U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39714670

Date: DEC. 8, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an entrepreneur, 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 record did not establish that the Petitioner met the initial evidence requirements for this classification either through evidence of a one-time achievement (a major, internationally recognized award) or meeting at least 3 of the 10 evidentiary criteria at 8 C.F.R. § 204.5(h)(3). 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 individual 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 the petitioner's 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 aliens 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 alien 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 Amin v. Mayorkas*, 24 F.4th 383, 394 (5th. Cir. 2022).

II. ANALYSIS

The Petitioner is a co-owner of a bakery near [redacted], Florida that specializes in Brazilian cakes and sweets. She states that she is an owner of two other businesses based in Florida, and previously served as an owner and purchasing director for an auto parts distributor in Brazil. She intends to continue working as a chief executive or business administrator in the United States.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). SCOPS found that the Petitioner did not meet any of the 6 evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) that she claimed. On appeal, the Petitioner asserts that she meets the same 6 evidentiary criteria:

- (i) Lesser nationally or internationally recognized prizes or awards
- (ii) Membership in associations requiring outstanding achievements
- (iv) Participation as a judge of the work of others in the field
- (v) Original contributions of major significance in the field
- (viii) Leading or critical role for organizations with a distinguished reputation
- (ix) High salary in relation to others in the field

After reviewing all of the evidence in the record, we conclude that the Petitioner does not meet the initial evidence requirement and is not eligible for classification as an alien of extraordinary ability.

1. Evidence of Lesser Nationally or Internationally Recognized Prizes or Awards

The regulation at 8 C.F.R. § 204.5(h)(3)(i) calls for "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor."

The Petitioner initially submitted evidence relating to two awards: "[redacted]" competition in 2018 in which the Petitioner was a finalist, and the "[redacted]" in the dessert shop category for the Petitioner's bakery. On appeal, she does not assert that the latter of these qualifies under this criterion, so we will not consider that evidence in our decision.[1]

In support of her claim to "[redacted]" award, the Petitioner submitted email correspondence originating from the [redacted] which listed her as one of three finalists in this competition.[2] Also, a copy of a check for $750 for the "[redacted]" was made out to "[redacted]." This evidence does not establish that the Petitioner received an award, as she was only named as a finalist in the correspondence and the scholarship check does not mention her by name. Further, even if the Petitioner had established that she received this award, the evidence does not show that it was in her field of business administration or entrepreneurship, but was for a cooking competition. We therefore conclude that the Petitioner does not meet this criterion.

2. Evidence of Membership in Associations Requiring Outstanding Achievements of Members

The regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "[d]ocumentation 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."

The Petitioner submitted evidence of her membership in the National Society of Leadership and Success (NSLS) and the American Culinary Federation (ACF). In their decision, SCOPS concluded that the record did not show that either of these organizations requires outstanding achievements of their members. On appeal, the Petitioner's counsel asserts that NSLS membership is "extended only to individuals who meet strict eligibility criteria, including academic excellence and demonstrable leadership potential."[3] But counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). And even if counsel's assertions were accurate and substantiated, the Petitioner has not shown that academic excellence and leadership *potential* are outstanding achievements in the field of business administration, or that those achievements are judged by recognized national or international experts in their fields.

A letter from the President and CEO of NSLS states the following regarding the association's membership requirements:

> In order to achieve induction in the NSLS, [the Petitioner] committed to attending leadership training focused on collaborative teamwork, goal setting, high achievement, leadership skills and styles, self motivation, and accountability.

[1] Any ground of ineligibility that is not raised on appeal is waived. *See Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

[2] The record indicates that this competition at [redacted] was one of many "[redacted]" competitions.

[3] The Petitioner does not assert on appeal that her membership in ACF qualifies under this criterion. We therefore consider this issue to be waived. *Id.*

The Petitioner has not shown how a commitment to attend training is an outstanding achievement in her field. While the Petitioner also provided information about the NSLS from its website, this evidence does not shed additional light on the association's membership requirements. Accordingly, the Petitioner has not established that she meets this criterion.

