U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40706958

Date: JAN. 5, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a senior staff software engineer, 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.

SCOPS denied the petition, concluding the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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

The Petitioner states it is a software engineering company specializing in the standardization of background checks employing artificial intelligence (AI) and machine learning. The Petitioner indicates it is an industry leader in "gig economy" technology. The Petitioner explains that it employed the Beneficiary as a senior staff software engineer and that he has "peerless expertise," since he has worked on key technology. It states that the Beneficiary was involved in the development and production of two specific technologies, [redacted] providing $18 million in payments to over 25,000 of its clients. The Petitioner indicates that this innovative technology allows it to leverage background check data to streamline account onboarding and to circumvent fraud, making the company a leader in gig payment systems.

Because the Petitioner did not indicate or show that the Beneficiary 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). The Petitioner asserted that the Beneficiary the met the following criteria at 8 C.F.R. § 204.5(h)(3): (i) lesser nationally or internationally recognized prizes or awards; (ii) membership in an association requiring outstanding achievement; (iii) published material in professional or major trade publications related to his work in the field; (iv) participation as a judge of the work of others in the same or an allied field; (v) original business-related contributions of major significance in the field; (vi) authorship of scholarly articles in the field in major trade publications or other major media; (viii) a leading or critical role for organizations or establishments having a distinguished reputation; and (ix) a high salary in relation to others in the field.

SCOPS later issued a notice of intent to deny (NOID) stating that the Petitioner established that the Beneficiary met the following criteria at 8 C.F.R. § 204.5(h)(3): (iv) participation as a judge of the

work of others; (viii) a leading or critical role; and (ix) a high salary. However, SCOPS otherwise stated that the Petitioner did not demonstrate that the Beneficiary had sustained national or international acclaim and that he was one of a small percentage who had risen to the very top of his endeavor. SCOPS later denied the petition concluding the Petitioner did not establish that he met the required three initial criteria to reach a final merits determination. More specifically, SCOPS determined that the Beneficiary did not meet seven of the eight criteria asserted, including two criteria SCOPS previously indicated that he did meet.[1]

On appeal, the Petitioner contends that SCOPS erred when they initially concluded the Beneficiary established three of the ten initial evidentiary criteria, and then later determined that only one of these criterion had been established in the denial decision. In doing so, SCOPS did not give the Petitioner a sufficient opportunity to respond to any perceived insufficiencies in the provided evidence, particularly with respect to whether the Beneficiary had participated as a judge of the work of others or whether he acted in a leading or critical role with a distinguished organization, the two criteria they stated that the Petitioner had met in the NOID. Likewise, in the denial decision and with respect to each criteria, SCOPS provided little analysis as to why the Petitioner did not sufficiently establish seven of the eight criteria. An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); see also *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

As such, on remand, SCOPS should provide a fuller review of the evidence and sufficient analysis as to each criterion. If SCOPS finds insufficient evidence to establish that the Petitioner meets individual criterion, it should provide sufficient analysis to allow a meaningful appeal. If SCOPS does find sufficient evidence that he meets two additional criteria, then it should consider whether the record as it currently stands is sufficient to establish that the Beneficiary had sustained national or international acclaim and that he is one of a small percentage who had risen to the very top of the field of software engineering.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[1] SCOPS did determine the Petitioner demonstrated that the Beneficiary commanded a high salary in relation to others in the field.