U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40989136

Date: FEB. 19, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner is a professor of Kazakh law 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, and although he demonstrated that he met at least three of the ten regulatory criteria, his case did not warrant a favorable conclusion when considering the totality of the evidence in a final merits determination. 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.

I. LAW

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The alien enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The alien's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. The term "extraordinary ability" refers only to those 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-step analysis. In the first step, a petitioner can demonstrate international recognition of his or her 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 he or she must provide sufficient qualifying documentation 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).

Where a petitioner meets these initial evidence requirements, we then move to the second step to 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, 1121 (9th Cir. 2010) (discussing a two-step 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 Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

The Petitioner indicates he received a bachelor's in law degree (LL.B.) in 2008, a master's degree in law (LL.M.) in 2010, and a doctorate in law in 2015, all in his native country of Kazakhstan. The Petitioner explained that he began as a legal researcher in Kazakhstan in 2008, worked as an in-house attorney for the Kazakhstan Army from 2011 to 2021, and later as an associate law professor at [redacted] in Kazakhstan from 2016 to 2022, mainly teaching courses in Kazak criminal law and procedure. In addition, the Petitioner stated that he received another LL.M. in the United States at the [redacted] in 2023 and that he was enrolled in a doctorate of judicial science program, with a focus on Indigenous American law, as of the time the petition was filed in May 2025.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he 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 at least three of the criteria, specifically that he participated as a judge of the work of others in his field consistent with 8 C.F.R. § 204.5(h)(3)(iv), he authored scholarly articles in the field in professional and major trade journals pursuant to 8 C.F.R. § 204.5(h)(3)(vi), and he commanded a high salary in relation to others in his field as reflected in 8 C.F.R. § 204.5(h)(3)(ix). However, SCOPS also determined that the Petitioner did not satisfy other asserted criteria, including that he received lesser nationally or internationally recognized prizes or awards consistent with 8 C.F.R. § 204.5(h)(3)(i), he was a member in an association in his field requiring outstanding achievements as judged by recognized national or international experts pursuant to 8 C.F.R. § 204.5(h)(3)(ii), or he had original, scholarly, artistic, athletic, or business-related contributions of major significance in the field per 8 C.F.R. § 204.5(h)(3)(v). Further, SCOPS concluded that the record did not demonstrate his sustained national or international acclaim and that he was one of the small percentage at the very top of the field of endeavor after conducting a final merits determination.

We begin with the Petitioner's procedural appellate claims that SCOPS violated the Administrative Procedures Act (APA) and disregarded the Petitioner's premium processing by issuing a second request for evidence (RFE). The record reflects that SCOPS issued a RFE in June 2025 requesting additional evidence related to whether the Petitioner participated as a judge of the work of others, had contributions of major significance in his field, and authored scholarly articles in the field in

professional and major trade journals. SCOPS also requested additional evidence, despite the Petitioner not asserting these bases for eligibility, related to whether he had received a major internationally recognized award and whether he performed in a leading or critical role with an organization or establishment with a distinguished reputation. The Petitioner responded to this RFE later that month providing the requested evidence and noting that the RFE did not request evidence relevant to criteria one through three and suggested that these had been met. SCOPS later issued another RFE in July 2025 instructing the Petitioner to disregard the first RFE and stating that the Petitioner had met criteria four, five, and six; but requesting additional evidence relevant to the first three criteria. Notably, SCOPS stated in the second RFE that the Petitioner should submit additional evidence to demonstrate that the Petitioner had sustained national or international acclaim and was one of a small percentage who had risen to the very top of his field of endeavor.

The Petitioner indicates that he submitted a comprehensive response to SCOPS' first RFE and received no indication in the second RFE whether the first would be "retracted, amended, or superseded." However, SCOPS indicated in the second RFE that the Petitioner should disregard the first RFE. Although SCOPS' issuance of two separate RFEs was not ideal, they determined in the denial decision that the Petitioner satisfied at least three of the initial criteria for eligibility. As such, we do not see a remedy to these claimed errors other than a de novo review of his eligibility, our jurisdiction in this matter. The Petitioner has been given the opportunity to supplement the record in response to the RFEs and on appeal as to the issue of whether he qualifies following a final merits determination. As a result, we dispose of the Petitioner's procedural claims, and we will analyze SCOPS' final merits determination.

B. Final Merits Determination

As the Petitioner has submitted and met the requisite initial evidence requirements, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim, that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in his field through extensive documentation. In a final merits determination, we analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119–20). *See generally* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policymanual (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

The two-step adjudication process is an interpretive rule that does not violate the Administrative Procedures Act, nor is it a legislative rule. *Agrawal v. Miller*, No. 4:24CV3143, 2025 WL 2879217, at *12 (D. Neb. Sept. 12, 2025); *Etsy, Inc. v. Jaddou*, No. 4:22CV3022, 2023 WL 3689555, at *23 (D. Neb. May 25, 2023) (citing *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 96 (2015); *Bharathm Ram Nagaiah, v. USCIS*, No. CV 23-2077-KSM, 2025 WL 1508028, at *14 (E.D. Pa. May 27, 2025).

