U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37872947

Date: AUG. 28, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a lawyer, seeks classification as an alien 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 aliens who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. *Id.*

Service Center Operations (SCOPS) denied the petition, concluding the Petitioner had not established she had a major, internationally recognized award, or that she met at least three of the ten regulatory criteria. 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 aliens with extraordinary ability if: they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry will substantially benefit the United States prospectively. 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 of the evidence to determine whether a petitioner has sustained national or international acclaim and whether their achievements have been recognized in the field. First, a petitioner can provide evidence of either "a

major, international recognized award," or satisfaction of at least three of ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3).[1]

Where a petitioner meets these initial evidence requirements, U.S. Citizenship and Immigration Services (USCIS) then considers the totality of the material provided in a final merits determination and assesses 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 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); *see generally* 6 *USCIS Policy Manual* F.2(B), www.uscis.gov/policy-manual (providing, as guidance, USCIS' two-step extraordinary ability analysis).

II. ANALYSIS

The Petitioner holds the equivalent of a U.S. bachelor's degree in law from Brazil, which she obtained in 2011. She was approved for membership in the Brazilian Bar Association in 2012. The Petitioner authored several articles while pursuing her legal degree. After obtaining her bar membership, the Petitioner worked in law firms for a few years and then worked as an advisor for a public prosecutor's office for a city in Brazil from 2014 to 2018.

The Petitioner has not indicated or established that she has received a major, internationally recognized award under 8 C.F.R. § 204.5(h)(3). She must therefore satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

A. Evidentiary Criteria

The Petitioner claimed that she satisfied five of the regulatory criteria, specifically at 8 C.F.R. § 204.5(h)(3)(ii), (iii), (v), (vi), and (viii). SCOPS determined that the Petitioner met 8 C.F.R. § 204.5(h)(3)(iii) by submitting evidence of published material about herself relating to her work in the field in major media and 8 C.F.R. § 204.5(h)(3)(vi) by submitting evidence of her authorship of scholarly articles in the field or other major media. We disagree that the Petitioner has met 8 C.F.R. § 204.5(h)(3)(iii).

1. Criterion Withdrawn

In order to meet 8 C.F.R. § 204.5(h)(3)(iii), a petitioner must establish that material has been published about them and their work in the field for which classification is sought, and that the medium in which the material was published was a professional or major trade publication or other major medium. *See generally* 6 *USCIS Policy Manual, supra,* at F.2(B)(1). The Petitioner submitted an article from 2022 published by '[redacted]." The Petitioner included a Google search printout that explains that [redacted] is "derived from the most prestigious business and economics magazine" with the website

[1] The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she 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. The Petitioner has not submitted comparable material.

address [redacted]. She also included printouts evidencing that the magazine's online traffic is limited to Brazil, is ranked 127,059 in the country, and has total monthly visits at 13,623. However, the evidence does not provide context for the ranking and viewership data to establish the magazine is a major medium. Moreover, the Petitioner does not present evidence such as the magazine's intended audience, its relative circulation, or readership to show that [redacted] is a professional or major trade publication. *See id.* (providing, as guidance, factors to consider in determining qualifying media). Without more, we cannot conclude that the Petitioner meets this criterion and withdraw SCOPS' determination to the contrary.

2. Criterion Waived

SCOPS determined the Petitioner did not provide sufficient evidence of her membership in associations in the field to establish the criterion at 8 C.F.R. § 204.5(h)(3)(ii). On appeal, the Petitioner does not contest SCOPS' finding. We therefore deem her eligibility under this criterion waived. *See Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (stating any ground of ineligibility that is not raised on appeal is waived).

