U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40776853

Date: JAN. 23, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner describes herself as chief executive and she 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 warranted a favorable determination in the case's final merits analysis. 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

On the petition, the Petitioner indicated she was currently a consultant and under the proposed employment she listed the job title of CEO. She offered evidence of each of the following foreign degrees: a Bachelor of Science in Computer Engineering in 1999, a Master of Business Administration in 2004, and a Master of Science in Networking and Telecommunications in 2014. Within a document titled Digital Employment Record, it reflected the Petitioner was an information technology project manager at [redacted].

Although much of the language in the initial filing was oriented towards the standards of a different immigrant classification, she indicated that as part of her "proposed endeavor" in the United States she will execute the following:

> [D]evelop a U.S. company that aims to offer a complete line of courses, training, seminars, and workshops (online and presential) on topics related to Artificial Intelligence, Blockchain, and the Internet of Things (IoT). It will also be provided a technical consultancy to improve the IoT & business services of companies around the US, and will have a R&D (Research and Development) project, to keep improving the existing technologies in the market.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she 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 she met five of the regulatory criteria. SCOPS decided that the Petitioner satisfied three of the criteria relating to prizes or awards, authorship of scholarly articles, and performing in a leading or critical role but that she had not satisfied the criteria associated with membership or original contributions. SCOPS also decided the totality of her evidence did not warrant a favorable determination in the final merits determination. On appeal, the Petitioner maintains that she meets the evidentiary criteria relating to membership and original contributions as well as satisfying the requirements in the final merits. After reviewing all the evidence in the record, we conclude she has not demonstrated she is eligible for this immigration benefit.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence we will evaluate whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim and

that she is one of the small percentage at the very top of the field of endeavor, and that her 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 her successes are sufficient to demonstrate that she 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 demonstrated her eligibility.

Preliminary matters. We begin with the Petitioner's appellate claim that SCOPS "was considering the wrong field of endeavor altogether" when they performed their final merits analysis to evaluate whether she is among the small percentage at the very top of her field of endeavor. Later under this same claim, the appeal brief provides that "[p]er the USCIS Decision, the analysis appears to focus on the absence of CEO-level notoriety, that reasoning is misplaced and inconsistent with both the plain language of the statute and current policy guidance."

While we agree with the Petitioner that SCOPS was incorrect when it stated "[t]he beneficiary now holds the position of CEO," a review of the final merits determination reveals that despite that misstatement, SCOPS did not place any focus on the aspect of whether or not she had presented achievements commensurate with someone operating at that high executive level. In other words, it was a harmless error and even though the Petitioner claims that "[p]er the USCIS Decision, the analysis appears to focus on the absence of CEO-level notoriety, that reasoning is misplaced and inconsistent with both the plain language of the statute and current policy guidance," we disagree that they committed error to that extent.

It is not enough to demonstrate errors in an agency's decision; a petitioner must also establish they were prejudiced by the mistakes. *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009); *Molina-Martinez v. United States*, 578 U.S. 189, 203 (2016). As the Petitioner has not demonstrated she was prejudiced by SCOPS' error, such a lapse in propriety is harmless and is insufficient grounds upon which to base this appeal. Errors can be overlooked when they had no bearing on the substance of an agency's decision. *Aguilar v. Garland*, 60 F.4th 401, 407 (8th Cir. 2023) (citing *Prohibition Juice Co. v. United States Food & Drug Admin.*, 45 F.4th 8, 24 (D.C. Cir. 2022)). The party that "seeks to have a judgment set aside because of an erroneous ruling carries the burden of showing that prejudice resulted." *Shinseki*, 556 U.S. at 409 (quoting *Palmer v. Hoffman*, 318 U.S. 109, 116 (1943)); *Molina-Martinez*, 578 U.S. at 203.

Next, the Petitioner argues that she met some of the regulatory criteria under step one that SCOPS did not grant. But that bears no relevance to her claims in the final merits determination where our focus shifts from the standards as expressed in each of the regulatory criteria to whether she has demonstrated she has achieved sustained national or international acclaim, that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. So, we will not devote space considering whether individual criteria were satisfied as it would have no effect on our analysis in the final merits. However, we will still consider whether her claims relating to those criteria demonstrate she is among the top percentage in her field and merits an approval.

We also note that the Petitioner may not narrow or limit the field in which we compare her to only women. In the appeal brief, she states:

> In this scenario, [the Petitioner's] achievements manifestly satisfy-and indeed surpass-the rigorous evidentiary requirements of 8 C.F.R. § 204.5(h) for first-preference immigrant classification as an individual of extraordinary ability. Her case stands as a compelling testament to the advancement of women in the technology sector, a field where they occupy fewer than 3% of top executive positions in Brazil, thereby emphasizing the "extreme rarity of such achievements in the market context" and fulfilling the requirement to demonstrate that the petitioner 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), Policy Manual Vol. 6, Part F, Ch. 2).
>
> . . . .
>
> It is "not the title ... but rather the person's performance in the role that determines whether the role is (or was) critical" per USCIS Policy Manual, and statistical underrepresentation underscores the exceptional nature of Mrs. [redacted]'s success. As less than 3% of N1/N2 technology executive positions are held by women in Brazil, this reinforces the regulatory requirement that the petitioner is "within that small percentage who has risen to the very top of the field."

