U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43930344

Date: AUG. 24, 2026

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

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

The Petitioner is a machine learning engineer who 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.

Through its Service Center Operations (SCOPS), USCIS denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner had received a major, internationally recognized award, nor did he demonstrate that he met at least three of the ten regulatory criteria. The matter is now before us on appeal under 8 C.F.R. § 103.3. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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 qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The alien enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The alien's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. The term "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). *See also* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739 (stating: "In short, admission under this category is to be reserved for that small percentage of individuals who have risen to the very top of their field of endeavor.").

The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-step analysis. In the first step, 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 move to the second step to 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, 1121 (9th Cir. 2010) (discussing a two-step 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 Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

After earning his foreign Master of Computer Science degree, the Petitioner has worked in various roles and as a machine learning engineer since 2019.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). Before SCOPS, the Petitioner claimed he met five of the regulatory criteria. SCOPS decided that the Petitioner satisfied two of the criteria relating to membership and performing in a leading or critical role but that he had not satisfied the criteria associated with prizes or awards, membership, original contributions, or a high salary or remuneration. On appeal, the Petitioner maintains that he meets the same criteria. After reviewing all the evidence in the record, we conclude he has not demonstrated eligibility here.

1. "Documentation 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." 8 C.F.R. § 204.5(h)(3)(ii).

This criterion contains several evidentiary elements the Petitioner must satisfy. First, the Petitioner must demonstrate that he is a member of an association in his field. Second, the Petitioner must demonstrate both of the following: (1) the associations utilize nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements are outstanding, and (2) the associations use this outstanding determination as a condition of eligibility for prospective membership. The Petitioner must satisfy all of these elements to meet the plain language requirements of this criterion. *Tapia v. Jaddou*, No. 8:23-CV-813-CEH-AAS, 2025 WL 2780815, at *3–4 (M.D. Fla. Sept. 30, 2025).

Relevant factors that may lead to a conclusion that the person's membership in the association(s) was not based on outstanding achievements in the field include, but are not limited to, instances where the person's membership was based solely on the following factors (by themselves or in the aggregate): a level of education or years of experience in a particular field; the payment of a fee or by subscribing

to an association's publications; and a requirement, compulsory or otherwise, for employment in certain occupations, as commonly seen with union membership or guild affiliation for actors. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual.

The Petitioner argued that his "senior membership" with the Institute of Electrical and Electronics Engineers (IEEE) fulfilled this criterion. SCOPS determined that the Petitioner met the requirements of this criterion, but we do not agree that the Petitioner has shown this level of membership is adequate here. The Petitioner submitted his IEEE membership certificate, and three partial printouts from the IEEE website about senior level membership requirements. The first printout reflects four requirements for membership:

- Be engineers, scientists, educators, technical executives, or originators in IEEE-designated fields;
- Have experience reflecting professional maturity;
- Have been in professional practice for at least 10 years (with some credit for certain degrees); and
- Show significant performance over a period of at least five of their years in professional practice.

In the second partial printout, the Petitioner highlighted the portion illustrating that "candidates for Senior Member grade must supply three references from current IEEE members holding the grade of Fellow, Senior Member, or Honorary Member." And in the third partial printout, the Petitioner highlighted the statement that only eight percent of IEEE's members hold the grade of senior member, which according to their own figures amounts to more than 34,000 members.

None of these materials demonstrate that this association requires outstanding achievements as a condition for this level of membership, and the Petitioner did not offer the organization's bylaws that might have provided additional information. Having professional maturity and being in practice for at least 10 years fall far short of that standard. And the Petitioner did not offer evidence of what IEEE considers "significant performance" that a candidate must demonstrate for at least five years of their professional practice.

The requirements for the "Senior Member Grade" on the IEEE website—the portion of the website printout that the Petitioner cut off and failed to offer for the record—further specify that "significant performance" does *not* require "special awards, patents, or other extremely sophisticated technical accomplishments," but can include "substantial job responsibilities such as team leader, task supervisor, engineer in charge of a program or project, engineer or scientist performing research with some measure of success (papers), or faculty developing and teaching courses with research and publications." *Requirements for IEEE Senior Member Grade*, IEEE Advancing Technology for Humanity (Aug. 21, 2026), https://www.ieee.org/membership/senior/senior-requirements.

The record, therefore, does not demonstrate that the IEEE's standards for the senior grade membership rise to the level of "outstanding achievements" as contemplated by the plain language of 8 C.F.R. § 204.5(h)(3)(ii). While this membership level does not appear to be available to all professionals with 10 years of experience in the field, the Petitioner must establish that IEEE requires senior members to have "outstanding achievements" as an essential condition of membership to satisfy this

criterion. *Mussarova v. Garland*, 562 F. Supp. 3d 837, 845 (C.D. Cal. 2022) (determining that the record did not include evidence that the claimed associations required outstanding achievements as a condition of membership).

