U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40777461

Date: FEB. 10, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a construction manager in the field of transportation infrastructure, 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 made numerous significant errors of both law and fact and that he submitted ample and compelling evidence showing that he meets at least two additional criteria. The Petitioner maintains that the evidence supports his 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 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). SCOPS decided that the Petitioner satisfied the criterion relating to a leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii) but did not satisfy the remaining claimed criteria relating to judging and a high salary at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix), respectively. 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.

1. "Evidence 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." 8 C.F.R. § 204.5(h)(3)(iv).

To meet this criterion, the Petitioner must demonstrate that he has acted as a judge of the work of others in the same or an allied field of specification. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual. The Petitioner must show that he has not only been invited to judge the work of others, but also that he actually participated in judging the work of others in the same or allied field of specialization. *Id.*

SCOPS determined that the Petitioner did not establish eligibility for this criterion. A review of the record of proceeding, however, reflects that the Petitioner submitted sufficient documentary evidence establishing that he minimally meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). The Petitioner submitted documentation showing that in 2019 and 2020, he served as a technical reviewer of the technical working group for the [redacted], reviewed bids submitted for construction jobs for the [redacted], determined whether the bidder was capable of performing the necessary work, and provided recommendations on which firm was best qualified to perform different aspects of the contract. Accordingly, the Petitioner meets 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 his 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 argues that SCOPS' determination that he did not meet this criterion is arbitrary and capricious because SCOPS applied a heightened standard by requiring him to provide evidence of additional years of high remuneration and finding that one year of salary did not demonstrate sustained acclaim. The Petitioner asserts that his 2024 annual salary of $171,517.98 far exceeds the 90th percentile nationally for civil engineers ($150,640) and the level 4 wage for civil engineers in New Jersey where he works ($113,402).

While the Petitioner documented his 2024 annual income by submitting his paystubs and Form W-2 for 2024, he has not provided sufficient objective earnings data showing that he has earned a "high salary" or "significantly high remuneration" in comparison with those performing similar work as a construction manager in the field of transportation infrastructure 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).

In his Form I-140, the Petitioner listed a construction manager as his current occupation and his proposed employment in the United States. But the Petitioner provided 2023 wage statistics for civil engineers from the U.S. Bureau of Labor Statistics (BLS) showing mean wage estimates and percentile wage estimates for civil engineers for 2023. He also provided (1) mean wages for four levels of civil engineers in all industries from 2024 to 2025 from the U.S. Department of Labor (DOL), (2) the salary of a civil engineer in [redacted], New York, for 2025 from ZipRecruiter, (3) the total pay range for a

civil engineer in the United States for 2024 from Glassdoor, and (4) the average base salary of a civil engineer in the United States for 2025.

Regarding the mean wage estimates and percentile wage estimates for civil engineers for 2023 from the BLS and the average base salary of a civil engineer in the United States for 2025 from Indeed, these surveys measured the average or percentile statistics of civil engineers. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." These surveys only provided average and percentile salary data for civil engineers and did not identify the high-end salaries for those performing work with similar responsibilities as the Petitioner, a construction manager in the field of transportation infrastructure. Average and percentile statistics for a different occupation do not provide position appropriate compensation data to demonstrate that the Petitioner meets this criterion. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(1).

The Petitioner also claims to meet this criterion based on the 2024 to 2025 annual salary of civil engineers in all industries because his 2024 annual salary of $171,517.98 is more than the yearly prevailing wage of level 4 (fully competent) civil engineers in [redacted] and [redacted], New Jersey. The Petitioner submitted his "Online Wage Library – FLC Wage Search Results" indicating that the prevailing wage for fully competent civil engineers in the [redacted] and [redacted] areas for 2024 to 2025 was $113,402 per year.[1] The Foreign Labor Certification (FLC) Data Center's Online Wage Library relies on the BLS Occupational Employment Statistics (OES) wage estimates.[2] The OES program collects data on wage and salary workers in nonfarm establishments in order to produce employment and wage estimates for about 830 occupations; the BLS produces occupational employment and wage estimates for over 450 industry classifications at the national level; and the employment data are benchmarked to average employment levels.[3] The Petitioner, however, must submit evidence showing that he has earned a high salary or other significantly high remuneration relative to other construction managers in the field of transportation infrastructure, not a salary that is above the amount paid to the majority of fully competent workers in civil engineering in all industries. *See* 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner also provided the salary of a civil engineer in [redacted], New York, for 2025 from ZipRecruiter showing the 2025 annual salary of top earners in civil engineering ($124,925) and the salary range of a civil engineer in the United States for 2024 from Glassdoor ($99,000 to $140,000). A letter from the director of human resources at [redacted]. doing business as [redacted] that the Petitioner's daily job duties as a construction manager "align closely with the duties of SOC 17-2051, Civil Engineers" and "it is common in [their] industry that the title of "Construction Manager" is used to refer to people, like [the Petitioner], who have a background and/or license in civil engineering." While the Petitioner may perform duties of a civil engineer as part of his job duties as a construction manager for his employer, a separate Standard Occupational Classification (SOC) code exists for construction managers, 11-9021, which is used to identify

