U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40988436

Date: FEB. 12, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a business executive, seeks classification as an individual 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 aliens who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. *Id.*

SCOPS denied the petition, concluding that the Petitioner did not establish either that he received a major, internationally recognized award, or that he satisfied at least three of the 10 initial evidentiary criteria. 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

Section 203(b)(1) of the Act makes visas available to immigrants 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). 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 the recognition of their 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 10 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).

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 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).

II. ANALYSIS

The Petitioner described the endeavor as a plan to found and operate a petroleum business consulting firm in the United States.

SCOPS concluded that the record satisfies the criteria at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix), but not the criteria at 8 C.F.R. §§ 204.5(h)(3)(ii)-(iii), (v), and (viii), noting that the Petitioner did not assert eligibility under the remaining criteria. On appeal, the Petitioner reasserts that the record satisfies the criteria at 8 C.F.R. §§ 204.5(h)(3)(iii), and (viii), in addition to the criteria at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix).[1]

A. High Salary or Other Significantly High Remuneration

Before turning to the criteria that SCOPS determined the record does not meet, we withdraw SCOPS' conclusion that the record satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(ix) for the reasons discussed below.

The criterion 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."

The Petitioner submitted income information for the 2023 calendar year, including an IRS Form W-2, Wage and Tax Statement; and an IRS Form 1040, U.S. Individual Income Tax Return. The Petitioner also submitted information from the U.S. Department of Labor, Bureau of Labor Statistics (BLS), that remarks about the wages of chief executives, top executives, and general and operations managers in 2023 and 2024. The extent of SCOPS' analysis of this criterion in the decision and a prior request for evidence (RFE) was a brief list of evidence and a conclusory statement that the criterion is met.

[1] The Petitioner does not assert on appeal—and the record does not support the conclusion—that the record satisfies the criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(ii), (v)-(vii), or (x).

BLS information regarding wages in 2024 does not inform what wages in 2023—the calendar year for which the Petitioner submitted his income information—were. Moreover, even the limited BLS information the Petitioner submits for the corresponding year addresses wages for individuals with those general occupational titles among all industries and fields, without distinguishing between differences in wages across industries and fields, which may vary substantially. Therefore, the information regarding wages among those generalized occupational categories provides minimal informative value for determining how the Petitioner's income would relate to others in the same field as his, even if the information applied to the same year in question. The Petitioner did not otherwise submit evidence regarding his salary or other remuneration for services in any year other than 2023, nor does he otherwise submit information regarding how his income in 2023 relates to others in the same field as his. Therefore, the record does not support the conclusion that the Petitioner has commanded a high salary or other significantly high remuneration for services, in relation to others in the field, and we withdraw SCOPS' determination that the criterion at 8 C.F.R. § 204.5(h)(3)(ix) has been met.

B. Published Material About the Alien

The criterion at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation." Factors for determining whether a publication qualifies as professional or major trade publications include the intended audience and, for major trade publications and other major media, the relative circulation, readership, or viewership. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual.

SCOPS acknowledged that the record contains a copy of one article that relates to the Petitioner and his work, published by [redacted]. However, SCOPS determined, "This criterion has not been met because the evidence does not indicate that the published material was published in professional or major trade publications or other major media."

On appeal, the Petitioner generally reasserts that [redacted] qualifies because it "is widely recognized as one of Argentina's three principal economic newspapers" and it has "significant national circulation." However, he does not identify documentary evidence in the record that supports his statements.

