U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40798237

Date: FEB. 4, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner is a structural 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.

SCOPS denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner had a major, internationally recognized award, nor did she demonstrate that she 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 to U.S. Citizenship and Immigration Services (USCIS) 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.

We adopt and affirm SCOPS' ultimate determination. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below "is not only common practice, but universally accepted"). SCOPS provided a reasoned analysis of the record and although the Petitioner claims SCOPS committed various errors in the denial, she has not shown that any error—or combination of errors—would result in a different outcome for her petition. It is not enough to demonstrate errors in an agency's decision; a petitioner must also establish they were prejudiced by the mistakes. *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009); *Molina-Martinez v. United States*, 578 U.S. 189, 203 (2016). We do, however, withdraw SCOPS' comments when they considered whether her entry will substantially and prospectively benefit the United States as they included language and concepts that do not apply to this immigrant classification. However, as other unmet requirements are dispositive of this appeal, we do not need to address this issue any further.

We also note that the Petitioner initially addressed two criteria that she abandoned in her response to SCOPS' request for evidence (RFE) as she did not offer a response to that notice. Those criteria relate to memberships under 8 C.F.R. § 204.5(h)(3)(ii) and the display of her work under 8 C.F.R.

§ 204.5(h)(3)(vii). She does not address the membership criterion on appeal, but she does raise her eligibility under the display criterion. But when she failed to address either of these requirements in the RFE response, she relinquished her ability to further claim them later in the proceedings, such as on appeal. An RFE is intended to clarify eligibility as of the petition's filing date. *See* 8 C.F.R. § 103.2(b)(8), (12). Under 8 C.F.R. § 103.2(b)(13)(i), failure to respond to specific RFE elements constitutes abandonment or waiver of those claims. A petitioner cannot later revive such claims on appeal after knowingly declining to respond.

The Board of Immigration Appeals' (the Board) precedents favor this reading. In *Matter of R-S-H-*, 23 I&N Dec. 629, 638 (BIA 2003) the Board explained that when faced with an adverse scenario (e.g., SCOPS outlining an evidentiary shortcoming within an RFE) a filing party must offer a response and advance their arguments to preserve that topic for consideration on appeal). The Board concluded the same in *Matter of C-A-R-R-*, 29 I&N Dec. 13, 17 (BIA 2025) in which they decided that when the trier of fact requests supplemental statements or documents it deems necessary to complete an adjudication, but those materials are not timely submitted, the opportunity to make those statements or documents part of the record is waived. Also, in *Matter of Lopez-Ticas*, 29 I&N Dec. 90, 94 (BIA 2025), the Board determined that an issue is waived or forfeited if we issue a notice, and the filing party fails to address a particular issue within the notice that they disagree with or that they deem is incorrect.

So, we will not entertain new arguments on appeal—such as her new comparable evidence arguments—that were not raised in response to SCOPS' RFE. *Matter of R-S-H-*, 23 I&N Dec. at 638 (citing *Matter of Garcia-Reyes*, 19 I&N Dec. 830, 832 (BIA 1988)). The Petitioner had the opportunity to present these arguments and failed to do so. And federal courts have acknowledged such USCIS action when the agency determines a filing party's failure to respond to a specific eligibility requirement in an RFE means they have abandoned or waived that issue. *See Nagaiah v. Allen*, 784 F. Supp. 3d 798, 807 (E.D. Pa. 2025). Issues not properly developed before SCOPS are not preserved for appeal. *See Santos Garcia v. Garland*, 67 F.4th 455, 460 (1st Cir. 2023); *Ali v. Garland*, 33 F.4th 47, 55 (1st Cir. 2022); *Indrawati v. U.S. Att'y Gen.*, 779 F.3d 1284, 1297 (11th Cir. 2015); *Jeune v. U.S. Atty. Gen.*, 810 F.3d 792, 800 (11th Cir. 2016).

Also, despite SCOPS informing the Petitioner of the types of comparative evidence USCIS policy requires to demonstrate a media source qualifies as other major media, the record still does not contain that requisite type of material. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual (emphasis added) (noting when USCIS evaluates whether a submitted publication is other *major* media, relevant factors include the relative circulation, readership, or viewership that should be compared to other similar statistics). *See also Branski v. Seng*, No. 24-CV-360, 2024 WL 4678939, at *5 (E.D. Wis. Nov. 4, 2024) (indicating that the failure to provide context to circulation figures makes it difficult to assess their significance); *Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 185 (D.N.J. 2021) (upholding this office's determination the plaintiff provided no basis to gauge the circulation of the publication in which she appeared); *Jafarov v. USCIS*, No. 23 CIV. 3372 (PAE), 2024 WL 69056, at *7 (S.D.N.Y. Jan. 5, 2024) (finding the petitioner's evidence reflecting only of the frequency of their circulation, with conclusory claims about their national importance, insufficient to establish the major status of the publications).

And to briefly touch on her contributions of major significance claims, while she appears to have played an important role in a technology's development, she has not established—as claimed—that

she was the sole person to which it can be attributed. Vague references in support letters that she played a pivotal role are insufficient to support her claims that she solely developed the technology. And although the technology does appear outside of her home country, she has not demonstrated the product she claims association with, in and of itself, resulted in contributions of major significance in the field, rather than existing as one similar product among a class of open web steel joists structural technologies.

Ultimately, the Petitioner has not demonstrated the record supports granting an additional criterion, which would satisfy the first of two steps in the adjudication process, thereby warranting a final merits analysis in the second procedural step. The Petitioner has not explained how the evidence she submitted adequately supports her claims that she qualifies for this highly restrictive immigrant classification.

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