U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39360368

Date: AUG. 01, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a musician, seeks classification as an individual 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 petition, concluding that the record did not establish the Petitioner met the requirements for classification as an individual of extraordinary ability. 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 individuals with 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, provided that the individual seeks to enter the United States to continue work in the area of extraordinary ability, and the individual'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 a multi-part analysis. First, petitioners can demonstrate international recognition of their accomplishments in the field through a one-time achievement (that is, a major, internationally recognized award). If petitioners do not submit this evidence, then they 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). 8 C.F.R. § 204.5(h)(4) allows petitioners 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 their 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).

II. ANALYSIS

A. Evidentiary Criteria

The Petitioner indicates that he intends to continue his work as a musician in the United States. Because the Petitioner has not asserted or established that he has received a major, internationally recognized award at 8 C.F.R. § 204.5(h)(3), he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). SCOPS determined the record satisfies the criteria for awards, published materials, judging, and display at 8 C.F.R. § 204.5(h)(3)(i), (iii), (iv), and (vii), respectively. However, SCOPS concluded the Petitioner did not show he garnered sustained national or international acclaim or his achievements have been recognized in the field of endeavor, demonstrating he is one of that small percentage who has risen to the very top of the field.

The Petitioner asserts on appeal that the record establishes his eligibility for classification as an individual of extraordinary ability. He contends that SCOPS erred by analyzing the evidence individually rather than collectively, misapplying the standard of proof, and denying the petition without providing meaningful analysis. The Petitioner further argues that SCOPS failed to account for field-specific standards and did not give due weight to the fact that he met four eligibility criteria, surpassing the requisite three. On appeal, we will review the totality of the evidence in the context of the final merits determination below. *See generally* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policymanual.

B. Final Merits Determination

We will evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim,[1] 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. In a final merits determination, we analyze an individual'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.[2] Upon review, we determine the Petitioner has not

[1] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(A)(1) (stating the 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").
[2] *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.

shown his eligibility and also note the record reflects SCOPS properly analyzed the submitted documentation and applied the correct evidentiary standard.

In considering the totality of the evidence, the Petitioner has not demonstrated that his achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress.[3] Furthermore, he has not shown that he has risen to that small percentage at the very top of the field of endeavor per 8 C.F.R. § 204.5(h)(3). 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 FR 30703-01, 30704. The Petitioner has not established that he meets this very high standard.

On appeal, the Petitioner asserts that the record reflects he is "an internationally acclaimed musician and the founder of the award-winning metal band [redacted]," which has "received continuous international praise for nearly two decades and has developed a dedicated international following." He refers to the documentation provided with the initial petition and in response to SCOPS' request for evidence, and argues that the information shows his work "has shaped the genre of extreme metal music and earned him widespread recognition, awards, and media acclaim." The Petitioner contends that he "is a rare and exceptional talent" and "his sustained acclaim is supported by: repeated award recognition from the [redacted] Awards across multiple years; published material in major music media, with verified readership statistics; invitations to judge industry competitions; and global distribution of albums and music via top platforms." He argues that his sustained acclaim should be evaluated in the context of death metal music's "highly specialized, international subculture" where excellence "is not demonstrated by chart performance or pop culture appearances." Rather, it is demonstrated "through peer recognition, sustained underground presence, and influence across countries."

The record reflects that the Petitioner, as his band's lead guitarist and vocalist, received the following [redacted] awards: [redacted], and [redacted] (2014-2015); [redacted] (2015-2016); and [redacted] (2017-2018). He indicated that [redacted] awards hold a distinguished and nationally recognized status within Venezuela's music industry and have been highlighted by prominent media coverage. He pointed to coverage by [redacted] which the Petitioner indicates is the "largest print newspaper in the country" and "ranked #[redacted] in the News and Media category." He claimed that [redacted] digital edition extends its reach to an international audience and the global exposure amplifies the awards' visibility. The Petitioner asserted that winning these awards is "a testament to unparalleled excellence and mastery in the field." Although the awards may show recognition of his work from the field, the Petitioner did not demonstrate they indicate sustained national or international acclaim or a career of acclaimed work in the field. We note the record reflects he received awards during a short period of time, from 2014 to 2018, and the documentation is insufficient to demonstrate widespread recognition of the awards' importance. Here, the Petitioner did not establish the awards place him among that small percentage at the very top of the field. U.S. Citizenship and Immigration Services (USCIS) has long held that even athletes performing at the major league level do not automatically meet the statutory standards for

[3] 1990 U.S.C.C.A.N. 6710, 6739.

classification as an individual of "extraordinary ability." *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994).

