U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39208856

Date: AUG. 14, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a cybersecurity engineer, 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.

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner had not satisfied any of the initial evidentiary criteria, of which he must meet at least three. 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

To establish eligibility as an alien of extraordinary ability, a petitioner (or anyone on the petitioner's behalf) must establish that they:

- Have extraordinary ability in the sciences, arts, education, business, or athletics;
- Seek to enter the United States to continue work in their area of extraordinary ability; and that
- Their entry into the United States will prospectively substantially benefit the United States.

Extraordinary ability must be demonstrated by evidence of sustained national or international acclaim as well as extensive documentation that their achievements have been recognized in the field. Section 203(b)(1) of the Act.

The implementing regulation further states that 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." A petitioner can demonstrate that they meet the initial evidence requirements for this immigrant visa

classification through evidence of a one-time achievement (that is, a major, internationally recognized award). If such evidence is unavailable, then they must alternatively provide evidence that meets at least three of the ten listed criteria, which call for evidence about lesser awards they may have received, published material about them in qualifying media, and their authorship of scholarly articles, among other types of evidence. 8 C.F.R. §§ 204.5(h)(2),(3).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination, assessing whether the record shows that the individual possesses the acclaim and recognition required for this highly exclusive immigrant visa classification. *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, with his petition, claimed that he satisfied five of the ten possible evidentiary criteria, relating to membership in association, judging the work of others, original contributions of major significance, leading or critical role for an organization with a distinguished reputation, and significantly high salary or remuneration.

With his appeal, he waives the issue of whether he has membership in associations and challenges the SCOPS conclusion regarding the remaining four evidentiary criteria. Further, the Petitioner submits new evidence with his appeal "to further clarify and substantiate the facts originally presented" with his petition and response to SCOPS' request for evidence (RFE). Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. *See Matter of Furtado*, 28 I&N Dec. 794, 801-02 (BIA 2024) (declining to consider new evidence on appeal when the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it) (citing *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988)); *see also* 8 C.F.R. § 103.2(b)(11) (requiring that in response to a request for evidence or notice of intent to deny, all evidence must be submitted together at one time and that submitting only some of the requested evidence will be considered a request for a decision on the record). We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

> *Evidence of the individual's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv)

The regulation at 8 C.F.R. § 204.5(h)(3)(iv) calls for "evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." The alien must show that they not only have been invited to participate as a judge of the work of others in their field, but also that they have actually participated in such judging. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual. Examples of judging may include peer review for a scholarly journal, conference, or government research funding program or serving as a member of a Ph.D. dissertation committee. *Id.*

The Petitioner asserts that he meets this evidentiary criterion as a result of his employment with [redacted] and his completion of the performance reviews of the employees on his team. The Petitioner provided copies of information regarding the performance reviews and a letter from E-L-[1], the Chief Information Officer at [redacted] among other evidence. The letter from E-L- stated that the Petitioner performed his own team's reviews, as well as "high-level engineers across the company" and provided information regarding the contents of the reviews.

On appeal, the Petitioner contends that SCOPS erred in applying aspects of the final merits determination as discussed in *Kazarian v. USCIS* in review of his evidence. 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). The SCOPS decision cited the language used in their RFE, which cited *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, the SCOPS decision was only noting that, as held in *Caron International*, that "the appropriate entity to determine eligibility" is U.S. Citizenship and Immigration Services (USCIS). Although the SCOPS decision stated that the Petitioner must demonstrate that he is "recognized in the field of expertise," the remaining explanation does not appear to examine the evidence in the manner of a final merits determination.

The Petitioner further cites to *MRC Energy Co. v. USCIS*, No. 3:19-CV-2003-K, 2021 WL 1209188, along with other cases, as an instance in which USCIS's decision was found to be arbitrary and capricious because it imposed an extra-regulatory requirement that the beneficiary must have been invited to serve as a judge rather than do so as part of his job. Here, the Petitioner asserts that the SCOPS decision similarly imposed an extra-regulatory requirement by discounting the Petitioner's judging activities in the course of his employment. While we agree with the Petitioner's assertion that the plain language of the judging criterion does not require an individual to serve as a judge outside of their job, it nevertheless requires a petitioner to provide "evidence of [their] participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." 8 C.F.R. § 204.5(h)(3)(iv).

