that he meets this criterion, there was not a proper basis to compare his salary to other salaries.

On appeal, the Petitioner reasserts that his salary is not a conventional wage but remuneration for services rendered as a "startup evaluator, governance specialist, and advisor." However, he has not provided data regarding remuneration for similarly situated individuals with a similar compensation structure, to demonstrate his compensation is high relative to others in the field. Rather, the Petitioner provided only salary data for business management consulting analysts[1] as comparative data, after repeatedly indicating that his source of income is not salary related, but based on profit participation and consulting remuneration. As a result, he has not demonstrated his data is comparative and that he meets this criterion.

2. Issues Reserved

SCOPS determined the Petitioner did not establish he meets the criteria at 8 C.F.R. § 204.5(h)(3)(iii), requiring evidence of published material about the Petitioner in professional or major trade publications or other major media, relating to the Petitioner's work in the field for which classification is sought; and 8 C.F.R. § 204.5(h)(3)(v), requiring evidence of the Petitioner's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. As the Petitioner would still be unable to establish that he meets at least three of the ten threshold "initial evidence" requirements at 8 C.F.R. § 204.5(h)(3), we cannot conclude he is an alien of extraordinary ability and reserve our analysis of the remaining two criteria as well as a final merits determination in

[1] We also note that the Petitioner has not sufficiently demonstrated that his duties as startup evaluator, governance specialist, and advisor are those of a management consultant so that the salary or remuneration data would be comparative.

this matter. *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); *see also Kazarian*, 596 F.3d at 1119-20 (discussing a two-step review, where if the required number of criteria are met by the documentation, then it is considered in the context of a final merits determination).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated eligibility as an individual of extraordinary ability.

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 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.