U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38419738

Date: AUG. 11, 2025

Appeal of Service Center Operations Decision

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

The Petitioner, a search engine optimizer, seeks first preference immigrant classification as an individual 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 who can show 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 that the Petitioner's evidence did not satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). This matter is before us on appeal, which we review de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). The Petitioner must establish his eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon de novo review, we will dismiss the appeal.

Section 203(b)(1)(A) 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 this country 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.

"Extraordinary ability" refers only to those 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 regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, an alien can show sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that satisfies at least three of the ten criteria 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 regulatory 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 analysis, first determining whether the documentation satisfies the required number of the initial regulatory criteria and then conducting a final merits determination).

Because the Petitioner has not indicated, and the record does not otherwise show, receipt of a major, internationally recognized award, he must satisfy at least three of the ten regulatory criteria. The

Petitioner claimed below five criteria at 8 C.F.R. § 204.5(h)(3)(iii), (v), (vi), (viii), and (ix). SCOPS determined (in its request for evidence) that the evidence satisfied only two of the five criteria at 8 C.F.R. § 204.5(h)(3)(viii), (ix), namely that he has performed in a leading or critical role for organization or establishment having a distinguished reputation and commanded a high salary or other renumeration in the field. However, SCOPS determined that the record did not satisfy the remaining three criteria the Petitioner also claimed to have met, comprising published materials about himself, original contributions of major significance in his field, and authorship of scholarly articles in the field, 8 C.F.R. § 204.5(h)(3)(iii), (v), (vi), respectively, and therefore denied the case concluding that the evidence did not satisfy at least three of the ten regulatory criteria.

On appeal, the Petitioner does not contest SCOPS' conclusion that he did not meet the two criteria at 8 C.F.R. § 204.5(h)(3)(iii) and (v) (published materials about himself and original contributions of major significance in the field, respectively). We thus deem his claims as to these two criteria waived. *Matter of Garcia*, 28 I&N Dec. 693 n.1 (BIA 2023) (noting that issues not raised on appeal are waived) (citation omitted); *Matter of O-R-E-,* 28 I&N Dec. 330, 336 n.5 (BIA 2021) (same). But he argues that the record establishes his claimed authorship of scholarly articles in his field, and avers that satisfying this criterion at 8 C.F.R. § 204.5(h)(3)(vi), along with the above-referenced two criteria SCOPS found to have been met, shows that he has met at least three of the ten initial regulatory criteria. We conclude that the record does not satisfy 8 C.F.R. § 204.5(h)(3)(vi)'s "scholarly articles" criterion, and it therefore does not establish the Petitioner has met at least three of the ten evidentiary criteria.

To satisfy 8 C.F.R. § 204.5(h)(3)(vi), there must be sufficient evidence of the Petitioner's "authorship of scholarly articles in the field, in professional or major trade publications or other major media." We first determine whether he authored *scholarly articles* in the field. *See* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2. In the academic arena, "a scholarly article reports on original research, experimentation, or philosophical discourse. It is written by a researcher or expert in the field who is often affiliated with a college, university, or research institution." *Id.* They are "also generally peer reviewed by other experts in the field of specialization," "should have footnotes, endnotes, or bibliographies." *Id.* For other fields, it "should be written for learned persons in that field." *Id.* "Learned" is defined "as having profound knowledge gained by study" and "learned persons" include all persons having profound knowledge of a field. *Id.*

Next, we consider whether a publication was a professional, major trade, or major media publication. *Id.* Relevant factors for professional and major trade publications include their intended audiences and, for major media, their circulations or readerships relative to other media in the field. *Id.*

The Petitioner reiterates that his book, titled [redacted] published in China by [redacted] and [redacted] satisfies the scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi).[1] In support of this assertion, he submitted below (and resubmits on appeal) copies of front and back cover pages of the book with brief introductory descriptions about the Petitioner and the book; a copy of its table of contents; a list indicating various colleges, vocational and technical schools, and other entities in China that have purchased it; receipts indicating royalty income from book sales; screenshots of online retailers (Amazon, Google Play, and Alibaba) indicating availability for purchase; one-page online abstract of

[1] Amazon.com and other publicly available sources translate the book as [redacted] published by [redacted]

what appears to be an article that may have referenced the book; and the publisher's information. Based on its table of contents, the book appears to be about 300 pages. It was first published in 2008; currently on a third edition since its last update in 2014; and there is also a Taiwanese version.

The evidence does not show that this book constitutes "scholarly articles" for purposes of satisfying the plain language criterion at 8 C.F.R. § 204.5(h)(3)(vi). The record does not contain any evidence, and the Petitioner does not claim, that: he was or is affiliated with any academic or research institution; his book was published in academia; it reports on original research, experimentation, or philosophical discourse; or that it was peer-reviewed by any expert in the field. *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). Although he refers to his book as a "scholarly work" that also had some commercial success in China, the Petitioner did not submit any of its substantive contents or evidence of any related discourse that may indicate its claimed scholarly nature, as considered in the academic arena. *Id.* Further, he submitted no evidence that his book contains the features of scholarly articles, such as footnotes, endnotes, or bibliographies. *Id.* For these reasons, the evidence does not demonstrate that the Petitioner's book qualifies as "scholarly articles" in the academic arena.

As stated, for "other fields," scholarly articles should be written for *learned* individuals who have profound knowledge in the field gained by study. *Id.* Here, although he highlights that many colleges have purchased his book and he has earned significant income from book sales, the record lacks evidence that it was written for *learned* persons in the field. The back cover page of the book states that it introduces various knowledge points of SEO technology, suitable "for beginners to reference and learn from the basics to the complicated"; and an online description states it is "suitable for SEO beginners and readers with some experience" and "as a textbook for e-commerce and computer application majors in colleges and universities." Apart from these descriptions, he does not clarify, and the record lacks evidence of, the book's specific audience and its actual readerships that may inform whether it was written for learned persons in the field. The record instead indicates that the book was written generally for beginners and potential students, rather than *learned* individuals who have profound SEO knowledge they gained through study.

Accordingly, the record does not establish that the Petitioner's book qualifies as "scholarly articles" and he therefore has not satisfied the evidentiary criterion as set forth in 8 C.F.R. § 204.5(h)(3)(vi).[2]

Congress set a very high benchmark for aliens of extraordinary ability by requiring them to establish sustained national or international acclaim and present extensive documentation to demonstrate their achievements have been recognized in the field. Section 203(b)(1)(A)(i) of the Act. Here, the Petitioner's inability to meet the above regulatory criterion means he cannot satisfy the initial evidentiary requirement at 8 C.F.R. § 204.5(h)(3). Therefore, we cannot conclude that he is an alien of extraordinary ability and need not further analyze the merits under the Act. *See Kazarian*, 596 F.3d at 1119-1120; *see also Nagaiah v. Allen*, F.Supp.3d, 2025 WL 1508028, at *10 (E.D. Pa. May 27, 2025) (finding that the regulation "establishes a necessary, not sufficient, evidentiary requirement for a petitioner who seeks an extraordinary ability visa."). As our finding is dispositive of this appeal, we decline to reach and hereby reserve any final merits determination in this matter. *See, e.g.*, *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to reach issues unnecessary to the ultimate conclusion).

[2] As our finding is dispositive of this appeal, we do not reach whether the Petitioner's book was published "in professional or major trade publications or other major media" as the plain regulatory language also requires.

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.