In addition, the Petitioner did not establish that recognized national or international experts judge the outstanding achievements for senior membership within IEEE as required by 8 C.F.R. § 204.5(h)(3)(ii). The partial printout about supplying three references does not meet this requirement.

Because the Petitioner has not submitted evidence that meets the plain language requirements of this criterion, we withdraw SCOPS' favorable determination.

2. "Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." 8 C.F.R. § 204.5(h)(3)(i).

This criterion contains several evidentiary elements, all of which must be met to satisfy the regulation. According to the plain language of the regulation the evidence must establish: (1) the alien is the recipient of the prizes or the awards; (2) those accolades are nationally or internationally recognized; and (3) each prize or award is one for excellence in the field of endeavor.

The Petitioner provided a team award that named him as one of its team members. SCOPS determined that the Petitioner did not meet the requirements of this criterion. While we do not agree with SCOPS that the Petitioner is not sufficiently identified as one of the award's recipients, we do agree that the record lacks adequate evidence that it was national or internationally recognized for excellence in the field. Before SCOPS the Petitioner relied on material about the methodology the team used during the competition, how the competition was structured, later reliance on the methods, and the fact that [redacted] sponsored the conference when his team received the recognition.

On appeal, the Petitioner identifies some of the same evidence, claims SCOPS' denial did not substantively analyze the material, and failed to engage with it. But what remains lacking is his explanation of how this form of recognition was nationally or internationally recognized.

National and international recognition results, not from the entity that issued the prize or award, nor from the issuing event's sponsors, but through the awareness of the accolade in the eyes of the field nationally or internationally. *Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 183 (D.N.J. 2021) (finding "the focus is on the award, not the awarding organization"); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 136 (D.D.C. 2013). Agency policy addresses the requisite level of a prize's or award's recognition noting we consider the "national or international significance of the awards or prizes in the field" and states "national or international recognition is most often associated with awards given to individuals at the highest level in a given field." *See generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(1). *See Guida v. Miller*, No. 20-CV-01471-LB, 2021 WL 568850, at *8 (N.D. Cal. Feb. 16, 2021) (upholding the determination that awards must be nationally or internationally recognized).

A national or international level competition may issue lesser awards that also receive lesser recognition, which do not meet the plain language requirements of this criterion. The requisite recognition should be evident through specific means; for example but not limited to, national or international-level media coverage. Courts have recognized other factors when considering whether

an award was nationally or internationally recognized such as the number of entrants who competed in the same category or their level of experience. *Nakos v. USCIS*, No. 3:25-CV-0985-D, 2026 WL 2042845, at *4 (N.D. Tex. July 15, 2026). The fact that the Petitioner's team recognition occurred in connection with a reputable conference establishes the institutional setting in which the challenge occurred, but it does not demonstrate that when the team won the challenge, that this constituted winning a conference award or that the award itself possessed the same level of recognition as the conference.

Additionally, unsupported conclusory letters from those in the Petitioner's field are not sufficient evidence that a particular prize or award is nationally or internationally recognized. Probative evidence that an award is nationally or internationally recognized is generally material from sources besides the issuing entity. *Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 183 (D.N.J. 2021).

It remains that the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

3. "Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." 8 C.F.R. § 204.5(h)(3)(ix).

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires the Petitioner to submit evidence of a "high salary or other significantly high remuneration for services, in relation to others in the field." That means a petitioner must provide comparative evidence for those performing similar work, during the same approximate time and geographic location, within the field. *See generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(1). And the presentation of only average salaries in the field is generally inadequate to demonstrate a petitioner's earnings are high, or their other types of remuneration are significantly high, in relation to the rest of the field.

The Petitioner claimed his remuneration from his current employer and he asserted his annual remuneration consisted of his base salary and restricted stock units. His evidence consisted of his 2025 tax documents, government-based wage data, and to compare with his own remuneration, public crowdsourced job boards and data aggregators. SCOPS determined that the Petitioner did not meet the requirements of this criterion.

We note the Petitioner did not submit evidence from his employer verifying the breakdown of his wages, tips, and other compensation to corroborate his assertions relating to his base salary and restricted stock units comprising his remuneration. So at the outset he has failed to demonstrate what made up the figure on his tax documentation and this has an adverse effect on the value of his claims under this criterion. However, his initial supporting evidence in which to compare with his own reflected only base salaries and bonuses, and did not include restricted stock units or other documentation consistent with his claimed compensation structure.

In the request for evidence (RFE) response, the Petitioner claimed that some of the salary survey evidence he initially provided included restricted stock units in the total pay figures, but he did not corroborate that with any evidence and we were unable to verify those claims. Unsupported assertions have little evidentiary value and are insufficient to establish a filing party has satisfied their burden of proof; such assertions do not even make a prima facie eligibility showing. *See Matter of G-C-I-*, 29

I&N Dec. 176, 178 (BIA 2025). Also accompanying the RFE response, the Petitioner provided material from levels.fyi, but that evidence related to a "Software Engineer" and should have instead been for a "Machine Learning Engineer." We reviewed the data for both a "Software Engineer" and a "Machine Learning Engineer" on that website and the "Machine Learning Engineer" demands considerably higher remuneration. Additionally, the Petitioner's earnings data was from a different year than much of the comparative evidence he submitted, limiting its value as a direct comparison.