3. Remaining Evidentiary Criteria Not Met

On appeal, the Petitioner contests SCOPS' determination of 8 C.F.R. § 204.5(h)(3)(v) and (viii), arguing she submitted sufficient evidence of her original contributions of major significance in the field and performing in a leading or critical role for organizations or establishments of distinguished reputation.

a. Original Contributions of Major Significance

In order to meet 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that she not only made original contributions but that they have been of major significance in the field. Relevant supporting evidence may include, for example, published materials, testimonials, letters, and affidavits about the significance of the person's original work; documentation that the person's original work was cited at a level indicative of major significance in the field; patents or licenses deriving from the person's work or evidence of commercial use of the person's work. *See generally* 6 *USCIS Policy Manual, supra,* at F.2(B)(1). The Petitioner submitted articles she authored, a few of which appear to be published electronically in '[redacted].'" However, the Petitioner did not provide information on the publisher, '[redacted]," to demonstrate whether it is a professional publication, major trade publication, or major media publication to explain the significance of it publishing her work. She also included an abstract of an article published on the [redacted]'s website. She included a blurb from [redacted] website stating it was publishing on its website a series of relevant articles on the purposes of punishment and the prison system but does not explain the major significance to the field of having her work included on the university's website. The Petitioner did not provide evidence that her work was cited by others. Further, her recommendation letters make no mention of her publications. On appeal, the Petitioner argues that citations of her work and references in other scholarly and professional legal publications were overlooked, however, this evidence was not provided in the record below or on appeal. As a result, the Petitioner has not established the articles she authored were of major significance in the field. *See id.* (providing, as guidance, that published research that has provoked widespread commentary on its importance from others working in the field,

and documentation that it has been highly cited relative to others' work in that field, may be probative of the significance of the person's contributions to the field of endeavor).

The Petitioner also argued below that she contributed originally and significantly through her commitment to the practice of law. She described her pro bono work as a mediator, the workshops she conducted in underserved communities, and her community advocacy. She, however, does not explain how her pro bono activities amount to original contributions of major significance to the field. The Petitioner's recommendation letters do not mention her pro bono work and her supporting documentation do not detail the significance of her work as a lawyer. *See id.* (providing, as guidance, that detailed letters from experts in the field explaining the nature and significance of the person's contribution may also provide valuable context for evaluating the claimed original contributions of major significance). As a result, the Petitioner has not demonstrated she satisfies this criterion.

b. Leading or Critical Role

The criterion at 8 C.F.R. § 204.5(h)(3)(viii) requires a petitioner first demonstrate that she has performed in a leading or critical role for an organization, establishment, or a division or department of an organization or establishment. A supporting role may be considered critical if the petitioner's performance in the role is (or was) important. *See generally* 6 *USCIS Policy Manual, supra,* at F.2(B)(1). The Petitioner submitted recommendation letters in support of her performing a leading or critical role for the prosecutor's office.

However, none of the letters refer to the Petitioner's role as leading. *See id.* (providing, as guidance, for a leading role, the evidence should establish that the person is (or was) a leader within the organization or establishment or a division or department thereof). The letters also do not support her role was critical. To establish she played a critical role, the Petitioner must show that she 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. *Id.* The Petitioner submits a letter authored by a colleague at the prosecutor's office who speaks to the Petitioner's deep understanding of Brazilian law, coupled with her proactive approach to problem-solving, and concludes she was a critical asset to the prosecutorial team. However, neither this letter nor the others explain how her role was of such significant importance to the outcome of the prosecutor's office or her division within that office to establish her role was critical.

In addition, we disagree with SCOPS' determination that the prosecutor's office had a distinguished reputation. Distinguished is defined as "marked by eminence, distinction, or excellence" or "befitting an eminent person." *See* Distinguished, Merriam-Webster.com, www.merriam-webster.com. The Petitioner did not meet her burden to establish the distinguished reputation of the prosecutor's office by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Here, the Petitioner has not provided any information on the prosecutor's office to substantiate her statements that it has a distinguished reputation. As a result, she has not established this criterion.

B. Summary of Evidentiary Criteria and Reserved Issue

The Petitioner has not established that she has received a major, internationally recognized award under 8 C.F.R. § 204.5(h)(3), or that she satisfies at least three of the alternate regulatory criteria at

8 C.F.R. § 204.5(h)(3)(i)-(x). As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). 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.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields. *See* 8 C.F.R. § 204.5(h)(2) (explaining "extraordinary ability" refers only to those in "that small percentage who have risen to the very top of the field of endeavor"). USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the record as a whole does not demonstrate a level of recognition that indicates the required sustained national or international acclaim or demonstrates 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 is one of the small percentage who has risen to the very top of the field of endeavor.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated 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 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.