3. Participation as a Judge of the Work of Others in the Field

The regulation at 8 C.F.R. § 204.5(h)(3)(iv) calls for "[e]vidence 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 specialization for which classification is sought." Here, the Petitioner asserts that she meets this criterion based on her judging of a culinary competition hosted by [redacted]. An email correspondence chain verifies that she was asked to judge the work of local high school students in this competition, and later thanks her for her participation. As with our discussion pertaining to the awards criterion above, we note that the Petitioner is relying on evidence relating to the field of culinary arts, while her stated field of expertise is business administration. She does not explain, nor does the record demonstrate, how evaluating the cooking of high school students equates to judging the work of other business administrators, executives or entrepreneurs. For this reason, we conclude that the Petitioner has not established that she meets this criterion.

4. Commanded a High Salary or Significantly High Remuneration in Relation to Others in the Field

The regulation at 8 C.F.R. § 204.5(h)(3)(ix) seeks "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." SCOPS acknowledged the Petitioner's jointly-filed IRS Form 1040 tax return for 2018, as well as what appears to be financial documentation in a foreign language that was not accompanied by a full English translation.[4] But SCOPS' decision noted that the Petitioner did not submit additional information in response to the RFE to show that her salary was high in relation to others in her field.

On appeal, the Petitioner asserts that her tax return reflects remuneration "that is substantially above median income for culinary professionals, particularly when compared to the U.S. Bureau of Labor Statistics wage data and [redacted]-area benchmarks for small food business owners." This assertion makes an inappropriate comparison and is not supported by the evidence. First, since the tax return was jointly filed with the Petitioner's spouse and is not accompanied by either a Form W-2 or 1099 or a Schedule C, Profit or Loss from Business, it is not possible to discern the Petitioner's salary or other remuneration from this evidence. Second, the return shows wages and salaries of $3,866 in Line 1, and total adjusted gross income of $36,218 on Line 7. However, this last figure includes income from Schedule 1, which reports "foreign income" of $32,352. The record does not further explain the source of this income or whether it is attributable to the Petitioner or her spouse. And even if it is attributable to the Petitioner, this evidence does not indicate that it reflects her remuneration as an entrepreneur, business administrator, or executive.

[4] Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that they are competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of the document as required, we accord it no weight as we cannot determine whether it supports their claim.

Third, while the Petitioner references salary statistics from the U.S. Bureau of Labor Statistics, these statistics are not in the record. And even if this data was in the record, the closest O*NET occupational code for her field of endeavor would be 11-1011.00 – Chief Executives. Current BLS average wage figures for this occupation exceed any earnings possibly attributable to the Petitioner in the record. And the Petitioner did not provide other evidence, such as an industry salary survey, which might form a basis for comparison to her earnings.

As the Petitioner has not provided evidence of her remuneration or that her remuneration would be high in comparison to others in her field, we conclude that she does not meet this criterion.

B. Final Merits Determination

The Petitioner also challenges SCOPS' decision regarding the criteria at 8 C.F.R § 204.5(h)(3)(v) and (viii), relating to her claims of having made original contributions of major significance to her field, and that she played a leading or critical role for organizations having a distinguished reputation. But because we have determined that the Petitioner does not meet four of the six criteria she asserts that she meets on appeal, she cannot satisfy the initial evidence requirement of meeting at least three of the evidentiary criteria under 8 C.F.R. § 204.5(h)(3). We therefore reserve the issue of whether she meets the criteria at 8 C.F.R. § 204.5(h)(3)(v) and (viii). *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).

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. Here, because the Petitioner has not satisfied the threshold initial evidence requirements at 8 C.F.R. § 204.5(h)(3), we cannot conclude that she 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."). Nevertheless, we advise that we have reviewed the record in the aggregate, and conclude that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

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.