U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41762474

Date: FEB. 02, 2026

Appeal of Service Center Operations Decision

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

The Petitioner, a chief executive officer, 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 the record did not establish that the Petitioner had satisfied at least three of the initial evidentiary criteria for this classification, as required. The Petitioner subsequently filed combined motions to reopen and reconsider, which SCOPS dismissed, determining that he had not overcome the previously stated grounds for denial. 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 withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Immigrant visas are available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. Section 203(b)(1)(A) of the Act. These individuals must seek to enter the United States to continue work in the area of extraordinary ability and show that their entry will substantially benefit the United States. *Id*. 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 international recognition of the individual's achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the

petitioner can submit evidence 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. If those standards do not readily apply to the individual's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we 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

The Petitioner is the CEO and co-founder of [redacted] which uses a patented technique to cultivate [redacted] Previously, the Petitioner held a series of executive positions with overseas companies, including [redacted] where he last held the position of global brands marketing director.

Because the Petitioner has not indicated or shown 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). The Petitioner initially claimed to have satisfied eight of these criteria. In its decisions denying the petition and dismissing the Petitioner's motion, SCOPS determined that he satisfied two of the eight claimed criteria, relating to judging the work of others in the same or allied field and performing in leading or critical roles for organizations with a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(iv) and (viii).

On appeal, the Petitioner maintains that he submitted evidence satisfying the other six claimed criteria relating to awards, memberships, published materials about him, original contributions, scholarly articles, and high salary or other significantly high remuneration. *See* 8 C.F.R. § 204.5(h)(3)(i)-(iii), (v), (vi) and (ix). He contends that SCOPS erred in its evaluation of the evidence, applied standards beyond what the regulations and U.S. Citizenship and Immigration Services (USCIS) policy guidance require, and relied on "undisclosed research" in reaching its determinations regarding his eligibility under certain criteria.

We agree with the Petitioner that SCOPS' latest decision is based, in part, on evidence reviewed by USCIS that was neither disclosed to the Petitioner prior to the issuance of the decision, nor incorporated into the record. If a decision will be unfavorable to the petitioner and is based on potentially derogatory information considered by USCIS and of which the petitioner is unaware, the petitioner must be advised of this fact and offered an opportunity to rebut the information before a decision is rendered. 8 C.F.R. § 103.2(b)(16)(i). A determination of statutory eligibility shall be based

only on information contained in the record of proceeding which is disclosed to the petitioner. *See* 8 C.F.R. § 103.2(b)(16)(ii).

For example, the Petitioner claimed eligibility under 8 C.F.R. § 204.5(h)(3)(ii) based on his membership in the Forbes Business Council. In evaluating his eligibility under this criterion, SCOPS advised that "USCIS reviewed data from the North American Industry Classification System" and then relied on that information to conclude that "millions of 'senior level executives' would be eligible for membership consideration for the Forbes Business Council," noting that "such inclusion does not denote outstanding achievement when millions of people are eligible for consideration."

In determining whether the Petitioner had provided published material about him in professional or major trade publications under 8 C.F.R. § 204.5(h)(3)(iii), SCOPS' decision introduced a definition of "professional magazine or journal" obtained from the website of [redacted] and relied on that source to dismiss the Petitioner's claim that he satisfied this criterion. Further, SCOPS' discussion of the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v) states that USCIS consulted information published by [redacted] regarding the total value of global venture capital investment for all companies worldwide, and then used that information to dismiss the Petitioner's claim that the venture capital and grant funding [redacted] has received should be deemed "significant."

None of the evidence addressed above, or other independently researched information referenced in SCOPS' latest decision, was incorporated into the record or nor was the Petitioner put on notice that SCOPS would be considering such information. To ensure fair and complete consideration of the proceedings before us, it is necessary that the record of proceedings contains copies of all evidence considered. SCOPS bears the responsibility of ensuring that the record is complete and contains all evidence submitted by the Petitioner and any other evidence considered by SCOPS in reaching their decision. *See* 8 C.F.R. § 103.2(b)(1); *cf. Matter of Gibson*, 16 I&N Dec. 58, 59 (BIA 1976).

In addition, review of the record and SCOPS' prior decisions indicates that SCOPS did not consider the Petitioner's request that USCIS consider comparable evidence with respect to certain evidentiary criteria. *See* 8 C.F.R. § 204.5(h)(4). Specifically, SCOPS did not evaluate whether the Petitioner's evidence of the presentation of his work at trade shows is of comparable significance to publication of scholarly articles and whether he presented evidence of highly valued equity holdings in his start-up company that are of comparable significance to the high salary criterion. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual (providing examples of potentially qualifying comparable evidence under 8 C.F.R. § 204.5(h)(4)).

Therefore, for the reasons discussed, we will withdraw SCOPS' decision and remand this matter. On remand, SCOPS should identify and incorporate any documents that may have been omitted from the record of proceeding, before reviewing the entire record, including the Petitioner's appeal, re-evaluating the Petitioner's eligibility under the claimed evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) and 8 C.F.R. § 204.5(h)(4), and issuing a new decision. If the new decision will be based in part, on materials not submitted by the Petitioner, SCOPS should issue an RFE or NOID, granting the Petitioner a reasonable opportunity to respond, before issuing a new decision.

ORDER: The decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.