U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41017451

Date: FEB. 10, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a marketing manager in the field of digital commerce, 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 (EB-1) classification makes immigrant visas available to aliens who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their fields 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 ten initial evidentiary criteria. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. On appeal, the Petitioner contends that SCOPS improperly applied an elevated evidentiary standard and maintains that the evidence supports her eligibility for the EB-1 classification.

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) of the Act makes visas available to aliens with extraordinary ability if:

(i) the alien has 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,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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). *See also Onaghise v. Dep't of Homeland Sec.*, No. 3:20-CV-03033-X, 2022 WL 4073344, at *2 (N.D. Tex. Sept. 2, 2022) ("EB-1 petitions, nicknamed Einstein visas, are coveted visas reserved for only the most talented noncitizens with extraordinary ability in the sciences, arts, education, business, or athletics"). 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 the beneficiary's 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 categories 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). Additionally, if the criteria at 8 C.F.R. § 204.5(h)(3) do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility. 8 C.F.R. § 204.5(h)(4).

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 beneficiary 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 established that she has 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 decided that the Petitioner satisfied two criteria relating to published material and judging but did not satisfy the remaining claimed criteria relating to a leading or critical role and a high salary. After reviewing all the evidence in the record, we conclude that the Petitioner has not demonstrated eligibility for this highly restrictive immigrant classification. While we may not address each piece of evidence individually, we have reviewed and considered each one.

The Petitioner argues that SCOPS improperly applied an elevated evidentiary standard. Except where a different standard is specified by law, a petitioner must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Under the preponderance of the evidence standard, the evidence must demonstrate that the petitioner's claim is "probably true." *Id.* at 376. We will examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. Here, we have reviewed each piece of evidence, both individually and within the context of the totality of the evidence, and conclude that the Petitioner has not established by a preponderance of the evidence eligibility for the EB-1 classification.

1. "Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." 8 C.F.R. § 204.5(h)(3)(viii).

First, the Petitioner must demonstrate that she has performed in a leading or critical role for an organization or establishment. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual. For a leading role, we look at whether the evidence establishes that the Petitioner was a leader within the organization or establishment or a division or department thereof. *Id.* For a critical role, we look at whether the evidence establishes that the Petitioner has 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.*

Second, the Petitioner must show that the organization or establishment for which she held a leading or critical role has a distinguished reputation. *Id.* The relevant size or longevity of an organization or establishment is not a determining factor but is considered together with other information to determine whether a distinguished reputation exists. *Id.* Other relevant factors for evaluating the reputation of an organization or establishment include the scale of its customer base or relevant media coverage. *Id.* Based on the definition of "distinguished" provided in *Merriam-Webster.com Dictionary*, we interpret "distinguished" as "marked by eminence, distinction, or excellence" or "befitting an eminent person." *Distinguished*, Merriam-Webster.com, www.merriam-webster.com.

The Petitioner contends that SCOPS discounted probative evidence, including acquisition documents, equity consideration records, organization charts, and letters, which establishes her indispensable role as the founder and chief executive officer of [redacted] and a senior vice president at [redacted]. The Petitioner claims that SCOPS' requirement that she proves her role was of significant importance to the outcome of the organization's activities misstates the regulatory standard.

The Petitioner asserted that she has played both leading and critical roles for [redacted] as the founder and chief executive officer and for [redacted] as a senior vice president of China strategic partnerships and global account development for the Asia-Pacific region. The record includes an employment verification letter from a former chief marketplace officer of [redacted]'s organization chart, recommendation letters from various individuals, an equity transfer agreement, an employment contract, a revenue notice under a management equity transfer agreement, and media reports covering the Petitioner in her capacity as [redacted]'s chief executive officer. These documents establish that the Petitioner has played a leading or critical role for [redacted] as the chief executive officer in increasing its revenue, helping numerous brands achieve success in e-commerce digitization, and leading the company's acquisition by [redacted]. These documents also indicate that the Petitioner has played a leading or critical role for [redacted] as a senior vice president of China strategic partnerships and global account development for the Asia-Pacific region in managing and expanding its strategic partnerships in the Asia-Pacific region.

