U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40779006

Date: JAN. 7, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner is a contemporary oil painting artist 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 met at least three regulatory criteria, he did not demonstrate that he warranted an approval when considering the totality of his evidence. 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

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). Before SCOPS, the Petitioner claimed he met seven of the regulatory criteria. SCOPS decided that the Petitioner satisfied four of the criteria relating to published material, judging, display of his work, and leading or critical role, but that he had not satisfied the criteria associated with prizes or awards, membership, or authorship of scholarly articles.

On appeal, the Petitioner maintains that he meets additional evidentiary criteria and that he qualifies for this immigration benefit when considering the totality of his evidence in a final merits determination. As he already satisfied at least three criteria, our ruling on whether he has met two additional criteria would serve no purpose so we will not make a determination on those issues. After reviewing all the evidence in the record, we conclude he has not demonstrated he is eligible for this immigration benefit.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and 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 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). In this matter, we determine that the Petitioner has not shown his eligibility.

The Petitioner is a contemporary Chinese painter and academic who graduated with a master's degree from th[redacted] Following his graduation, he joined the faculty at the same

institution, where he currently teaches in the [redacted] and served as the Dean at the time he filed this petition. His work has been featured in international auction houses. As indicated above, the Petitioner received press coverage, judged others, displayed his work, and he has performed in a leading or critical role for an organization with a distinguished reputation. The record, however, does not demonstrate that his personal and professional achievements rise to a level of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Within the appeal brief the Petitioner alleges that SCOPS did not adhere to the proper process of evaluating his achievements in their final merits determination. The Petitioner contests that SCOPS granted four criteria in the quantitative-oriented step one, but found his achievements did not rise to the qualitative level necessary to qualify for this immigrant classification. The Petitioner describes this as "using a higher standard which awas not prescribed by the regulation or *Kazarian* [opinion], and concluded that the Petitioner did not sustain national or international acclaim." Contrary to the Petitioner's opinion, SCOPS used the process to evaluate his accomplishments as outlined in the *Kazarian* opinion and USCIS policy. *See generally* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policymanual. Later in the appeal the Petitioner repeats similar claims fashioning them as SCOPS unilaterally imposing novel substantive evidentiary requirements beyond those required by the regulation under the individual criteria. Again, the Petitioner does not appear to understand that step one of the adjudicative process is an evaluation of the standard described in each regulatory criteria, and step two in the final merits considers his sustained national or international acclaim and whether he is one of the small percentage at the very top of the field of endeavor as recognized in the field through extensive documentation.

Next, the Petitioner appears to misunderstand some of SCOPS' language in the final merits determination when he claims "SCOPS erred in denying this petition based on the quantity of the evidence he assumed the Petitioner should have submitted," and he offers two examples of "limited media reporting" for published material about him and how his judging was "limited to a few exhibitions." The Petitioner provides a quote from the USCIS Policy Manual about how an officer should not make an adverse determination based on what the officer thinks someone at the top of the field should be able to submit for the record. *See generally* 6 *USCIS Policy Manual* , *supra*, F.2(B)(2). But the examples the Petitioner offers on appeal are not a breach of that policy statement. Instead, SCOPS evaluated the qualitative nature of his published material and judging claims and found them lacking. That is the exact process *Kazarian* and USCIS policy provide as appropriate.

The Petitioner's final claim of error on SCOPS' part is their failure to follow the preponderance of the evidence standard in the final merits determination. After quoting USCIS policy relating to the preponderance of the evidence standard, the Petitioner states that he "submitted extensive documentation to prove that he has sustained national acclaim and that he is the small percentage risen [sic] to the top of his field." But his simple statements as to fact does not necessarily make it so. *See Matter of Chawathe*, 25 I&N Dec. at 371–72 (discussing assertions that are not supported by probative material will not meet a filing party's burden of proof). To otherwise allow a petitioner to satisfy its responsibilities within these proceedings by simply claiming a fact as the truth would undermine the basic tenet that the burden of proof comprises both the initial burden of production (e.g., documents, testimony, etc.), as well as the ultimate burden of persuasion (e.g., establish the degree to which their evidence should persuade or convince). *See Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998).

The Petitioner compresses the meat of his final merits claims into two paragraphs devoting only about one sentence to each area that he feels he demonstrated his achievements show that he qualifies for this immigration benefit.