Regarding media coverage, the Petitioner offered multiple articles and interviews published from 2017 to 2021. The record includes interviews with the Petitioner and his band published by [redacted], a publication "focusing on the intersection of music, culture, and arts"; [redacted] a Venezuelan rock media publication with radio broadcasts and an online presence; and online interviews by [redacted] and [redacted] He also submitted articles published in [redacted], which the Petitioner describes as a rock and music trade journal, noting the band's albums inclusion on a 2017 list of [redacted] recommended death metal albums. While the published material indicates some recent attention to the Petitioner and his band, he did not establish that such reporting is consistent with a level of success among that small percentage who has risen to the very top of the field of endeavor and has achieved sustained national or international acclaim. The Petitioner did not show how the amount of his media coverage compares to others in his field who are among the very top or how his press coverage reflects a career of acclaimed work in the field.

Concerning the Petitioner's service as a judge of the work of others, an evaluation of the significance of his experience is appropriate to determine if such evidence indicates the required extraordinary ability for this highly restrictive classification.[4] The record reflects the Petitioner participated as a member of the jury at the [redacted] awards in 2022. He indicated that he was asked to judge the participants and their work because of his extraordinary skill and ability as a musician, the [redacted] awards "are the most important recognition event in the genre of rock and metal in Venezuela," and it has been covered by the most important media in the country. However, the Petitioner did not establish that this instance of judging contributed to a finding that he has a career of acclaimed work in the field or is indicative of the required sustained national or international acclaim. The Petitioner did not show, for example, how his judging experience compares to others at the very top of the field or that he garnered wide attention from the field based on his evaluation work. Without evidence that sets the Petitioner apart from others in his field, such as documentation that he has a consistent history of reviewing or judging recognized, acclaimed experts in his field, he has not shown that his judging experience places him among that small percentage who has risen to the very top of the field of endeavor.

For evidence satisfying the display criterion, the Petitioner referred to his live performances, recorded albums, and the inclusion of his work on digital platforms and streaming services. He pointed to his performances at festivals and showcases, such as [redacted] in Venezuela, and [redacted] The Petitioner indicated that these events are recognized as "pillars of the rock and metal music scene" and performing "at these showcases is a testament to an artist's skill, creativity, and mastery." He referred to three albums in particular and noted they were recognized by the [redacted] awards, [redacted] and echoesandust.com. The Petitioner claimed that the legacy of his albums "extend his influence and cement his reputation as a distinguished figure in the music industry"; his recordings are "meticulously catalogued on renowned collector platforms"; and his music has "captivated audiences across the globe, amassing millions of streams on prominent platforms." Though the record contains documentation reflecting the Petitioner's talent and experience in the metal music field, he did not

[4] *See Kazarian,* 596 F. 3d at 1121-22.

sufficiently show how his albums, performances, and online streaming demonstrated sustained national or international acclaim, rather than documenting continued activity in his field.[5] Without sufficient evidence distinguishing the Petitioner's professional experience from others in his field, he has not shown that he "is one of that small percentage who [has] risen to the very top of the field of endeavor."[6]

The Petitioner further indicated in his initial petition that he performed a leading and critical role for an organization with a distinguished reputation and obtained commercial success in the performing arts. He provided various forms of documentation, to include support letters, articles, flyers, photographs, and online printouts to support his assertions. For instance, he pointed to his role as his band's founder and lead guitarist and vocalist; his band's recognition by [redacted] and other publications; and his band's receipt of the [redacted] awards. He also referred to printouts that reflected his band's albums are available to purchase online and their music has been downloaded and streamed on various platforms. In addition, the Petitioner provided support letters from musicians, composers, and producers, praising his musical talent and influence in the field.[7] We acknowledge the letters and other supporting documents highlight the Petitioner's recognition and achievements as a death metal musician. However, as a whole, they do not reflect: a career of acclaimed work in the field, garnering the required sustained national or international acclaim; the Petitioner is viewed by the overall field among the upper echelon; or he has garnered recognition on a national or international scale, consistent with being among the small percentage at the very top of the field of endeavor.

C. O-1 Nonimmigrant Status

We note the record indicates the Petitioner was previously granted O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition, which is adjudicated based on a different standard - statute, regulations, and case law. Many Forms I-140 are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *affd*, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification intended for individuals already at the top of their respective fields. *See Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2002) (stating that

[5] *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2)-(3).
[6] *See* 8 C.F.R. § 204.5(h)(2).
[7] We have reviewed and considered all support letters contained in the record.

extraordinary ability is such an elite level of accomplishment); *Onaghise v. Dep't of Homeland Sec.*, No. 3:20-CV-03033-X, 2022 WL 4073344, at *2 (N.D. Tex. Sept. 2, 2022) (holding that extraordinary ability visas are known as "Einstein" visas, are extremely "coveted," and are "reserved for only the most talented" aliens). As required by section 203(b)(1)(A) of the Act, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or consistent with a career of acclaimed work in the field. Though the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, the record is insufficient to demonstrate he is among the small percentage at the top of his field per 8 C.F.R. § 204.5(h)(2).

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.