Although the Petitioner states on appeal that his RFE response included a "formal invitation appointing [him] to lead the evaluations," this evidence, which is an email from A-P- at [redacted] is not addressed to the Petitioner specifically, and indicates that it was sent to "Team US" and speaks generally about the company's performance review processes, rather than addressing the Petitioner himself. A second email from A-P- was similarly disseminated to a large group of individuals and does not discuss the Petitioner's specific invitation, and the record does not reflect that the performance reviews were conducted as part of a panel in concert with the other individuals who received the email. The Petitioner further provided copies of performance reviews he completed in 2024 for the members of his team; however, he did not provide evidence that he completed reviews for other "high-level engineers across the company," as claimed in the letter from E-L-. Although it appears that the Petitioner conducted the performance reviews, the record does not include evidence that he was invited to participate as a judge of the work of others in his field. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual. As noted, the evidence provided by the Petitioner reflects general information sent to managers at [redacted] regarding the performance review process of the company and does not indicate that the Petitioner received a "formal invitation" as he claims on appeal.

[1] We use initials to protect the identity of individuals.

Rather, it appears that the Petitioner conducted a function of his employment in reviewing the performance of individuals who reported to him.

Accordingly, he has not established that he meets this evidentiary criterion.

> *Evidence of the individual's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v)

The regulation at 8 C.F.R. § 204.5(h)(3)(v) calls for "evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." A petitioner may show that their contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. *See Visinscaia*, 4 F. Supp. 3d at 134-35. Relevant evidence of the significance of an original contribution may include, but is not limited to:

- Published materials about the significance of the alien's original work;
- Letters providing details about how the alien's original work has been significant in the field;
- Citation of the alien's published scholarly work at a level indicative of major significance; and
- Patents or licenses deriving from the alien's work or evidence of its commercialization.

See generally 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual.

The Petitioner provided letters from his employers and others who have utilized tools that he has created during his career.[2] E-L- with [redacted] and S-M- at Poshmark both mention the Petitioner's "groundbreaking" system at [redacted] that provided a real-time analysis of transactions for fraud indicators. S-M- stated that following the Petitioner's development, "Poshmark adopted similar advanced techniques to enhance [their] detection mechanisms to catch bad actors." Notably, while this letter admires the Petitioner's work, it only indicates that they implemented "similar" techniques, and not the Petitioner's own techniques. E-L- claims that the Petitioner's "innovation has significantly advanced the broader field of cybersecurity" but the record contains no substantiating evidence of these statements.

While the Petitioner was employed by [redacted] he also developed a Security Assurance Coverage system for which the company recognized him. The Petitioner submitted a letter from J-K- at [redacted] who stated that the "Security Assurance Framework delivered an impressive 99.68% coverage" and similar to S-M-, stated that they were inspired by the Petitioner's work and incorporated some of the Petitioner's methods into his work with [redacted].

The Petitioner provided additional similar letters from those who have worked with him, and third parties that discuss his work. Detailed letters from experts in the field explaining the nature and significance of the person's contribution may provide valuable context for evaluating the claimed original contributions of major significance, particularly when the record includes documentation corroborating the claimed significance.[3] Here, the Petitioner's letters do not contain specific, detailed

[2] Although we do not discuss each letter individually, we have reviewed and considered each one.
[3] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

information explaining the unusual influence or high impact his research or work has had on the overall field to establish that it has been of major significance. *See Jafarov v. United States Citizenship & Immigr. Servs.*, No. 23 CIV. 3372 (PAE), 2024 WL 69056, *8 (S.D.N.Y. Jan. 5, 2024) (finding the petitioner's testimonial letter mostly consisted of conclusory statements about the significance of his work and his potential).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)*

The regulation at 8 C.F.R. § 204.5(h)(3)(viii) calls for "evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." The role may be shown to be leading or critical for a division or department of an organization or establishment, or for the organization or establishment overall. Evidence of a leading role should show that the alien was a leader for the claimed component, and a job title with matching duties may help to establish that a role was leading. For a critical role, evidence should show that the alien has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities or those of a division or department of the organization or establishment. In determining whether the organization or establishment, or a department or division thereof, has a distinguished reputation, relevant factors include its size, longevity, scale of its customer base, and relevant media coverage. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual.