For the display of his work, the Petitioner points to the evidence in Exhibit A of the original petition filing and he disagrees with SCOPS' statement in the denial that his displayed work appeared to be "peripheral and regional in nature." He argues instead that over the past two decades he "has participated in numerous artistic exhibitions across China, including in major cities such as [redacted]" While the Petitioner submitted evidence about some of the exhibits of his work, absent from the record is adequate material to demonstrate the national or international prestige or influence of each institution where his work was displayed. Artists displaying their work should show how their work is distinguished from others in the field. *See Hamal v. DHS*, No. 21-5160, 2023 WL 1156801, at *2 (D.C. Cir. Jan. 31, 2023). Further, the Petitioner did not establish that his work garnered a level of attention or was regularly seen at highly reputable venues consistent with being among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

For his awards, the Petitioner identifies the silver award at the [redacted] and the gold award at the [redacted] The Petitioner claims "both demonstrate excellence and distinction as judged by experts in the art field." First, the Petitioner's evidence relating to these awards originated in a foreign language and were not accompanied by certified translations that conform to the regulation. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit properly certified English language translations of the relevant material, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims.

Additionally, SCOPS decided that the Petitioner failed to meet the plain language requirements of the prizes or awards criterion in step one. But we further note that he abandoned his claims under that criterion and in the final merits when SCOPS issued a request for evidence (RFE) for additional materials relating to his prizes or awards but he failed to offer any response. An RFE is intended to clarify eligibility as of the petition's filing date. *See* 8 C.F.R. §§ 103.2(b)(8), (12). Under 8 C.F.R. § 103.2(b)(13)(i), failure to respond to specific RFE elements constitutes abandonment or waiver of those claims. A petitioner cannot later revive such claims on appeal after knowingly declining to respond.

The Board of Immigration Appeals' (the Board) precedents favor this reading. In *Matter of R-S-H-*, 23 I&N Dec. 629, 638 (BIA 2003) the Board explained that when faced with an adverse scenario (e.g., SCOPS outlining an evidentiary shortcoming within an RFE) a filing party must offer a response and advance their arguments to preserve that topic for consideration on appeal). The Board concluded the same in *Matter of C-A-R-R-*, 29 I&N Dec. 13, 17 (BIA 2025) in which they decided that when the trier of fact requests supplemental statements or documents it deems necessary to complete an adjudication, but those materials are not timely submitted, the opportunity to make those statements or documents part of the record is waived. Also, in *Matter of Lopez-Ticas*, 29 I&N Dec. 90, 94 (BIA 2025), the Board

determined that an issue is waived or forfeited if we issue a notice, and the filing party fails to address a particular issue within the notice that they disagree with or that they deem is incorrect.

So, we will not entertain new arguments on appeal that were not raised in response to SCOPS' RFE. *R-S-H-*, 23 I&N Dec. at 638 (citing *Matter of Garcia-Reyes*, 19 I&N Dec. 830, 832 (BIA 1988)). The Petitioner had the opportunity to present these arguments and failed to do so. And federal courts have acknowledged such USCIS action when the agency determines a filing party's failure to respond to a specific eligibility requirement in an RFE means they have abandoned or waived that issue. *See Nagaiah v. Allen*, 784 F. Supp. 3d 798, 807 (E.D. Pa. 2025). Issues not properly developed before SCOPS are not preserved for appeal. *See Santos Garcia v. Garland*, 67 F.4th 455, 460 (1st Cir. 2023); *Ali v. Garland*, 33 F.4th 47, 55 (1st Cir. 2022); *Indrawati v. U.S. Att'y Gen.*, 779 F.3d 1284, 1297 (11th Cir. 2015); *Jeune v. U.S. Atty. Gen.*, 810 F.3d 792, 800 (11th Cir. 2016).

As it relates to his leadership role, the Petitioner notes his academic leadership role as the Dean of the School of [redacted] as he presented in in "Exhibit C in the Original Petition." The Petitioner notes in the appeal that it "not only reflects the art and education fields' trust in his vision and expertise but also places him as a major influence in shaping the next generation of Chinese artists." While some of the supporting material appears to have originated in English, other evidence did not and it suffers the same problem as the Petitioner's prizes or awards evidence in that it does not comply with the regulation for foreign language documents under 8 C.F.R. § 103.2(b)(3), and that material will not be considered here.

The only leadership role evidence that originated in English is the About [redacted] website printout from the institution itself. This is not material from an independent source, and we generally do not ascribe probative weight when an entity offers information regarding its own prestige. *See Braga v. Poulos*, No. CV 06-5105 SJO FMOX, 2007 WL 9229758, at *7 (C. D. CA July 6, 2007) *aff'd* 317 F. App'x. 680 (9th Cir. 2009) (concluding that USCIS did not have to rely on self-serving assertions of a magazine as to the magazine's status as major media).

