U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43298937

Date: AUG. 3, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

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

The Petitioner, a hammered dulcimer artist and music educator, 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 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.*

USCIS denied the petition, concluding that the record did not satisfy at least three of the 10 initial evidentiary criteria. USCIS also determined that the record did not establish that the Petitioner would continue to work in the area of claimed 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) 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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of their 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 they must provide sufficient qualifying documentation that meets at least three of the 10 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). If a criterion at 8 C.F.R. §§ 204.5(h)(3)(i)-(x) does not readily apply to an occupation, petitioners may submit comparable evidence to establish eligibility. 8 C.F.R. § 204.5(h)(4).

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).

II. ANALYSIS

The Petitioner described the endeavor as a plan "to promote hammered dulcimer education in the United States, address the current educational gap in this field, and contribute to the diversification of music education and research." He further states on appeal, "In my field, performance, pedagogy, and scholarship are integrated aspects of a single area of expertise, with professional recognition most often reflected through teaching, evaluation, and academic contribution."

USCIS concluded that the record satisfied the criteria at 8 C.F.R. §§ 204.5(h)(3)(iv) and (vi) but not the criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(ii) and (v), noting that the Petitioner did not assert eligibility under the remaining criteria. On appeal, the Petitioner reasserts that the record satisfies the criteria at 8 C.F.R. §§ 204.5(h)(3)(ii), (iv),[1] and (v). As the Petitioner does not address the remaining criteria, we consider them waived.[2] *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)).

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[1] Because USCIS determined that the Petitioner satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(iv), we need not address the Petitioner's assertions raised on appeal regarding this criterion, given that the claimed errors were, at most, harmless. *See generally Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing cases regarding harmless or scrivener's errors).

[2] The Petitioner also claims that *Mukherji v. Miller*, No. 4:24-CV-3170-JFB-RCC, 2026 WL (D. Neb. Jan. 28, 2026), is a "controlling decision," that "held that the two-step adjudication process for EB1-A petitions, particularly the 'final merits determination' phase that is commonly used by USCIS, is unlawful." USCIS is not bound to follow the published decision of a district court, even in cases arising in the same district. *See Matter of K-S-*, 20 I&N Dec. 715, 718-20 (BIA 1993). Therefore, we are unpersuaded by the Petitioner's references to *Mukherji*, which is an unpublished district court case, despite his incorrect assertion that it is a "controlling decision" here. The Petitioner also asserts that satisfying at least three initial evidentiary criteria is prima facie evidence that the alien is extraordinary and that, in that circumstance, USCIS must approve the petition "unless it can present 'specific and substantiated' evidence to the contrary," citing *Buletini v. INS*, 860 F. Supp. 1222, 1234 (E.D. Mich. 1994). Again, we are not bound to follow district court decisions, such as *Buletini*, even in cases arising in the same district. *See Matter of K-S-*, 20 I&N Dec. at 718-20. Moreover, we note that at least one circuit court has expressly rejected *Buletini*, although the Petitioner does not clearly indicate which circuit would control this matter. *Amin v. Mayorkas*, 24 F.4th 383, 391 n.5 (5th Cir. 2022).

For the reasons discussed below, the record does not satisfy at least three of the criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(x).

A. Membership in Associations in the Field

The criterion at 8 C.F.R. § 204.5(h)(3)(ii) requires "[d]ocumentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields."

USCIS acknowledged that the Petitioner is a member of the Chinese Musical Instrument Association (CMIA) and the Chinese Musicians Association (CMA). However, USCIS observed that the record does not establish that either association requires outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. USCIS further stated that the Petitioner's elected positions in the CMIA and the Chinese Ethnic Minorities Vocal Music Society (CEMVS) exceed the entities' general membership requirements and, thus, they would "go beyond the substantive or evidentiary requirements set forth at 8 C.F.R. § 204.5(h)(3)(ii)." Based on those issues, USCIS determined that the record does not satisfy this criterion.