It is not the Petitioner's particularized narrow group within her field that is the determining factor as to whether she is an alien with extraordinary ability under the Act. Rather, it is whether her evidence demonstrates that she "is one of that small percentage who have risen to the very top of the field of endeavor," 8 C.F.R. § 204.5(h)(2) and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). *See Kazarian*, 596 F.3d at 1119–20. Nothing in the statute, the regulation, nor USCIS policy appears to support the position that an alien may restrict their field to a small subset of limited peers as the Petitioner appears to have attempted here.

Concluding otherwise would render the requirement meaningless that the Petitioner establish she is among the small percentage at the very top of her field by allowing her to narrow her field until she ranks among the top of a small group in that so-called field. *See Buletini v. INS,* 860 F. Supp. 1222, 1229 (E.D. Mich. 1994) (finding an alien's area of extraordinary ability was not limited to the specific study of nephrology but rather was within the general field of medical science).

Awards. Turning our attention to the Petitioner's appellate arguments about her award, the brief states "USCIS acknowledges this criterion, but in its Final Merits Determination . . . directly reverts the analysis for the USCIS Officer's opinion, rather than the case's material substance or legal context." We do not agree that the adjudicating officer inserted their own opinion in substitution for the type of analysis required in a final merits determination. The officer recounted the award and type of material the Petitioner submitted in support of her award, then concluded that a single award, even a notable one that was adequate to meet the regulatory requirement of being a lesser award, did not rise to the standard here. Despite this single achievement occurring at a notable level, this award is not

representative of sustained acclaim, nor is a single accolade indicative of the very high standard to present more extensive documentation. *See* H.R. Rep. No. 101-723 at 59 (1990); Employment-Based Immigrants, 56 Fed. Reg. at 30703, 30704 (July 5, 1991). We are not persuaded that SCOPS erred in their analysis.

Memberships. SCOPS determined the Petitioner's evidence and claims were insufficient to meet the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii). While the Petitioner's appeal directly contests that determination in the appeal, whether she met the standards under the criterion in step one is not the type of analysis we employ in a final merits determination. Instead, we evaluate how the Petitioner claims that her acclaim and achievements propel her to be among the top percentage in her field. But she has not addressed that issue in her appeal.

The Petitioner has a single membership in an association in her field. The association accepted her membership in 2021 and that membership is limited to women. While this may represent a notable membership for females in the Petitioner's field in her home country, this sex-restricted organization in her field appears to amount to a lesser level of accomplishment that's significantly below the stature associated with those who are among that small percentage who have risen to the very top of their field of endeavor. Additionally, the statute and regulations require the Petitioner to demonstrate that her national or international acclaim has been *sustained*. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). A single instance of membership occurring approximately two decades after entering the field, and three years before filing this petition, is not consistent with sustained national or international acclaim.

Contributions. SCOPS concluded that the Petitioner did not meet the plain language requirements of the original contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v). The Petitioner lists her acclaim stemming from work on her employer's [redacted], the book she authored on fuzzy logic, and her participation at symposia.

She claims that the [redacted] set new standards for shipping fleet efficiency and it impacted more than the company she worked for, it "catalyzed broader industry change," and it's "ripple effect" "inspired other companies within the maritime logistics sector to pursue similar technological transformations." While it appears her efforts on this project had a lasting impact on the logistics and the relevant information technology areas in her home country, less apparent was its effect on the broader field. Neither she nor her supporting evidence illustrate this has sufficient influence in the field as a whole. The level at which the Petitioner's contributions have impacted her field, as a whole, is the determining factor as to whether the Petitioner is among that small percentage who has risen to the very top of the field of endeavor and has sustained national or international acclaim at such an elevated level. *See* 8 C.F.R. § 204.5(h)(2).

The fuzzy logic research she performed and the publication of a subsequent book appear to be an original application of an existing concept to the area of modern computer engineering. What's not apparent is what level of impact this had on the field. Support letters noted efficiency gains made possible by her application of fuzzy logic, but only referenced the [redacted] we discussed above and found inadequate. *See Hamal v. DHS*, No. CV 19-2534 (RC), 2021 WL 2338316, at *4 (D.D.C. June 8, 2021), *aff'd sub nom. Hamal v. DHS*, No. 21-5160, 2023 WL 1156801, at *3 (D.C. Cir. Jan. 31, 2023) (upholding the decision that a petitoiner did not establish that he significantly influenced the field). One author

indicated when that project is replicated in other environments, it "can effectively bring positive outcomes to the entire inland waterway navigation sector . . . . This scenario is feasible, as it is based on the work by [the Petitioner], published in her previously mentioned book, with the entire methodology applied by the author herself." But possible future contributions to the field is speculative and does not illustrate that the Petitioner's impact on the broader field has already placed her among the top percentage of her field. This is not useful in setting her apart through a "career of acclaimed work." H.R. Rep. No. 101-723, at 59.

