U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40798058

Date: JAN. 20, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an audio-visual provider and agency, seeks to classify the Beneficiary, a cinematographer and drone cameraman, 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 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.

Service Center Operations (SCOPS) denied the petition, concluding the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. On appeal, the Petitioner contends that SCOPS' decision was arbitrary and capricious, SCOPS did not fully analyze all the documents provided, its decision was not based on the facts presented but based on faulty conclusions not supported by the record, and SCOPS failed to follow the USCIS Policy Manual. The Petitioner maintains that the evidence supports the Beneficiary's eligibility for the EB-1 classification.

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 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

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary 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). SCOPS decided that the Beneficiary satisfied two criteria relating to judging and display but did not satisfy the remaining claimed criteria relating to awards and a leading or critical role. After reviewing all the evidence in the record, we conclude that the Petitioner has not demonstrated the Beneficiary's eligibility for this highly restrictive immigrant classification. While we may not address each piece of evidence individually, we have reviewed and considered each one.

1. "Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." 8 C.F.R. § 204.5(h)(3)(i).

In order to fulfill this criterion, the Petitioner must first demonstrate that the Beneficiary was the recipient of prizes or awards. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual. Second, the award must be a lesser nationally or internationally recognized prize or award, which the Beneficiary received for excellence in the field of endeavor. *Id.* Relevant considerations regarding whether the basis for granting the prizes or awards was excellence

in the field include: (1) the criteria used to grant the awards or prizes, (2) the national or international significance of the awards or prizes in the field, (3) the number of awardees or prize recipients, and (4) limitations on competitors. *Id.*

The Petitioner claims eligibility for this criterion based on awards the Beneficiary received for his drone films at film festivals from 2017 to 2022. The record includes recommendation letters from experts in the field, articles about drone film festivals, drone filming, and drone films, information about the [redacted] and [redacted], and [redacted], evidence that [redacted] by the Beneficiary was the winner in the landscape category at the [redacted] and recognized as the best drone film at the [redacted], and evidence that [redacted] by the Beneficiary was the winner in the landscape category at the [redacted] and recognized as the best drone film at the [redacted] and as the best film in the epic landscape category at the [redacted].

The Petitioner provided general information about the [redacted] and [redacted], and [redacted] from various websites. An article about drone film festivals from [redacted] discusses the [redacted] and [redacted] as two of the five drone film festivals making headlines in the drone community. While the record includes general or basic information about the [redacted], and [redacted], the Petitioner has not provided sufficient evidence to establish the national or international significance of the awards presented at these film festivals in the field. *See* 8 C.F.R. § 204.5(h)(3)(i).

A letter from the founder and festival director of the [redacted] states that the [redacted] is "one of the biggest and most renowned festival for drone cinematography in the world" and "by 2018, [it was] considered by many to be the premiere drone film festival in the world." But the record does not contain sufficient information about [redacted] awards, such as different categories for the awards, an overview of the different levels of awards, the selection criteria used to grant the awards, the national or international significance of the specific awards in the field, the number of awardees, or candidates for the awards in order to establish that the awards are nationally or internationally recognized for excellence in the field of endeavor. *See id.*

Without sufficient documentary evidence reflecting the national or international recognition for excellence of the awards, it is insufficient to conclude that the awards presented at these film festivals are nationally or internationally recognized for excellence in the field consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i). Accordingly, the Beneficiary does not meet this criterion.

2. "Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought." 8 C.F.R. § 204.5(h)(3)(iv).

To meet this criterion, the Petitioner must demonstrate that the Beneficiary has acted as a judge of the work of others in the same or an allied field of specification. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(1). The Petitioner must show that the Beneficiary has not only been invited to judge the work of others, but also that he actually participated in the judging of the work of others in the same or allied field of specialization. *Id.* The Petitioner provided documentation showing that the Beneficiary served as a jury member for the [redacted], watching and rating the submitted films for the festival. Therefore, the Beneficiary meets this criterion. *See* 8 C.F.R. § 204.5(h)(3)(iv).

3. "Evidence of the display of the alien's work in the field at artistic exhibitions or showcases." 8 C.F.R. § 204.5(h)(3)(vii).

In order to meet this criterion, the Petitioner must first show that the work that was displayed is the Beneficiary's work product. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(1). Second, the venues, whether they are virtual or otherwise, where the Beneficiary's work was displayed must be artistic exhibitions or showcases. *Id.* The Petitioner provided evidence showing that the films on which the Beneficiary worked as the director of still photography or cinematographer won awards at film festivals, implying that the films were screened or shown at the film festivals. As the Petitioner has established that the Beneficiary's work was displayed at artistic exhibitions or showcases, the Beneficiary satisfies this criterion. *See* 8 C.F.R. § 204.5(h)(3)(vii).

4. "Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." 8 C.F.R. § 204.5(h)(3)(viii).

