U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42393340

Date: AUG. 10, 2026

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

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

The Petitioner, a jazz bassist and composer, 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.

USCIS denied the petition, concluding the record did not establish that the Petitioner had a major, internationally recognized award, nor did it demonstrate that she 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.

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 international recognition of his or her 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 he or she 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) (including items such as awards, published material in certain media, and scholarly articles).

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

The Petitioner, a graduate of [redacted] and the [redacted] in [redacted], Austria, is a jazz bassist and composer who intends to continue her career as a musician in the United States.

Because the Petitioner has not indicated or established that she received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). She claimed to meet five of the ten criteria: (i) lesser nationally or internationally recognized prizes or awards, (ii) membership in associations that require outstanding achievements, (iii) published material in professional or major media, (iv) participation as a judge of the work of others, and (vii) display of work at artistic exhibitions or showcases.

Service Center Operations (SCOPS) determined the Petitioner did not satisfy any of the claimed criteria. On appeal, she asserts that the record demonstrates that she meets all five claimed criteria. She also asserts that, because the language in the denial notice is a near-verbatim reproduction of the request for evidence (RFE), and because the denial does not address arguments or additional evidence she submitted, SCOPS did not review her RFE response.

Upon review, we agree that SCOPS' decision largely mirrors the RFE and it is not clear whether SCOPS reviewed all of the documentation in the record. An officer must fully explain the reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(1)(i). This explanation should be sufficient to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See, e.g., Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

Here, the decision lacks sufficient analysis and discussion of the evidence. Most of the language in SCOPS' decision replicates the analysis of the RFE, which is based only on the evidence initially submitted. For example, SCOPS' determination that the Petitioner did not meet the published-material criterion at § 204.5(h)(3)(iii) is limited to discussion of the articles and supporting documentation initially submitted; the decision does not acknowledge several letters of support from professional musicians and additional documentation submitted in response to the RFE. The only acknowledgment of evidence submitted in response to the RFE is a reference to the letter from A-M-, the senior managing director at the [redacted] under the membership criterion at 8 8 C.F.R. § 204.5(h)(3)(ii). Further, SCOPS' determination that the Petitioner did not meet the judging criterion provides conclusory statements concerning the insufficiency of the documentation submitted without discussion of a letter submitted in response to the RFE. SCOPS must explain why the documentation submitted in response to the RFE was insufficient.

In addition, SCOPS' determination that the Petitioner did not meet the criterion at 8 § C.F.R. 204.5(h)(3)(vii) is based on an erroneous interpretation of the criterion and misapplication of a district court case. The regulation requires "[e]vidence of the display of the alien's work in the field at artistic exhibitions or showcases." In addition to demonstrating that the displayed work was the alien's work product, the venues (virtual or otherwise) where the work was displayed must be artistic exhibitions or showcases. While *Merriam-Webster's* online dictionary definition of "exhibition" includes public showings other than those that are artistic in nature, the plain language of the criterion includes the modifier "artistic" and explicitly requires that the exhibitions or showcases be artistic in nature.

SCOPS determined that the Petitioner could not satisfy this criterion as a jazz musician, referring to a district court case "upholding an interpretation that performances by a performing artist" do not constitute display of an artist's work under 8 C.F.R. § 204.5(h)(3)(vii). SCOPS asserted "it is inherent in the petitioner's occupation to perform" and that, since she is "not a visual artist and has not created tangible pieces of art that were on display at exhibitions or showcases," she does not meet the criterion.

On appeal, the Petitioner asserts that USCIS did not consider the Policy Manual and the AAO's non-precedent decision, which state that this criterion does not exclude performing artists from its broad definition of "exhibition." She asserts that her artistic work is not merely her presence on a stage, but includes her original compositions and output as a musician and composer, and that when she performs at artistic venues, "she is presenting ('displaying') her work product to the public."

We agree that neither the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) nor the USCIS Policy Manual preclude musicians from satisfying this criterion.[1] In evaluating whether the evidence meets the criterion, we first determine whether the work that was displayed is the person's work product. Next, we determine whether the venues where the person's work was displayed were artistic exhibitions or showcases. Merriam-Webster's online dictionary defines "exhibition" as a public showing, such as the displaying of works of art, objects of manufacture, or athletic skill.[2]

The record includes articles that discuss the Petitioner's music and her performance at music venues, venue websites that depict her upcoming performances, and advertisements that show her among

[1] See *generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[2] *See* https://www.merriam-webster.com/dictionary/exhibition (accessed July 28, 2026).

performers at jazz festivals. The record also includes letters of support from professional musicians affirming that the Petitioner has been featured at artistic venues and festivals showcasing music in several countries. We conclude that the Petitioner has displayed her work by performing her music at both artistic venues and showcases. The evidence of record is sufficient to demonstrate that the Petitioner meets the criterion at 8 C.F.R. § 204.5(h)(3)(vii).

Concerning the remaining criteria that the Petitioner claims to have met, again, an officer must explain the specific reasons for denying a petition. *See* 8 C.F.R. § 103.3(a)(1)(i). While the evidence of record may ultimately be insufficient to demonstrate the Petitioner's eligibility for the requested benefit, SCOPS did not adequately address the evidence submitted with the initial filing and in response to the RFE and, therefore, did not sufficiently explain the reasons for denial.

III. CONCLUSION

We withdraw SCOPS' decision and remand this matter for further consideration and entry of a new decision. On remand, SCOPS should review the entire record and determine whether she meets at least two of the remaining claimed criteria at 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), and (iv) in addition to 8 C.F.R. § 204.5(h)(3)(vii). If SCOPS concludes that the Petitioner's evidence does not meet a specific eligibility requirement, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility. If the Petitioner meets at least three criteria, SCOPS should provide a final merits analysis to determine whether she meets the requirements for classification as an alien of extraordinary ability. SCOPS may request any additional evidence considered pertinent to the determination prior to issuing a new decision. In remanding, we express no opinion as to the ultimate resolution of this case.

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