As SCOPS acknowledged, the record contains a copy of one article published by [redacted] in [redacted] 2025, with a certified translated in English. The article relates to the Petitioner and his business management work in the petroleum industry. However, the article—as translated in English in the record—does not satisfy the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(iii). Specifically, the criterion requires such evidence to include not only the title and the date of the publication, but also the "author of the material." The English translation of the article reports, "Author: [redacted]." Repeating the name of the entity that published the article does not identify the author of the material. The author of the material is significant because marketing materials created for the purpose of selling or promoting a person's products or services, including seemingly objective content for which an employer or individual in question paid, generally does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(iii). *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). We note

that the original copy of the article, written in a language other than English, also does not appear to identify any particular author of the material, thereby casting doubt on whether it qualifies as published material about the alien or is marketing or commissioned material. *See generally id.*; *see also Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (providing that petitioners must resolve ambiguity in the record with independent, objective evidence pointing to where the truth lies).

Further, as SCOPS noted, the record also does not establish that [redacted] qualifies as the type of professional or major trade publication, or other major media contemplated by the criterion. The Petitioner does not clarify whether he believes [redacted] is a professional publication, a trade publication, or another form of major media, which are distinguished by different factors, as noted above. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). For example, the Petitioner refers to [redacted] in his RFE response as "major trade media," apparently conflating major trade publications with major media, but he also describes [redacted] on appeal as "a leading economic newspaper in Argentina," and he asserts that it is major media and "a professional and trade publication of record for business and finance in Argentina." As noted above, petitioners bear the burden of resolving ambiguity in the record. *See Matter of Ho*, 19 I&N Dec. at 591-92.

Although we acknowledge that the record contains web traffic data regarding [redacted] from Similarweb.com, this information does not inform what web traffic for other business and finance publications is, whether specifically for Argentinian audiences or in general. Without more, the Similarweb.com web traffic data does not inform what [redacted]'s circulation, readership, or viewership is, relative to other, similar publications. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

In response to SCOPS' RFE, the Petitioner submitted certified translations of two additional articles published by [redacted], regarding itself. We note that the article published in [redacted] 2025 presents a set of material facts that did not exist at the time the Petitioner filed the Form I-140 in April 2025. A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to U.S. Citizenship and Immigration Services requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Because the article published in [redacted] 2025 presents set of material facts that did not exist at the time the Petitioner filed the Form I-140, it cannot—and it does not—establish eligibility and we need not address it further. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176. The other [redacted] article, dated [redacted] 2019, that the Petitioner submitted in response to SCOPS' RFE provides self-reported information about it being "among the leading local business newspapers for over 20 years." However, the 2019 article does not inform whether [redacted] remained a generally leading local business newspaper through [redacted] 2025, when it published the article in question, or how its profile may have changed in the interim.

The Petitioner also submitted a certified English translation of self-reported information from [redacted], which lists [redacted] among [redacted]'s media holdings in the forms of various news channels, music channels, newspapers, radio stations, and other content production companies. The [redacted] information also provides self-reported data regarding its media holdings' overall

circulation, readership, or viewership in October 2024, although it does not specify what [redacted]'s circulation, readership, or viewership is within the total figures, nor does it provide data other than for October 2024 to establish how its audience may vary beyond one month in isolation. And, like the Similarweb.com information addressed above, [redacted]'s self-reported audience information does not clarify what other, similar publications' audience information is, in order to establish how [redacted]'s circulation, readership, or viewership compares relative to other similar publications. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

The record also contains copies of six pages excerpted from Reuters Institute's Digital News Report 2024. However, the excerpt, which mostly consists of the report's cover pages and two tables of contents, does not address [redacted]'s circulation, readership, or viewership, and how it may compare, relative to other similar publications. *See generally id.*

For the reasons discussed above, the record does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

Because the Petitioner would not satisfy at least three of the 10 criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(x) even if he met the criterion at 8 C.F.R. § 204.5(h)(3)(viii), we reserve our opinion regarding that criterion. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

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. Because the Petitioner has not satisfied the threshold "initial evidence" requirements at 8 C.F.R. § 204.5(h)(3), we cannot conclude that he 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."). Therefore, we decline to reach and hereby reserve any final merits determination in this matter. *See INS v. Bagamasbad*, 429 U.S. at 25.

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.