On appeal, the Petitioner claims that, although USCIS' analysis was "textually accurate," it nevertheless "did not fully consider the context of professional associations in creative and artistic fields, nor did it review all pertinent evidence submitted." More specifically, the Petitioner claims that the CMIA and CMA bylaws' references to "certain accomplishments" or "certain influence" are "the standard practice across China's premier creative arts societies . . . as the standard formulation for peer-evaluated outstanding achievement." The Petitioner also asserts that USCIS "may not have reviewed the evidence pertaining to the [CEMVS], an association for which the Petitioner was appointed as an Expert Consultant."

Here, neither the CMIA nor the CMA bylaws, as translated into English in the record, show that they require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. Moreover, we are unpersuaded by the Petitioner's reference to "the standard practice across China's premier creative arts societies." Although similar Chinese associations in various fields may routinely use language like "certain accomplishments" or "certain influence," the CMIA and CMA bylaws nevertheless do not define these terms in a way that may show these particular associations require outstanding achievements of their members, as opposed to ambiguous "certain accomplishments" or "certain influence." Thus, even if using these phrases were "the standard practice across China's premier creative arts societies" as the Petitioner claims, the standard practice does not satisfy a plain-language reading of this criterion's requirements. Moreover, if the standard practice across creative arts societies is to require the same accomplishments or influence as other creative arts societies, such a practice would not appear to require outstanding achievements but, rather, the same standard accomplishments or influence as all other members of all other creative arts societies.

And contrary to the Petitioner's claim on appeal, USCIS addressed his elected position in the CEMVS. More importantly, the Petitioner has not established that his membership in a vocal music society is material to his field as a hammered dulcimer educator, given that operating a hammered dulcimer—or, more to the point, educating others to do so—is not a vocal music performance.

For the foregoing reasons, the record does not satisfy this criterion.

B. Original Contributions of Major Significance in the Field

The criterion at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field."

USCIS acknowledged that the Petitioner published books and musical compositions, and that he has worked as an editor and editorial committee member. However, USCIS noted that the record does not establish that his published books or musical compositions "have garnered significant attention and/or utilization throughout the field" or that he was offered his editorial positions "because [he] made contributions of major significance." USCIS also noted that, although the Petitioner is among [redacted]," the record does not establish whether "the wider music field considers this recognition commensurate with making contributions of major significance." USCIS further observed that the Petitioner has had speaking engagements in 2023 and 2024, and that his published works have received citations. However, USCIS concluded that the record does not establish how the two speaking events demonstrate contributions of major significance, given that "those in [his] field are generally expected to attend meeting[s] or conferences," and USCIS noted that the record does not show that his published works have had major significance in the field. Based on those issues, USCIS determined that the record does not satisfy this criterion.

We concur with USCIS' conclusion that the record does not establish the Petitioner's contributions to the field have been of major significance. For example, the record does not show how the Petitioner's publications, editorial contributions, judging roles, public speaking, and similar activities have provoked widespread commentary on its importance from others working in the field, rather than merely being acknowledged among other, similar contributions. *See generally* 6 *USCIS Policy Manual*, F.2(B)(1), https://www.uscis.gov/policy-manual.

As another example, the record does not contextualize the citations the Petitioner's publications received among the number of citations other authors received for similar publications, in order to show that his work has been highly cited relative to others' work in the field. *See generally id.* The record furthermore does not contextualize the substance of the citations, to clarify whether the citations the Petitioners' publications received are, on balance, favorable or critical of his contributions.

The Petitioner claims on appeal that USCIS' analysis of his citation history "is methodologically invalid" because it compares information from the China National Knowledge Infrastructure (CNKI) database to Google Scholar metrics, which he characterizes as "prioritiz[ing] English-language, international, and often scientific journals" and generally providing "poor coverage of Chinese publications." However, the Petitioner does not support his criticism of Google Scholar metrics' alleged flaws with credible, probative evidence. *See Matter of Chawathe*, 25 I&N Dec. at 375-76 (providing that petitioners must establish their claims are more likely than not true by submitting relevant, probative, and credible evidence); 8 C.F.R. § 103.2(b)(8)(i) (providing that USCIS will approve benefit requests only when the evidence of record—not information outside the record—establishes eligibility). And more to the point, he does not otherwise show how his citations are high relative to others' work in the field, given that he does not establish—through probative, credible