However, the record lacks sufficient independent, objective evidence demonstrating that [redacted] and [redacted] have a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(viii). The record includes information regarding [redacted] and a list of media reports from the [redacted] website, media reports covering the Petitioner in her capacity as [redacted]'s chief executive officer, and computer software copyright registration certificates owned by [redacted]. The list of media reports from the [redacted]

website indicate that [redacted] has received industry awards at various events, including the 2020 [redacted] and [redacted], the 2020 [redacted], and the 2020 [redacted], and that [redacted] was included in the list of top 30 digital marketing services providers in China in 2020. But the Petitioner did not provide, for example, independent, objective evidence demonstrating the significance or prestige of the awards or being included in the list of China's top 30 digital marketing services providers in 2020 to establish that [redacted] has a reputation marked by eminence, distinction, or excellence. *See id.* Moreover, while the Petitioner provided media reports regarding [redacted]'s acquisition of [redacted] and [redacted]'s collaboration with [redacted], she did not submit, for example, documentary evidence distinguishing [redacted] from other digital marketing services providers, so as to establish that it has a distinguished reputation pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

Although the Petitioner demonstrated that she has performed in a leading or critical role for [redacted] and [redacted], she did not sufficiently establish that they have a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(viii). Therefore, she does not meet this criterion.

2. "Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." 8 C.F.R. § 204.5(h)(3)(ix).

To meet this criterion, the Petitioner must establish that her salary or remuneration is high relative to the compensation paid to others working in the field. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(1). Evidence relevant to demonstrating high remuneration may include: (1) tax returns, pay statements, or other evidence of past salary or remuneration for services, (2) contract, job offer letter, or other evidence of prospective salary or remuneration for services, and (3) comparative wage or remuneration data for the person's field, such as geographical or position appropriate compensation surveys. *Id.* Evidence regarding whether the person's compensation is high relative to that of others working in the field may include: (1) geographical or position appropriate compensation surveys and (2) organizational justifications to pay above the compensation data. *Id.*

The Petitioner contends that the regulation requires only that she demonstrates her remuneration is significantly higher than that of others in the field and that SCOPS' demand for an explanation as to why her services would lead to a higher salary amount and whether the elevated salary was directly based on extraordinary ability is not supported by the statute, regulation, or precedent decision.

The Petitioner asserted that her annual base salary of 2,200,000 Chinese renminbi (RMB) exceeds the highest salary of RMB 1,800,000 for a head of digital in digital marketing in China. Based on the Petitioner's employment contract with [redacted], dated January 1, 2024, and an employment verification letter from a former chief marketplace officer of [redacted], it appears that the Petitioner's annual base salary at [redacted] as a senior vice president of China strategic partnerships and global account development for the Asia-Pacific region in 2024 was RMB 2,200,000. The 2024 Hays Asia Salary Guide shows the salary ranges for a head of digital in digital marketing in China in 2024 as between RMB 900,000 and RMB 1,800,000.

Here, the Petitioner has not provided sufficient objective earnings data showing that the Petitioner has earned a "high salary" or "significantly high remuneration" in comparison with those performing

similar work as a senior vice president in her field during the same time period. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of a NHL defensive player to salary of other NHL defensemen). The Petitioner's submission of the 2024 salary ranges for a head of digital in digital marketing in China does not provide for a meaningful comparison with high salaries in the Petitioner's occupation as a senior vice president in her field. The Petitioner did not provide geographical or position appropriate compensation surveys, organization justifications to pay above the compensation data, or other sufficient evidence to establish that her compensation is high relative to that of other senior executives working in the field, rather than a head of digital department working in the field. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(1).

Because the evidence the Petitioner submitted does not sufficiently demonstrate that she has received a high salary or other significantly high remuneration for services in relation to others working in the field, we determine that the Petitioner does not satisfy this criterion. *See* 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner claims that in her prior adjudication, SCOPS found that the same evidence met both the leading role and high salary criteria and the present decision departs from that determination without a reasoned explanation, reflecting inconsistent adjudication, and, therefore, the present decision is legally and factually erroneous.

While we acknowledge the Petitioner's claim, petitions are not required to be approved where the petitioner has not demonstrated eligibility because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Agencies need not treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Furthermore, our authority over the service centers 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 the alien or determined that the Petitioner met the two criteria relating to a leading role and a high salary, we would not be bound to follow the contradictory decision of a service center. *See Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, *1, *3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

B. Final Merits Determination

The Petitioner has not submitted the required initial evidence of either a major, one-time achievement or documents that meet at least three of the ten criteria. As a result, we do not need to provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119–20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those progressing toward that goal. U.S. Citizenship and

Immigration Services 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. at 954. In this case, the Petitioner has not shown the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with 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 has garnered national or international acclaim in the field and that she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2).

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