U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39422993

Date: AUG. 28, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a tattoo artist, seeks classification as an individual 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 record did not establish that the Petitioner met the requirements for classification as an individual of extraordinary ability. 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 qualify as an alien with extraordinary ability, a petitioner must demonstrate that:

- They have "extraordinary ability in the sciences, arts, education, business, or athletics;"
- They seek to continue work in their field of expertise in the United States; and
- Their work would substantially benefit the country.

Section 203(b)(l)(A)(i)-(iii) of the Act.

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 sustained acclaim and recognition of their 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 they 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 material if 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 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

A. Evidentiary Criteria

Because the Petitioner has not indicated or shown that he 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). The Petitioner initially claimed to have met six criteria, summarized below:

- (i), receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii), 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;
- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original scientific, scholarly, artistic, or business-related contributions of major significance in the field;
- (vi), Authorship of scholarly articles in the field, in professional or major trade publications or multimedia;
- (vii), display of the alien's work in the field at artistic exhibitions or showcases;
- (viii), Leading or critical role for distinguished organizations or establishments;

SCOPS found that the Petitioner solely met the criterion of judging. The Petitioner served as a jury member at a [redacted] competition in 2023 in [redacted] New Jersey and then three [redacted] competitions in 2024, in [redacted] and [redacted] New Jersey as well as in [redacted] Pennsylvania.

SCOPS found that the Petitioner did not meet the remaining criteria, repeatedly citing to inconsistencies and discrepancies in the record pertaining to work history and education that purportedly cast doubt on the reliability and sufficiency of the record evidence and citing to Matter of Ho, 19 I&N Dec. 582 (Comm. 1988). On appeal, the Petitioner disputes that there were any inconsistencies and discrepancies in the record. The Petitioner asserts that he was self-employed from

2014-2022, with the last two years of his self-employment listed as on his resume as [redacted] because he formed a business for tax purposes in Kazakhstan. Next, although the Petitioner has not provided corroborative evidence that he was employed at [redacted] from 2008-2014, he asserts the lack of corroborative evidence is neither an inconsistency nor a discrepancy, but rather a lack of proof because the salon has been out of business for eleven years. Finally, on his O-1 visa application, the Petitioner claimed to have attended an art college for two years, but did not list this education on his Form I-140. Form I-140 does not ask for education or schooling whereas the form for the O-1 visa does request education. Therefore, the omission of education on the pending Form I-140 petition is not an inconsistency or discrepancy. In light of the foregoing, we withdraw SCOPS's findings that there were inconsistencies and discrepancies that cast doubt on the reliability of and sufficiency of the evidence in support of the visa petition.

On appeal, the Petitioner reasserts that the record satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(iii) and (v)-(viii), in addition to the criteria at 8 C.F.R. § 204.5(h)(3)(iii), (vi), and (viii). Upon de novo review, the record supports additional criteria. For example, the record demonstrates that the Petitioner won a 2022 first place in the category of [redacted] in the [redacted] a 2023 "People Award" for [redacted] and a 2023 [redacted] 2023 award. [redacted] is a music television channel in Kazakhstan. These lesser national and international awards meet the criterion of 8 C.F.R. §§ 204.5(h)(3)(i). In addition, the record establishes that the Petitioner's tattoo work has been displayed at artistic exhibitions or showcases such as multiple tattoo conventions in New York, and [redacted] Kazakhstan, meeting the criterion of 8 C.F.R. § 204.5(h)(3)(vii)[1]. Therefore, we withdraw findings by SCOPS that the petitioner did not meet the criteria of 8 C.F.R. § 204.5(h)(3)(i) and (vii).

As the Petitioner has met the initial evidence requirements of at least three criteria, it is unnecessary that we discuss any additional eligibility claims relating to the regulatory provisions at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner has therefore overcome the only stated ground for denial of the petition. Nevertheless, the record does not support approval of the petition. Granting the third initial criterion does not suffice to establish eligibility for the classification the Petitioner seeks. We will undertake a final merits determination to analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if they establish extraordinary ability in the Petitioner's field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.

B. Final Merits Determination

On appeal, the Petitioner argues that SCOPS imposed a novel evidentiary requirement in the final merits determination. The Petitioner also argues that the two-part test in *Kazarian* is improper and that SCOPS was required to set forth specific and substantiated reasons for finding that he did not meet the extraordinary ability standard in line with *Buletini v. INS*, 860 F. sup. 1222, 1231 (E.D. Mich. 1994).