In support of the petition, as noted above, the Petitioner discussed his eligibility under several of the initial ten evidentiary criteria, emphasizing his membership in "two high selective expert bodies," the "Pool of Experts of the Institute of Legislation and Legal Information" and the "Register for

Conducting Legal Anti-Corruption Expertise of Draft Laws" within the Kazakhstan Ministry of Justice. The Petitioner emphasized that his participation in these organizations was highly selective and indicative of his outstanding achievements in Kazakh law and legal science. The Petitioner further pointed to claimed original scientific and scholarly contributions of major significance to his field, strongly emphasizing his doctoral dissertation completed in 2015 [redacted] He indicated that this scholarly work coincided with the adoption of a revised criminal code in Kazakhstan, including the establishment of an "investigating judge" to oversee pre-trial criminal proceedings. The Petitioner also discussed his participation as a leading researcher from 2018 to 2020 in a state sponsored initiative [redacted] funded by the Kazakhstan Ministry of Education and Science. He asserted that these scholarly works, among other published materials, reflected his advanced work and sustained scholarly contributions to judicial control of criminal proceedings and counter-terrorism policy in Kazakhstan.

In addition, the Petitioner further pointed to several asserted lesser national awards, including his third-place finish in a [redacted] in 2008 in the category of law and his receipt of a 15-year service medal from the [redacted] among others. The Petitioner indicated that these awards and honors reflected his "sustained academic excellence and professional recognition" and "distinction and recognition in the education field." The Petitioner also asserted that he had a high salary in comparison to other Kazakh "legal professionals" and lawyers. However, notably, the Petitioner did not clearly articulate in support of the petition and in response to the RFEs how the submitted evidence demonstrated that he had sustained national or international acclaim and that he was one of a small percentage at the very top of the field of endeavor.

SCOPS evaluated the totality of the evidence and concluded that the Petitioner did not demonstrate his achievements and accolades were indicative of the required sustained national or international acclaim or that it was consistent with a career of acclaimed work in the field as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). SCOPS further pointed to reference letters discussing the Petitioner's research but concluded these did not sufficiently establish that his work received sustained acclaim. Further, SCOPS indicated that although the Petitioner showed he commanded a high salary, he did not compare his wages with individuals at the very top of his field of endeavor. In sum, SCOPS concluded that the Petitioner did not establish he received an ongoing level of recognition and praise for his achievements within Kazakhstan reflecting national acclaim.

On appeal, the Petitioner contends that SCOPS made an improper final merits determination. The Petitioner points to his scholarly articles and asserts that SCOPS overlooked them and did not give them sufficient weight. The Petitioner also emphasizes his high salary, asserting that it significantly exceeded the national average of lawyers by 38%. He indicates that SCOPS did not question this evidence related to his claimed high salary indicating their acceptance of it as extraordinary. In addition, the Petitioner states that SCOPS did not address how his participation as a judge of the work of others in the field did not factor into the final merits determination.

After reviewing the Petitioner's appellate claims and the remaining record, we agree with SCOPS that he has not shown sustained national or international acclaim or that he is eligible for this immigration benefit.

As discussed, the Petitioner points to his scholarly works, in particular on appeal he mainly emphasizes his dissertation [redacted]' as evidence of his sustained national acclaim, that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field. As authoring scholarly articles is often inherent to the work of scientists and researchers in academia, the citation history or other evidence of the influence of an individual's articles can be an indicator to determine the recognition they have received in the field and whether such recognition has been sustained. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian,* 596 F. 3d at 1122. Evidence establishing that the total rate of citations to a petitioner's body of work is high relative to others, such as a high h-index, is weighed as a positive factor in the final merits determination. *See generally* 6 *USCIS Policy Manual*, *supra* at F.5(B)(2). Depending on a journal's level of recognition, as demonstrated by evidence in the record, there may be an elevated level of prestige or acclaim associated with publication in particularly highly ranked journals. *Id.*

However, the scholarly work emphasized by the Petitioner was completed as an academic requirement for the completion of his Kazakh doctorate of law degree in 2015, under the supervision two "scientific consultants," both then doctors of law.[1] Given that the petition was filed in May 2025, approximately a decade after his dissertation, it is not clear how the dissertation is reflective of sustained national acclaim or that he rose to a very small percentage at the top his field.

The Petitioner also provided several support letters mainly emphasizing his dissertation, including one from a professor of criminal justice at [redacted] in Kazakhstan reviewing the contents of his dissertation and stating that his insights "coincided with significant judicial and legal reforms in the country, resulting in the revision and re-promulgation of the Criminal Code, the Criminal Procedure Code, and the Penal Code." However, the Petitioner provides little documentary support to substantiate this assertion; namely, that his doctoral dissertation led to wide-spread government reforms in his country or acclaim for his work. For instance, the Petitioner provided little citation information related to his dissertation to demonstrate its impact on the legal field or scholarship in Kazakhstan or other corroborating evidence that his work had a large impact on changes in laws in his country.

