U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40777140

Date: JAN. 20, 2026

Appeal of Service Center Operations (SCOPS) Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a senior lead consultant, seeks second preference (EB-2) immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

SCOPS denied the petition, concluding the Petitioner did not establish that he was an individual of exceptional ability.[1] In addition, SCOPS concluded the Petitioner did not demonstrate his eligibility for a national interest waiver. The matter is now before us on appeal. 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

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[2] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See generally* 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual. If a petitioner does so, we will then conduct a final merits

[1] The Petitioner did not claim to be nor did the record show he held an advanced degree.

[2] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii). On appeal, the Petitioner vaguely refers to his "portfolio of completed [information technology] integrations" and suggests this should be considered comparable evidence. However, the Petitioner did not articulate how the criteria under 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F) do not readily apply to his occupation; in fact, he asserts that they do apply. The Petitioner also provides no specific explanation as why his completed information technology integrations represent comparable evidence of his exceptional ability. Therefore, we decline to address this issue further on appeal.

determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

II. ANALYSIS

SCOPS determined that the Petitioner established eligibility under the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B), related to him submitting evidence that he had at least ten years of full-time experience in his occupation. However, in denying the petition, the SCOPS concluded that the Petitioner did not demonstrate he met the following asserted criteria at: 1) 8 C.F.R. § 204.5(k)(3)(ii)(A), involving evidence of academic records they have a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability; 2) 8 C.F.R. § 204.5(k)(3)(ii)(D), related to evidence that the individual has commanded a salary, or other remuneration for services, which demonstrates exceptional ability; and 3) 8 C.F.R. § 204.5(k)(3)(ii)(F), specific to evidence of recognition for achievements and significant contributions to the industry or field by peers, government entities, or professional or business organizations.

On appeal, the Petitioner contends he demonstrated his eligibility under the criteria discussed above and that he qualifies as an individual of exceptional ability.

> *Evidence that the individual has commanded a salary, or other remuneration for services, which demonstrates exceptional ability.* 8 C.F.R. § 204.5(k)(3)(ii)(D)

The Petitioner stated he would be employed in the United States as a senior lead consultant for $80,000 per year and that he was employed abroad as an [redacted] consultant in Brazil earning an average gross salary of R$233,958 and an annual gross income of R$442,000. The Petitioner asserted that this renumeration was nearly double the national average in Brazil. He stated that his compensation demonstrated "the petitioner's exceptional abilities," "extensive experience," and "status as a highly qualified executive within the field," and that it was "a clear indicator of his superior qualifications and the high regard in which he is held professionally." In support, the Petitioner submitted a printout from a website indicating that the average base salary of an [redacted] consultant in Brazil was R$223,973 per year. With the petition, the Petitioner provided a letter from his accountant stating that he was the owner of his own information technology company in Brazil and that from August 2009 to February 2022 he was employed as '[redacted] E5 Senior Consultant WMS and Senior Consulting Technician" earning a gross annual income of $442,000 per year. The Petitioner further submitted a "professional experience letter" from a partner of his company stating that he was employed in the discussed positions earning "a salary of $5000 (R$25,000) monthly or $60,000 (R$300,000) annual (Average)."

In determining that the Petitioner did not establish this criterion, SCOPS stated that although the Petitioner's renumeration appeared to be above average during his time of employment, the evidence did not demonstrate that this renumeration was a direct result of exceptional ability in the field. On appeal, the Petitioner points to the previously provided evidence and asserts this demonstrates "above-market compensation consistent with senior, niche expertise."

Upon review, the Petitioner has not sufficiently established that he commanded a salary, or other remuneration for his services, demonstrating exceptional ability. To meet the plain language

requirement, the petitioner must provide evidence that they have commanded a salary or remuneration for services and this must be sufficiently documented through independent evidence such as foreign tax documentation, or payroll, personnel, or employment records, which may also provide information regarding any non-salary renumeration. However, the Petitioner only submitted an undated "Listing of Invoices for Electronic Services" from the City of [redacted] in Brazil applicable to his asserted information technology company abroad. This partially translated document asserts to list 146 invoices paid to his foreign company between June 2015 and September 2023. However, the itemized list of invoices was not fully translated. 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 they are competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a complete certified English language translation of the invoice listing as required, we accord it no weight as we cannot determine whether it supports their claim.

