U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43194002

Date: AUG. 13, 2026

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

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

The Petitioner seeks classification of the Beneficiary 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 that the Petitioner did not establish that the Beneficiary had received a major, internationally recognized award, nor did it demonstrate that he 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 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, a petitioner can demonstrate a beneficiary's international recognition of 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 it 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable evidence if it is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)–(x) do not readily apply to the individual's occupation.

Where a petitioner establishes that a beneficiary 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

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must demonstrate that the Beneficiary satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(ii)(i)-(x). The Petitioner initially claimed that the Beneficiary satisfied three criteria related to published material, leading or critical role, and high salary. 8 C.F.R. § 204.5(h)(3)(iii), (viii), and (ix). USCIS concluded that the Petitioner did not establish the Beneficiary's eligibility for any of the claimed criteria. On appeal, the Petitioner claims the Beneficiary meets these three criteria, along with two additional criteria related to awards and judging. 8 C.F.R. § 204.5(h)(3)(i) and (iv). Upon review, we conclude the Petitioner has not established that the Beneficiary meets at least three criteria. Therefore, the Beneficiary is not eligible for the extraordinary ability classification for the reasons we will discuss below.

A. Awards

On appeal, the Petitioner raises for the first time the Beneficiary's eligibility with respect to 8 C.F.R. § 204.5(h)(3)(i), regarding his receipt of awards. The Petitioner contends that the Beneficiary won the "[redacted] Award" and submits evidence of his receipt of this award on appeal.[1] In addition, the Petitioner submits evidence of the Beneficiary being awarded the '[redacted] Medal" along with a cash award from the [redacted] in [redacted] for his role in establishing the [redacted] and a plaque on a theater seat from the same theater for his "commitment to the youth symphony orchestra." We will not consider this criterion presented for the first time on appeal. We do not treat an appeal as a new adjudication of an immigration benefit request as if there had been no prior adjudication. *See, e.g., U.S. v. Raddatz*, 447 U.S. 667 (1980). The reason for filing an appeal is to provide an affected party with the means to remedy what he or she perceives as an erroneous

[1] The record indicates that the '[redacted] Award" was issued to the Beneficiary on [redacted], 2025. The underlying petition was filed December 9, 2024. The Beneficiary must meet all eligibility requirements at the time of filing the petition. *See* 8 C.F.R. § 103.2(b)(1). Subsequent developments cannot retroactively cause the Beneficiary to have been eligible at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Therefore, even if we were to consider the Beneficiary's evidence of awards on appeal, the record establishes he received this award after filing the petition and therefore it could not be considered in our analysis.

conclusion of law or statement of fact within a previous proceeding. *See* 8 C.F.R. § 103.3(a)(1)(v). As USCIS could not have committed an error in law or an error in fact as it relates to this criterion, we will not consider this claim for the first time on appeal. *See Matter of Izaguirre*, 27 I&N Dec. 67, 71 (BIA 2017) (citing *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988)).

Therefore, the Petitioner did not establish the Beneficiary meets this criterion.

B. Published Material

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought." These materials must include "the title, date, and author of the material, and any necessary translation." *Id.* The published material should be about the alien and his or her work, rather than the alien's employer and its work (or about an organization and its work). Professional or major trade publications may be identified by their intended audience, while other major media and major trade publications should have elevated circulation or readership relative to other media in the field. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual.

Here, the Petitioner did not include sufficient evidence related to the publications that feature the submitted articles, in order for us to determine that the publications qualify as "professional or major trade publications or other major media." 8 C.F.R. § 204.5(h)(3)(iii). On appeal, the Petitioner provides information about two of the publications. The first is *Connessi all'Opera* which the Petitioner states, in part, is "an Italian magazine covering opera performances, productions, artist interviews, and upcoming events. It serves as a comprehensive resource for opera fans and professionals." As it relates to a professional publication., the term "profession" shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. *See* section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32). Moreover, "profession" means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation. *See* 8 C.F.R. § 204.5(k)(2). In evaluating whether a submitted publication is a professional publication, a relevant factor includes the intended audience. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). Because the Petitioner did not demonstrate the publication's intended audience meets the definition of "profession" as defined in the law and regulations, the Petitioner did not establish the publication qualifies as a professional one. Likewise, the record does not establish that *Connessi all'Opera* is a major trade publication as the Petitioner did not provide evidence that it is one of the major trade publications in the field. *Braga v. Poulos*, No. CV 06-5105 SJO FMOX, 2007 WL 9229758, at *6 (C.D. Cal. July 6, 2007), *aff'd*, 317 F. App'x 680 (9th Cir. 2009) (finding an article in a trade publication must be one of the major trade publications in the field). Therefore, the Petitioner has not established that *Connessi all'Opera* is a professional or major trade publication in order to meet this criterion.