evidence in the record—what the citation rates of others in the field are. *See Matter of Chawathe*, 25 I&N Dec. at 375-76; 8 C.F.R. § 103.2(b)(8)(i). The Petitioner claims that citation comparison "does not reflect the nature of my field, where citation volume is not an appropriate primary measure of impact."[3] Rather, he states that "teaching, institutional adoption, and professional practice rather than citation metrics" measure contributions to the field of hammered dulcimer education. However, the record does not establish through probative documentary evidence how the Petitioner's contributions, relative to those of other hammered dulcimer educators, have been of major significance through teaching, institutional adoption, and professional practice, in lieu of a citation comparison. *See Matter of Chawathe*, 25 I&N Dec. at 375-76; 8 C.F.R. § 103.2(b)(8)(i).

The Petitioner asserts on appeal that an opinion letter written by [redacted] corroborates the Petitioner's claim that his contributions have been of major significance. Specifically, the Petitioner addresses the letter's statement that the Petitioner developed an "influential teaching program [with a] profound impact on music education in China." The Petitioner also quotes the letter's generalization that the Petitioner is "one of the very few leading experts in dulcimer and cross-cultural music in China." And the Petitioner references the letter's characterization of one of the Petitioner's articles as "one of the earliest and few truly specialized academic works on dulcimer in China [that] combined Western music theory with detailed explanations . . . to chart new directions for dulcimer pedagogy."

As a matter of discretion, we may use opinion statements submitted by a petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we may give an opinion less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; *see also* Fed. R. Evid. 702 (providing that an expert opinion may "help the trier of fact to understand the evidence or to determine a fact in issue," not that it is evidence of fact itself).

Here, the opinion letter from [redacted] bears minimal probative value because it purports to be evidence of fact, rather than helping us understand evidence to determine a fact in issue. *See* Fed. R. Evid. 702. For example, although the letter claims that the Petitioner developed an influential teaching program, it does not address evidence of the influence the Petitioner's teaching program had and how that evidence may establish such a fact. *See id.* Likewise, although the letter asserts that the Petitioner is "one of the very few leading experts in dulcimer and cross-cultural music in China," it does not reference evidence in the record that may establish such a fact, for example credible and authoritative publications that recognize the Petitioner as such. *See id.* Furthermore, although the letter states that [redacted] believes the Petitioner wrote "one of the earliest and few truly specialized academic works on dulcimer education in China [that] combined Western music theory with detailed explanations . . . to chart new directions for dulcimer pedagogy," that opinion is not supported by probative, documentary evidence of specialized academic works on dulcimer education in China that may place the Petitioner's article among the earliest. *See id.* Moreover, even if the Petitioner wrote one of the earliest such academic works, the opinion letter does not establish how being early relative to others is of major significance in the field of hammered dulcimer education.

[3] The Petitioner references "[a] simple search on Google Scholar for the term 'dulcimer.'" However, the Petitioner does not identify evidence in the record that may establish whether his claim is more likely than not true. *See Matter of Chawathe*, 25 I&N Dec. at 376; 8 C.F.R. § 103.2(b)(8)(i).

For all of the foregoing reasons, the record does not satisfy this criterion.

Because the Petitioner did not satisfy at least three of the 10 criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(x), which is dispositive, we reserve our opinion regarding whether the Petitioner would continue to work in the area of claimed extraordinary ability. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

Congress set a very high benchmark for aliens of extraordinary ability by requiring the petitioner demonstrate "sustained national or international acclaim" and present "extensive documentation" to show his or her achievements have been recognized in the field. Section 203(b)(1)(A)(i) of the Act. Because the Petitioner has not satisfied the threshold "initial evidence" requirements at 8 C.F.R. § 204.5(h)(3), we cannot conclude that he is an alien of extraordinary ability and need not further analyze the merits under the statute. *See Kazarian*, 596 F.3d at 1119-20; *see also 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."). Therefore, we decline to reach and hereby reserve any final merits determination in this matter. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

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.