To satisfy this criterion, the Petitioner must first show that the Beneficiary has performed in a leading or critical role for an organization or establishment. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(1). For a leading role, we look at whether the evidence establishes that the Beneficiary was a leader within the organization or establishment or a division or department thereof. *Id.* For a critical role, we look at whether the evidence establishes that the Beneficiary has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities or those of a division or department of the organization or establishment. *Id.*

Second, the Petitioner must establish that the organization or establishment for which the Beneficiary held a leading or critical role has a distinguished reputation. *Id.* The relevant size or longevity of an organization or establishment is not a determining factor but is considered together with other information to determine whether a distinguished reputation exists. *Id.* Other relevant factors for evaluating the reputation of an organization or establishment include the scale of its customer base or relevant media coverage. *Id.* USCIS Policy Manual interprets "distinguished" as "marked by eminence, distinction, or excellence" or "befitting an eminent person" based on the definition of "distinguished" in Merriam-Webster's online dictionary. *Id.*

The Petitioner claims eligibility for this criterion based on evidence that the Beneficiary served as the cinematographer on two films that won awards at various film festivals. The Petitioner asserts that because the work of cinematographers is an essential component of any production in the film and television industry, the Beneficiary served a critical role for the productions. The record includes articles about drone film festivals, drone filming, and drone films, recommendation letters from

experts in the field, and a list of awards nominated or received at various film festivals and a competition from the IMDb website for [redacted] and [redacted] on both of which the Beneficiary served as the cinematographer. In his recommendation letter, the producer of [redacted] states that the Beneficiary "perfectly framed the shots for [redacted], which helped lead to its success" and recommends the Beneficiary as "an excellent, professional cinematographer and drone operator." The producer of [redacted] states that the Beneficiary "knows how to perfectly capture a moment by framing it with the right background and the right light, allowing the viewer to focus on exactly what is needed to fully grasp the emotional weight of a subject" and praises the Beneficiary as "a talented artist as a cinematographer" and "one of the top drone pilot cameramen and cinematographers in the world today."

While the authors of the letters praise the Beneficiary for his skills and artistic talent, they do not indicate that the Beneficiary has performed in a leading or critical role for "organizations" or "establishments." *See* 8 C.F.R. § 204.5(h)(3)(viii). For example, having a diverse skill set is not reflective of performing in a leading or critical role. Rather, the record must be supported by evidence that the Beneficiary has already used those unique skills and artistic talent to perform in a leading or critical role for organizations or establishments that have a distinguished reputation. *See id.* Furthermore, while the Petitioner submitted sufficient documentary evidence reflecting that the Beneficiary served as the cinematographer for two films that won awards at various film festivals, the Petitioner did not demonstrate how a film or a documentary equates to an "organization" or "establishment." The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence that the alien has performed in a leading or critical role "for organizations or establishments that have a distinguished reputation."

Moreover, while the letter from the producer of [redacted] affirms that cinematography is such an important part of any film project, there is no sufficient indication from a review of the documentary evidence that the Beneficiary has performed in a leading or critical role. For example, the documentary evidence does not sufficiently reflect that the Beneficiary was featured or received top billing in any of the films consistent with the meaning of leading or critical pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii). There is no sufficient evidence demonstrating how the Beneficiary's roles differentiated him from other cinematographers, drone cameramen, or directors of photography. As the Beneficiary is a cinematographer, drone cameraman, or director of photography, it is expected that he will perform the routine duties of a cinematographer, drone cameraman, and director of photography to produce films or commercials. However, performing, even if the performance is considered noteworthy, does not equate to a leading or critical role. The Petitioner did not demonstrate that the Beneficiary's roles in the films were leading or critical. *See id.*

Without documentary evidence demonstrating that the Beneficiary has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, the Petitioner has not established that the Beneficiary meets the plain language of this regulatory criterion. *See id.*

B. Final Merits Determination

The Petitioner has not submitted the required initial evidence of either a major one-time achievement or documents that meet at least three of the ten criteria. As a result, we do not need to provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119–20. Nevertheless, we advise

that we have reviewed the record in the aggregate, concluding it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

C. O-1 Nonimmigrant Status

The record reflects that the Beneficiary was last admitted to the United States on September 26, 2025 as an O-1B nonimmigrant of extraordinary ability in the arts. Although the words "extraordinary ability" are used in the Act for classification of artists under both the nonimmigrant O-1 and the first preference employment-based immigrant categories, the statute and regulations define the term differently for each classification. Section 101(a)(46) of the Act states that "[t]he term 'extraordinary ability' means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction." The O-1 regulation reiterates that "[e]xtraordinary ability in the field of arts means distinction." 8 C.F.R. § 214.2(o)(3)(ii). "Distinction" is a lower standard than that required for the immigrant classification, which defines extraordinary ability as "a level of expertise indicating that the individual is one of that small percentage who has risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The evidentiary criteria for these two classifications also differ in several respects, for example, nominations for awards or prizes are acceptable evidence of O-1 eligibility, 8 C.F.R. § 214.2(o)(3)(iv)(A), but the immigrant classification requires actual receipt of nationally or internationally recognized awards or prizes. 8 C.F.R. § 204.5(h)(3)(i). Given the clear statutory and regulatory distinction between these two classifications, the Petitioner's receipt of O-1B nonimmigrant classification is not evidence of his eligibility for immigrant classification as an alien with extraordinary ability.

Further, an approval of a nonimmigrant visa does not mandate the approval of a similar immigrant visa. Each case must be decided on a case-by-case basis upon review of the evidence of record. Many Forms I-140 are denied after U.S. Citizenship and Immigration Services (USCIS) approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the alien's qualifications). Applications or petitions are not required to be approved where the petitioner has not demonstrated eligibility because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988).

III. CONCLUSION

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). Here, the Petitioner has not shown the significance of the Beneficiary's work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not demonstrate that the Beneficiary has garnered

national or international acclaim in the field and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2).

For the reasons we have discussed above, the Petitioner has not demonstrated the Beneficiary's 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.

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.