However, to the extent it is translated, the list of invoices claims 146 asserted payments to the Petitioner's company in varying amounts over many years. It is not clear how this evidence supports the Petitioner's assertions regarding his claimed annual salaries abroad as it appears to reflect his company's revenue. The listing of invoices paid to the Petitioner's claimed company does not substantiate his annual salary or income in any given year, and otherwise, he submitted no other supporting tax or payroll documentation to corroborate his claimed renumeration. For instance, the Petitioner provided a letter from his "partner" at his company, leaving question as to what extent the Petitioner would be entitled to all the proceeds of these paid invoices. In addition, the Petitioner's letters provide conflicting statements as to his stated annual salaries. For example, in a support letter provided with the petition, the Petitioner indicated that he earned an average gross salary of R$233,958 over an approximate 13-year period, while another letter from his accountant reflected that his annual gross income in an unidentified year was R$442,000. Still further, a letter from his partner states he earned R$300,000 on average per year over around a 14-year period. In each case, the basis for these annual numbers is not explained in detail and the Petitioner provided little supporting documentation to substantiate what he earned per year. The Petitioner must resolve discrepancies 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).

Therefore, since the Petitioner did not provide sufficient objective evidence of his salaries and renumeration abroad we have no basis to conclude that his renumeration was reflective of exceptional ability. Further, the Petitioner did not clearly articulate why SCOPS' determination as to this criterion was in error; as such, we agree that the evidence does not establish that he commanded a salary demonstrating exceptional ability and eligibility under the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D).

> *Evidence of recognition for achievements and significant contributions to the industry or field by peers, government entities, or professional or business organizations.* 8 C.F.R. § 204.5(k)(3)(ii)(F).

SCOPS concluded the Petitioner did not meet this criterion pointing to a previously issued request for evidence (RFE) stating that the letters of support provided with the petition included irregularities such as identical formats and language and a lack of letterheads and signatures. SCOPS determined in the RFE that these irregularities in the submitted supported letters discussing the Petitioner's asserted

achievements and significant contributions left question as to their credibility. SCOPS further stated in the RFE that the letters did not sufficiently establish the Petitioner's recognition for achievements and significant contributions to the industry but merely discussed his skills and professional experience. In the decision, SCOPS indicated that the Petitioner did not address these noted discrepancies in the RFE response but submitted new support letters, which again only discussed services he provided to clients, not his achievements and significant contributions to the industry.

On appeal, the Petitioner points to the previously submitted support letters discussed in SCOPS' decision. The Petitioner does not articulate how SCOPS' determination with respect to the provided evidence and this criterion was in error and does not provide additional evidence to demonstrate his eligibility. The Petitioner must specifically identify on appeal any erroneous conclusion of law or statement of fact in the unfavorable decision. 8 C.F.R. § 103.3(a)(1)(v). Therefore, we adopt and affirm SCOPS' determination as to this criterion. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below "is not only common practice, but universally accepted"). We agree with SCOPS that the support letters provided by the Petitioner include unaddressed discrepancies. The letters also do not discuss the Petitioner's recognition for achievements and significant contributions to the industry but merely reflect a review of services he provided to clients and his claimed expertise in information technology. Even if we accept the assertions included in the submitted support letters, their discussion of the Petitioner's capabilities, skills, and his ability to perform his job are not clearly defined achievements or contributions to his field.

For the foregoing reasons, the Petitioner did not establish that he received recognition for achievements and significant contributions to the industry or field by peers, government entities, or professional or business organizations consistent with 8 C.F.R. § 204.5(k)(3)(ii)(F).

III. CONCLUSION

Because the Petitioner did not show he meets the criteria under 8 C.F.R. § 204.5(k)(3)(ii)(D) and (F), no purpose would be served in determining if he meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) related to evidence of academic records of degrees, diplomas, certificates, or similar awards. Even if he meets this criterion, he cannot meet three criteria as required.

For the reasons set forth above, the evidence does not establish that the Petitioner satisfies at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii) and achieved the level of expertise required for exceptional ability classification. In addition, because he has not satisfied at least three criteria, we will not disturb SCOP's final merits determination that the Petitioner did not demonstrate, in the totality, that he is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. Furthermore, since the Petitioner has not met the threshold requirement for this classification, an analysis of SCOPS's conclusions as to the Petitioner's eligibility for a national interest waiver would also serve no meaningful purpose.

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.