[1] SCOPS's decision did not explain why this criterion was not met, except for the claimed inconsistencies and discrepancies that we have withdrawn, *supra*.

The Petitioner does not explain how *Buletini*, a district court case published within the Sixth Circuit in 1994, may supersede *Kazarian*, a circuit court case published in 2010 within the Ninth Circuit. *See, e.g., Matter of K-S-*, 20 I&N Dec. 715, 718-20 (BIA 1993) (contrasting the precedential value of circuit court cases for matters arising therein from the non-precedential value of district court cases, especially district court cases within other circuits). Moreover, the *Buletini* decision does not clearly conflict with the *Kazarian* court's characterization of the adjudication process as including a final merits determination. The *Buletini* opinion indicates that the court considered the possibility that a petitioner can submit evidence satisfying three criteria and still not meet the extraordinary ability standard if USCIS provides specific and substantiated reasoning for its conclusion. *See Buletini*, 860 F. Supp. at 1234. The court in *Buletini* did not reject at any time the concept of examining the quality of the evidence presented to determine whether it establishes a petitioner's eligibility for this highly restrictive classification.

Contrary to the Petitioner's assertions on appeal, the burden of proof in visa proceedings does not shift to the government. Section 291 of the Act. 8 U.S.C. § 1361. The Petitioner mischaracterizes the extent to which *Kazarian* not only acknowledges but also articulates the requisite two steps of analysis for a request for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act. The Ninth Circuit began by noting that a petitioner may satisfy initial evidentiary criteria by establishing receipt of a one-time achievement of a major, internationally recognized award, or through at least three of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), *Kazarian*, 596 F.3d at 1119-20. The Ninth Circuit continued, stating:

> If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the [individual] has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only [individuals] whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id..

In addition to acknowledging that the analysis for a request for classification as an individual of extraordinary ability entails a two-step process, specifically citing section 203(b)(1)(A) of the Act and 8 C.F.R. §§ 204.5(h)(2)-(3) as the basis for such a process, the Ninth Circuit itself declined to conduct the second step of the analysis because the individual in that case did not satisfy the first step. Specifically, the Ninth Circuit determined that the record in that case satisfied only two of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), and it concluded the following:

> Whether an applicant for an extraordinary visa [sic] presents two types of evidence or none, the proper procedure is to count the types of evidence provided (which the AAO did), and the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded).

Kazarian, 596 F.3d at 1122 (citing 8 C.F.R. § 204.5(h)(3)).

The *Kazarian* court then declined to conduct the second part of the analysis for that case by omitting a discussion of whether the record showed sustained national or international acclaim and demonstrated that the individual was among the small percentage at the very top of the field of endeavor, because that petitioner had not satisfied the initial evidentiary requirements. *Id.*

The record shows that the Petitioner is an experienced tattoo artist who founded a tattoo studio in New York, where he is employed, and has been earning a weekly salary of $800 since November 2023. As discussed further below, the Petitioner has also received awards, displayed his work, and authored material. However, upon review of the totality of the evidence, the Petitioner has not demonstrated that his achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Black's Law Dictionary defines "sustain" as "to support or maintain, especially over a long period of time" or "to persist in making (an effort) over a long period of time." *Sustain*, Black's Law Dictionary (11th ed. 2019). Furthermore, the Petitioner has not shown that he has risen to that small percentage at the very top of his field of endeavor. *See* 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provides that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Here, the Petitioner has not established that his career meets this very high standard.

The Petitioner provided evidence showing that he received over a dozen awards in various tattoo artistry categories, most particularly in 2022 and 2023. For instance, the Petitioner provided letters and promotional materials offering background information about the events – mainly internet competitions, expos and conventions – where the awards were won, thereby indicating that he has received some recognition for his work in the field. In one support letter, the President of [redacted] and an organizer of numerous national and international tattoo conventions and professional competitions in the United States, confirmed that the Petitioner served as an expert judge. He claims that the jury panels are acclaimed and recognized tattoo art experts. In his lengthy letter, he lists nine prominent artists who participate in his conventions and describes their unique styles. In another letter of support, by the organizer of the 11th and 12th [redacted] 2023 and 2024, the writer described the Petitioner as "an extremely talented tattoo artist" who he periodically invited to serve as a jury member. However, the record contains no probative evidence as to the specific criteria used for selecting a judge for a tattoo competition. *See Matter of Chawathe*, 25 I&N Dec. at 376. Without evidence that sets the Petitioner apart from others in his field, the Petitioner has not shown that his judging experience places him among that small percentage who has risen to the very top of the field of endeavor. As such, the Petitioner has not shown that his judging experience contributed to a finding that he has a career of acclaimed work in the field or that his career is indicative of the required sustained national or international acclaim.