Regarding her participation at various symposia, many professional fields regularly hold conferences and symposia to present new work, to discuss new findings, and to network with other professionals. Professional associations, businesses, educational institutions, and government agencies promote and sponsor these conferences. Participation in these events, however, does not necessarily result in an original contribution of major significance in the field and the Petitioner hasn't illustrated that her participation did so here.

The amount that others are relying on her work does not rise to the level of this classification's overall requirements. While her work is valuable, when considering the totality of the evidence, the degree at which others have used her methods falls short of demonstrating (1) that her achievements have been recognized in the field of expertise through extensive documentation or (2) that her level of expertise places her among the small percentage at the very top of the field.

Scholarly articles. The Petitioner's single publication is noteworthy, but authorship and publication do not automatically place one at the top of the field. *See generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(2), (providing that publications should be evaluated to determine whether they were indicative of being one of that small percentage who has risen to the very top of the field of endeavor and enjoying sustained national or international acclaim). The Petitioner did not demonstrate how her limited publication record is consistent with having a career of acclaimed work and sustained national or international acclaim. The Petitioner did not submit evidence showing the significance of her authorship or how her publication compares to others who are viewed to be at the very top of the field. *See* H.R. Rep. No. 101-723, at 59; section 203(b)(1)(A) of the Act. Here, the Petitioner did not establish that her authorship reflects being among the small percentage at the very top of the field. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Leading or critical role. After granting the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii) under the adjudication's step one, in the final merits SCOPS acknowledged the Petitioner's performance for two organizations characterizing it as commendable. But they ultimately concluded that she did not demonstrate that her positions within those companies placed her among those at the top of the field. On appeal, the Petitioner alleges that SCOPS had "gone beyond the acceptable limits of 8 C.F.R. § 204.5(h)(3)(viii) by requiring evidence that [the adjudicating officer] personally deems relevant, even though this is not specified required per the legislation." Here, it appears the Petitioner incorporates the adjudicative step one requirements into the second step in the final merits. But that is not the standard and the Petitioner does not identify any legal source to support that incorporation.

Later, the Petitioner acknowledges the proper standard for the final merits determination as outlined in the USCIS Policy Manual for the SCOPS officer to "consider all evidence in the totality." *See generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(2). Even though she asserts within the appeal that her work

has "demonstrably impacted not only her organizations but also the field at large," she vaguely points to "[t]he recognition of her work by independent experts" and the single but notable award "as clear evidence that her contributions were both original and acclaimed on a national scale, satisfying the 'leading or critical role' and 'sustained national or international acclaim' criteria."

First, she seemingly conflates her leading and critical role arguments with those about her contributions to the field. But more importantly, her appeal does not adhere to the same USCIS Policy Manual she cites. When the USCIS Policy Manual discusses the final merits determination process, it requires more than vague references to a petitioner's supporting materials when it provides:

> In all cases, the petitioner must provide sufficient context regarding the above evidence and considerations to demonstrate that the evidence meets the relevant criteria and to establish the person's extraordinary ability in the totality of the circumstances. This means that the petitioner must explain the significance of the submitted evidence, and how it demonstrates that the person has achieved sustained national or international acclaim and recognition in their field of expertise.

Id. If her contention is that SCOPS did not properly consider all of her evidence relating to her leading or critical roles with two organizations, as the above agency policy provides, it remains her burden to provide sufficient context about the evidence and explain its significance. But she has not done so in this appeal, nor did she achieve that in her previous claims about her leading and critical roles placing her among the top percentage of the field. Lacking is a salient argument to show her roles have elevated her to be situated among her peers in the top of the field. A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998) and she has not made such a showing in this appeal. While we agree that she has proven her value to organizations and could collectively be considered as representative of a successful career, these roles, by themselves, are not extensive evidence of the Petitioner's national or international acclaim. As discussed above, the remaining record does not demonstrate the Petitioner's sustained national or international acclaim or that she has risen to the very top of her field.

Conclusion. During her two decades in the field, the Petitioner rests her acclaim and achievements in the field on one award, one membership, one publication, two contributions to the field, and her performance for two organizations. While she is an accomplished information technology executive, she 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 her national or international acclaim and the extent to which her achievements have been recognized in the field are not indicative of a record of sustained acclaim. Also, she has not submitted extensive documentation exhibiting she has attained a level of expertise placing her 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.