Even still, the Petitioner served as the dean for this institution, but it is unclear from the record whether he held that position temporarily or on a long-term basis, or whether his service in that term illustrated that this might have been a leadership position that was commensurate with sustained national or international acclaim. *See Agrawal v. Miller*, No. 4:24CV3143, 2025 WL 2879217, at *24 (D. Neb. Sept. 12, 2025) (upholding this office's determination that a petitioner's evidence is not commensurate with sustained national or international acclaim when it fails to describe how they have garnered such a reputation through their roles). We therefore do not agree with SCOPS that the Petitioner met the criterion's requirements at 8 C.F.R. § 204.5(h)(3)(viii) in step one of the adjudicative process, much less that his leading role in this single institution places him among the small percentage at the very top of the field of endeavor.

He has not shown his scholarly efforts are leading among the top percentage of his field either. On appeal, the Petitioner merely states he is an influential art scholar as "the sole author of multiple scholarly articles published in national and professional journals, such as [redacted] [See Exhibit E in the Original Petition]." Again, the Petitioner's material suffers the evidentiary flaw that it originated in a foreign language but it is not accompanied by properly certified translations. 8 C.F.R. § 103.2(b)(3). He therefore did not demonstrate how his

publication record is consistent with having a career of acclaimed work and sustained national or international acclaim supported by evidence showing the significance of his authorships or how his publications compare to others who are viewed to be at the very top of the field. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act.

Although SCOPS granted the published material criterion under step one, they found his overall record of media coverage to fall short of the type needed to support his claims in the final merits determination. On appeal, the Petitioner asserts that his "media coverage further demonstrates the national recognition of his achievement. . . . [as] [h]e has been interviewed and profiled by prominent publications including [redacted] which regularly feature leading cultural figures in China."

First, we do not agree with SCOPS that the Petitioner's evidence was adequate to satisfy the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii). Some material lacked certain aspects the regulation required in step one of the adjudicative process. Also, much of the initially submitted evidence to demonstrate the material was a form of major media originated from the publications themselves and USCIS is not required to rely on the self-promotional material of the publisher and "we may require more than the publication's own say-so that it is 'major.'" *Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 185 (D. N.J. 2021) (citing *Braga*, No. CV 06-5105 SJO FMOX, 2007 WL 9229758, at *7 (concluding that USCIS did not have to rely on a company's self-serving assertions as to the magazine's status as major media)).

Second, the material he submitted in response to the RFE to demonstrate each article appeared in the required type of publication (i.e., a professional or major trade publication, or major media) originated in a foreign language and was not accompanied by a properly certified translation. Evidence in this diminished form is not representative of national or international acclaim, nor does it demonstrate the petitioner enjoys the status as one of that small percentage who have risen to the very top of their field of endeavor. The coverage is also sporadic with one article in 2013, a seven-year break until 2020, and finally more in 2023. The Petitioner has been in the field since the early 1990s and he earned a graduate degree in 1999. This collectively falls short of illustrating that the Petitioner has enjoyed sustained national or international acclaim.

Under his claims as a judge, he briefly discusses his "selection as a preliminary judge for the [redacted] Exhibition." But the evidence the Petitioner identifies does not speak to his experience as a judge and is instead related to a different regulatory criterion. Setting that aside, the Petitioner served as a judge in a preliminary round of a notable art contest for three consecutive years from 2022 to 2024, when that contest has existed since 1992 with a hiatus in the early 2000s. This appears to amount to a brief example of national acclaim, albeit it is somewhat diminished by the fact that he was not selected to judge in a final round. The Petitioner has not established that performing judging duties in a preliminary round is commensurate with achieving a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

And finally, the Petitioner claims that his paintings have sold at auction exceeding $200,000 in U.S. currency. But he only provided website printouts representing his sold works without an explanation of what figure represents the final sale price, and without a currency conversion demonstrating what each painting sold for in equivalent U.S. dollars. With these additional evidentiary deficiencies, we

are unable to confirm the Petitioner's claim that he has achieved notable commercial successes at renowned auction houses.

The record reflects that the Petitioner displayed his artwork at exhibitions but did not establish that those are considered prestigious or popular venues, or that his exhibitions garnered attention in a manner consistent with sustained national or international acclaim. Further, the Petitioner demonstrated he performed in a leading role but the evidence he relies on to show the prestige of that service is flawed. Much of his other evidence is infected with that same shortcoming. His judging experience at a notable venue in a preliminary role is not the type that sets him apart from others in the field. Without evidence distinguishing the Petitioner's achievements from others in his field, he has not shown that he "is one of that small percentage who [has] risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated his 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.