The Petitioner, as of filing his petition, was serving as the Senior Security Manager, Head of Security for [redacted] with four individuals reporting to him. The Petitioner stated that [redacted] was established in 2009 which provides service in the "beauty, wellness, and fitness industries, with over 100,000 active businesses, 210,000 providers, and 6 million monthly active users." He further stated that the company processes "over $4 billion in yearly transaction volume and employs more than 500 people across three countries."

In a separate letter from E-L- at [redacted] he stated that the "Head of Security is an essential position at [redacted] due to the inherent nature of the business, which handles vast amounts of sensitive customer data and relies heavily on cloud infrastructure. In this role, [the Petitioner] is responsible for safeguarding customer information, ensuring the company's infrastructure is protected from cyber threats and maintaining the integrity of the platform." In SCOPS' decision, they concluded that the Petitioner had not established that he served in a leading or critical role, as he oversees a team of four individuals. As noted by the Petitioner, neither the regulations nor the policy manual mention a headcount as a requirement to establish a leading or critical role. Notably, a "supporting role may be considered critical if the person's performance in the role is (or was) important. It is not the title of the person's role, but rather the person's performance in the role that determines whether the role is (or was) critical." *Id.*

As noted above, the USCIS policy manual states that determining whether the organization or establishment, or a department or division thereof, has a distinguished reputation, relevant factors

include its size, longevity, scale of its customer base, and relevant media coverage. *Id.* In support of his contentions, the Petitioner provided two articles about [redacted], and information from the company itself. In an article published by [redacted] it is noted that the company "has achieved a $1 billion valuation" after receiving additional investment. The article does not provide any other further information aside from a quote from its founder and CEO which stated that [redacted] "has been serving small businesses and independent service professionals with [their] technology solutions to help them achieve their business operations goals." The second article, from *businesswire*, discussed [redacted] acquisition of a competitor. This regulatory criterion requires the organization or establishment, or the department or division for which the person holds or held a leading or critical role, to have a distinguished reputation.[4] *Meriam-Webster's* online dictionary defines "distinguished" as "marked by eminence, distinction, or excellence" or "befitting an eminent person."[5] The Petitioner provided a copy of [redacted] "Executive Summary" from their website reflecting background information about the company's services. However, the Petitioner did not explain or show how those services garnered [redacted] a distinguished reputation. *See Cuckic v. Jaddou*, No. 21-CV-8395 (JPO), 2023 WL 2586031, at *5 (S.D.N.Y. Mar. 21, 2023) (finding self-promotional material from the organization did not establish a sufficiently high reputation).

As such, although we conclude that the Petitioner has established that he held a critical role, he has not established that this role was for an organization or establishment that has a distinguished reputation, as required.[6]

III. CONCLUSION

The Petitioner did not demonstrate that he satisfies the criteria relating to judging, original contributions, or leading or critical role for an organization or establishment with a distinguished reputation. Although the Petitioner claims eligibility for an additional criterion on appeal, relating to high salary or remuneration at 8 C.F.R. § 204.5(h)(3)(ix), we need not reach this additional ground, as he cannot meet at least three of the ten possible evidentiary criteria. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). Accordingly, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

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[4] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

[5] *Id.*

[6] On appeal, the Petitioner further claims to have served in a leading or critical role for Salesforce from 2020-2023. However, he did not raise this role with the underlying petition. Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. *See Matter of Furtado*, 28 I&N Dec. 794, 801-02 (BIA 2024) (declining to consider new evidence on appeal when the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it) (citing *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988)); *see also* 8 C.F.R. § 103.2(b)(11) (requiring that in response to a request for evidence or notice of intent to deny, all evidence must be submitted together at one time and that submitting only some of the requested evidence will be considered a request for a decision on the record).

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, the petitioner bears the burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

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.