In addition, the Petitioner highlights three articles published by [redacted] Here too, the Petitioner does not provide sufficient evidence for us to determine whether [redacted] qualifies as a "professional or major trade publication or other major media." 8 C.F.R. § 204.5(h)(3)(iii). On appeal, the Petitioner provides a statement with background

information regarding [redacted]; including that it has 102,500 total paying subscribers; along with a link to [redacted]' Wikipedia page. However, there are no assurances about the reliability of the Wikipedia content as it is an open, user-edited internet site, and therefore we afford it little weight. *See Matter of L-A-C-*, 26 I&N Dec. 516, 526-27 (BIA 2015) (noting that "Wikipedia articles lack indicia of reliability and warrant very little probative weight in immigration proceedings"); *see also Badasa v. Mukasey*, 540 F.3d 909, 910 (8th Cir. 2008). Furthermore, to qualify as major media, the publication should have elevated circulation or readership numbers relative to other media in the field. Here, the Petitioner did not provide evidence to compare [redacted] subscriber or readership level to other media in the field and therefore we cannot conclude it meets the requirement of being a "professional or major trade publication or other major media." *Branski v. Seng*, No. 24-CV-360, 2024 WL 4678939, at *5 (E.D. Wis. Nov. 4, 2024) (indicating that the failure to provide context to circulation figures makes it difficult to assess their significance).

Therefore, the Petitioner did not establish the Beneficiary meets this criterion.

C. Judging

On appeal, the Petitioner raises for the first time the Beneficiary's eligibility with respect to 8 C.F.R. § 204.5(h)(3)(iv), regarding his participation as a judge. Notably, the Petitioner asserts USCIS ignored the Beneficiary's eligibility for the criterion of judging the work of others. The Petitioner's support letter in response to the request for evidence (RFE) states, "[i]n his role as a Head of Music and Chorus Director with the [redacted] [the Beneficiary] serves as a judge to select choristers, pianists, conductors and singers. He also judges and selects candidates for the [redacted] at the [redacted]." However, we note that this statement was made to explain how he qualifies for the criterion at 8 C.F.R. § 204.5(h)(3)(ix) related to a leading or critical role. Neither the initial filing nor the attorney's letter in response to the RFE claimed the Beneficiary meets the judging criteria. Further, no evidence was submitted in support of this criterion, other than the Petitioner's letter as described above. Therefore, similar to the awards criterion, we will not consider this criterion also presented for the first time on appeal. *See* 8 C.F.R. § 103.3(a)(1)(v); *see, e.g., U.S. v. Raddatz*, 447 U.S. 667; *see Matter of Izaguirre*, 27 I&N Dec. at 71 (citing *Matter of Soriano*, 19 I&N Dec. at 766).

Therefore, the Petitioner did not establish the Beneficiary meets this criterion.

D. We Reserve the Remaining Claimed Criteria

We note the Petitioner claims the Beneficiary meets additional criteria related to performing in a leading or critical role for organizations or establishments that have a distinguished reputation and commanding a high salary in relation to others in the field. However, as noted above, the Petitioner's unsuccessful demonstration of the Beneficiary's eligibility under the criteria we discuss means the Beneficiary cannot numerically meet the required number of at least three criteria out of the 10 available. Accordingly, discussion of the remaining criteria would serve no legal purpose and we reserve them. *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).

E. Final Merits Determination

Congress set a very high benchmark for aliens of extraordinary ability by requiring the Petitioner to demonstrate the Beneficiary's "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 the Beneficiary 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. at 25.

F. The Beneficiary's O-1A Visa

We acknowledge the Beneficiary has an approved O-1A nonimmigrant visa petition, and that this classification is reserved for nonimmigrants of extraordinary ability. However, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different statute, regulations, and case law. Moreover, each petition is separate and independent and must be adjudicated on its own merits, under the corresponding statutory and regulatory provisions.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated the Beneficiary's 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 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.