The Petitioner further notes "the regulation requires evidence demonstrating a high salary or other significantly high remuneration 'in relation to others in the field.' It does not require mathematically perfect subgroup matching . . . ." Again we reiterate the levels.fyi evidence was for software engineers when they have a category for machine learning engineers, and within the initial filing the Petitioner included a separate section titled "My Field of Endeavor" in which he stated in the opening paragraph that he is "an established machine learning engineer."

Finally, the Petitioner notes that agency policy references various U.S. Department of Labor (DOL) resources that may be helpful when evaluating this criterion. However, the DOL resources he submitted relate to the software developer occupation, not to a more appropriate comparator occupation, such as data scientists or computer and information research scientists. Further, although he asserts that SCOPS did not meaningfully address this evidence, the DOL data has limited relevance because it reflects only base salary information and does not include bonus structures, restricted stock units, or other forms of compensation relevant to his claimed remuneration.

As a result, they do not provide an adequate basis for comparison with the compensation structure he claims. Comparing an alien's total compensation—which includes various bonuses and stock options—against even the upper percentiles of other base salaries is comparing apples to oranges. It artificially conflates guaranteed earnings with highly variable conditions that lean higher, thus creating an illogical, inflated, and fundamentally invalid benchmark of earnings. To make a legally sound comparison, one must measure like with like. *Xia v. Miller*, No. 3:20-CV-01468-JR, 2021 WL 5817324, at *6 (D. Or. Nov. 18, 2021), *report and recommendation adopted*, No. 3:20-CV-01468-JR, 2021 WL 5825999 (D. Or. Dec. 6, 2021) (finding a petitioner must show that salary reports reflect an apples to apples, rather than an apples to oranges).

Here, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

B. We Reserve the Petitioner's Remaining Claims

We conclude that although the Petitioner satisfies the leading or critical role criterion, he does not meet any of the remaining claimed criteria discussed above. While he argues and submits evidence for one additional criterion on appeal relating to contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v), it is unnecessary that we make a decision on this additional ground because he cannot numerically meet the required number of criteria. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve the remaining issue. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the

ultimate decision)); *see also Matter of Delcarmen-Lara*, 29 I&N Dec. 830, 837 n.2 (BIA 2026) (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. In creating the "extraordinary ability" visa, Congress hoped to "draw the world's best and brightest to American shores" by giving "preferential treatment to highly talented immigrants." *Branski v. USCIS*, No. 25-CV-1695, 2026 WL 2427439, at *11 (E.D. Wis. Aug. 19, 2026) (quoting *Amin v. Mayorkas*, 24 F.4th 383, 386 (5th Cir. 2022)). 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 it is unnecessary that we provide further analysis of 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 regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x) "establishes a necessary, not sufficient, evidentiary requirement for a petitioner who seeks an extraordinary ability visa.").

The two-step adjudication process is an interpretive rule that does not violate the Administrative Procedure Act, nor is it a legislative rule. *Taneja v. USCIS*, No. 24-CV-05657 (RER), 2026 WL 1734266, at *8 (E.D.N.Y. June 16, 2026); *Nagaiah*, 784 F. Supp. 3d at 810; *Agrawal v. Miller*, No. 4:24CV3143, 2025 WL 2879217, at *12 (D. Neb. Sept. 12, 2025); *Etsy, Inc. v. Jaddou*, No. 4:22CV3022, 2023 WL 3689555, at *23 (D. Neb. May 25, 2023) (citing *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 96 (2015). This approach is rooted in an exhaustive historical review of the congressional record, the governing statutory language, and the comprehensive regulatory scheme intended to ensure only those at the very top of their field receive this classification.

To date, no other federal court has offered an alternative framework that is similarly grounded in such a thorough analysis of the legislative and agency history. *See generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(2). *Contra Mukherji v. Miller*, No. 4:24CV3170, 2026 WL 895708, at *6 (D. Neb. Jan. 28, 2026) (concluding the two-step framework was adopted without required notice-and-comment rulemaking). But that appears to misconstrue a conference report—which serves solely to explain how the House and Senate resolved differences between their two versions of the bill—as being more authoritative on this issue than a Judiciary Committee Report, the purpose of which includes guiding the executive branch in implementing the law and assisting the judicial branch in its interpretation. That view has been directly rejected by numerous federal courts before and since the *Mukherji* court made it. Therefore, we decline to reach and hereby reserve any final merits determination in this matter. *Patel*, 596 U.S. at 332.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an alien 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.

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.