[1] A "prevailing wage" is defined as "the average wage paid to similarly employed workers in a specific occupation in the area of intended employment." *See* U.S. Department of Labor, *Prevailing Wages*, https://flag.dol.gov/programs/prevailingwages (last visited Feb. 10, 2026).

[2] *See id.*

[3] *See* U.S. Bureau of Labor Statistics, *Occupational Employment and Wage Statistics*, https://www.bls.gov/oes/oes_emp.htm#estimates (last visited Feb. 10, 2026).

individuals who "plan, direct, or coordinate, through subordinate supervisory personnel, activities concerned with the construction and maintenance of structures, facilities, and systems."[4] As such, the Petitioner's submission of salary surveys for a civil engineer in New York for 2025 and for a civil engineer in the United States for 2024 does not constitute geographical or position appropriate compensation surveys. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(1).

The record includes (1) 2023 wage statistics for construction managers from the BLS showing mean wage estimates and percentile wage estimates for construction managers for 2023 and (2) mean wages for four levels of construction managers in all industries from 2024 to 2025 from the DOL.

Regarding the mean wage estimates and percentile wage estimates for construction managers for 2023 from the BLS, this survey provided average and percentile salary data for civil engineers for 2023. Although this survey provided salary data for the same occupation, average and percentile statistics for a different year do not provide compensation data during the same time period. As for the mean wages for four levels of construction managers in all industries in [redacted] and [redacted], New Jersey, from 2024 to 2025 from the DOL, the Petitioner must submit evidence showing that he has earned a high salary or other significantly high remuneration relative to other construction managers in the field of transportation infrastructure, not a salary that is above the amount paid to the majority of level 4 (fully competent) construction managers in all industries. *See* 8 C.F.R. § 204.5(h)(3)(ix).

On appeal, the Petitioner presents a contingent employer offer letter from a task order manager of [redacted], dated January 2024, to work as a tunneling construction manager with an annual salary of approximately $200,000 "after the FTA has given [the company] approval for [the Petitioner] to work on the contract." He also offers an employment letter from the president and chief executive officer of [redacted], dated August 2025, to work as a senior construction manager for a construction project with $117.93 per hour starting in September 2025. The Petitioner filed the instant visa petition in April 2025. The offer of a potential salary at some time in the future or the contingent employment offer depending on the satisfaction of a certain condition in the future does not meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix). Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981), that U.S. Citizenship and Immigration Services (USCIS) cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

The record lacks geographical or position appropriate compensation surveys, organization justifications to pay above the compensation data, or other sufficient evidence to establish that his compensation is high relative to that of others working in his field. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(1). Accordingly, the Petitioner does not satisfy this criterion.

3. We Reserve the Remaining Claimed Criterion

[4] *See* U.S. Department of Labor, Employment and Training Administration, *O*NET OnLine*, https://www.onetonline.org/link/summary/11-9021.00 (last visited Feb. 10, 2026).

We conclude that although the Petitioner claims he meets one additional criterion relating to a leading or critical role and SCOPS agreed with this assertion, because his arguments fail on one of the two criteria discussed above, that means he cannot numerically meet the required number of at least three criteria. It is, therefore, unnecessary for us to decide on this additional ground because he cannot numerically meet the required number of criteria. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve this issue. *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).

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. USCIS 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. Here, the Petitioner has not shown the significance of his 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 he 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.