Otherwise, the record reflects that the Petitioner only published nine other scholarly works, with only one receiving the highest total of ten citations, namely [redacted] published in a Russian criminal law journal in 2014. The Petitioner provided evidence of only one published scholarly work after this, published in 2020, and little other citation data and documentary evidence to establish that his scholarly works had a significant impact on Kazak legal scholarship. Likewise, the Petitioner submitted little evidence to establish that the journals where his scholarly works were published were highly ranked, nor did he submit evidence to compare his modest citation level to others in the field. Therefore, based on the evidence in the record, the Petitioner's record of publication and its impact on his field of endeavor, if any, is not reflective of sustained national acclaim or that he rose to the very top of his field of endeavor.

[1] The Petitioner refers to this article as the "[redacted] However, the scholarly article appears in the record as [redacted]' (2014) published in the [redacted]'

It is further noteworthy that the Petitioner's highest position in Kazakhstan was associate professor at [redacted] in Kazakhstan from 2016 to 2022 teaching courses in Kazak criminal law and procedure. The Petitioner provided no evidence that he rose to a higher position within legal academia in Kazakhstan. In combination with his limited record of publication and citation, the evidence does not demonstrate, and leaves question as to whether he had risen to one of a small percentage at the very top of his field of endeavor.

We additionally note that the Petitioner submitted evidence that he left Kazakhstan in 2022 and came to the United States on an F-1 student visa to pursue an LL.M. in U.S. law. The record reflects that he is now enrolled in a Doctor of Law program focusing on Indigenous American law at the [redacted] The Petitioner further submitted support letters from professors and administrators at the [redacted] indicating that this program was designed for foreign lawyers or scholars to become U.S. law professors. The Petitioner's apparent shift from his area of stated expertise, Kazakh criminal law and procedure, for an entirely new field of legal study approximately three years prior to the date the petition was filed leaves considerable uncertainty as to whether he has sustained his asserted acclaim in Kazakh law or his claimed high position in this scholarly field. An applicant or petitioner must establish that he or she remains eligible for the benefit sought from the time of filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1); *Matter of Kazemi*, 19 I&N Dec. 49, 51 (BIA 1984) ("We have long held that an application for admission to the United States is a continuing application and admissibility is determined on the basis of the law and the facts existing at the time the application is finally considered."). The Petitioner must resolve inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, the Petitioner discusses his high salary on appeal asserting that it significantly exceeded the national average salary of lawyers by 38%. He indicates that SCOPS did not question the evidence of his high salary in concluding he had met this criterion, reflecting their acceptance of this evidence as extraordinary. However, SCOPS' conclusion that the Petitioner had met the criteria related to a high salary is not reflective of their acceptance of his extraordinary ability, which is evaluated in a final merits determination considering the totality of the evidence. Indeed, SCOPS stated in the denial that the Petitioner did not compare his claimed high salary to those who had risen to the top of his field of endeavor, in this case, the field of "law teachers, postsecondary" reflected in the petition. In support of the petition, the Petitioner compared his salary to "legal professionals" in the [redacted] region of Kazakhstan. Later, the Petitioner submitted data from the Kazakhstan Bureau of National Statistics specific to lawyers and again emphasizes this on appeal. However, the Petitioner does not clearly articulate how his income was indicative of him reaching the very top of law professors or sustaining acclaim in this field of endeavor. Without supporting explanation or evidence, we are unable to conclude that salary would have significant bearing on a law professor's standing or acclaim within their field. Regardless, without a clear explanation, we decline to speculate as to its relevancy in demonstrating the Petitioner's extraordinary ability.

Lastly, the Petitioner stated on appeal that SCOPS did not sufficiently consider evidence of him acting as a judge of the work others within his field. Again, the Petitioner does not indicate how his judging of the work of others in his field is reflective of him being at the very top of Kazakh law professors or professionals. Likewise, the Petitioner does not indicate how other asserted criteria SCOPS did not grant, such as his asserted receipt of lesser awards, his claimed member in associations in his field, or

his stated contributions of major significance in the field should be considered with respect to a final merits determination. We decline to speculate as to how the Petitioner's judging of others in the field or the other evidence specific to the other criteria may or may not demonstrate the Petitioner's eligibility under a final merits determination. However, regardless, it is notable that the judging in which the Petitioner took part mainly dated to his time as a Master of Law Student in 2009 at [redacted] where he states that he "reviewed and approved 54 academic articles submitted by master's students and personally selected the five most outstanding papers." However, it is not evident how the judging of scholarly articles while he was a master's student more than 15 years prior to the date the petition was filed in May 2025 reflects that he is in the highest portion of his field of endeavor, or his sustained acclaim as a law professor.

In summary, 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. 953, 954 (Assoc. Comm'r 1994). Considering the full measure of the Petitioner's ability and achievements, the level of his national or international acclaim and the extent to which his achievements have been recognized in the field are not indicative of a record of sustained acclaim. Also, he has not submitted extensive documentation exhibiting he has attained a level of expertise placing him among that small percentage that has risen to the very top of the field of endeavor.

III. CONCLUSION

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. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden here.

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.