While the many letters of support, the Petitioner's judging activities, displaying his work, and receipt of awards[2] indicate that the Petitioner has been recognized for his work in the tattoo artistry field, they

[2] While we may not discuss each piece of evidence in the record in our decision, we have reviewed and considered each one. When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required

do not establish that he is among that small percentage at the very top of the field, nor do they show that the Petitioner garnered national or international acclaim. We note that USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994).

The Petitioner claims to have authored seven scientific articles published in scientific journals in 2022-2024. These articles are three to five pages long, have no footnotes and short bibliographies. The Petitioner has not demonstrated that these articles made an original contribution to his field. For example, he has not shown that his articles are cited by others in the field or advanced the tattoo field.

The Petitioner claimed that his membership in an arts union was significant because membership was limited to truly unique artists who create work worthy of becoming part of the world cultural heritage. The Petitioner furnished a portion of the union's by-laws; however, the furnished portions of the bylaws do not reflect this level selectivity, but rather states that membership is open to professionals and amateurs *as well as* artists and individuals who have made a significant contribution to culture and art.

Although many articles were submitted, articles from [redacted], and [redacted] did not include an author and therefore did not meet the plain language of the requirement that published material about the alien "shall include the title, date, and author of the material." 8 C.F.R. § 204.5(h)(3)(iii). The Petitioner also included general articles about tattooing which did not discuss the Petitioner.

The Petitioner included numerous photographs of his work and evidence that he has had at least one high profile client. He claims to have written a book, [redacted]. However, he has not shown that his book has impacted his industry nor is there evidence, beyond the support letters on record,[3] showing that his book or other publications have established him as a "thought leader" as asserted on appeal. *See Matter of Chawathe*, 25 I&N Dec. at 376 (establishing that assertions must be supported by relevant, probative, and credible evidence). While we acknowledge the Petitioner's accomplishments and contributions, he has not established that either his publications and activities, individually or in the aggregate, reflect a career of acclaimed work in the field or indicate that the Petitioner met a "very high standard" by submitting "more extensive documentation than that required" for lesser classifications. *See* 56 Fed. Reg., *supra*, at 30704.

Lastly, the Petitioner underscores his awards, critical roles in organizations with distinguished reputation, his artwork exhibitions, recognition, and acclaim. However, being recognized for his skills in the tattoo industry does not automatically place him at the very top of the field. Here, the Petitioner has not demonstrated the significance of his awards, individually or in the aggregate, such as

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to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the Petitioner presents. *Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (citing *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir. 1992); *see also Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993).

[3] *See 6 USCIS Policy Manual*, *supra*, at F.2(B)(3) (stating that support letters, while not without weight, should not form the cornerstone of a successful claim for this classification and should be corroborated by documentary evidence in the record).

prompting wide praise for his work from critics, drawing notable crowds, raising attendance, or resulting in the success of the events. Further, while the Petitioner discusses several support letters from "industry experts" who highlight such factors as "his many awards" or the number of attendees at some of the events where the Petitioner received awards, the record lacks sufficient evidence that increased attendance was prompted by the Petitioner's participation. Moreover, the evidence does not show that the Petitioner's work reflects a career of acclaimed work in the field, nor does it show that the Petitioner's work garnered a level of attention or was regularly seen at highly reputable venues consistent with being among that small percentage who has risen to the very top of the field of endeavor.

C. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1B status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved multiple O-1B nonimmigrant visa petition filed on behalf of the Petitioner, the prior approvals do not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Sunlift Int'l v. Mayorkas, et al.*, 2021 WL 3111627 (N.D. Cal. 2021); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41. Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).[4]

III. CONCLUSION

In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability and the petition will remain denied.

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.

[4] *See also* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(3).