U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40567473

Date: JAN. 23, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an actor, 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(b0(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 petition, concluding the record did not establish that the Petitioner qualifies as an alien of extraordinary ability either as the recipient of a major, internationally recognized award, or that the Petitioner meets at least three of the ten initial regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). 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 dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants 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 aliens 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-part analysis. First, a petitioner can demonstrate sustained acclaim and the 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 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).

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 alien 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 has worked as an actor in television (TV) series and films, some of which were showcased at international film festivals. He intends to continue working as an actor in the United States.

As a preliminary matter, we acknowledge that the Petitioner has been the Beneficiary of an approved O-1 nonimmigrant petition. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the nonimmigrant and immigrant extraordinary ability categories have different definitions, evidentiary requirements, and standards for persons in the arts. "Extraordinary ability in the field of arts" in the nonimmigrant O-1 classification means "distinction." 8 C.F.R. § 214.2(o)(3)(ii). But in the immigrant context, "extraordinary ability" reflects that the individual is among the small percentage at the very top of the field. Regardless, each petition is separate and independent and must be adjudicated on its own merits, under the corresponding statutory and regulatory provisions.

A. Evidentiary Criteria

Because the Petitioner has not indicated or demonstrated that he has received a major, internationally recognized award, he must instead satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(ii)(i)-(x). In his initial petition, the Petitioner claimed to meet five criteria: membership in associations (ii); published material (iii); original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field (v); display of work in the field at artistic exhibitions or showcases (vii); and commercial successes in the performing arts (x). SCOPS evaluated the claims the Petitioner made in the initial petition and in response to the request for evidence (RFE) and concluded the Petitioner only satisfied one criterion, the display of his work at artistic exhibitions or showcases. On appeal, the Petitioner only claims to meet four criteria and does not assert his eligibility under the membership (ii) criterion. Therefore, we deem that issue to be waived and will not address this criterion in our decision. *See, e.g.*, *Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009). While we may not discuss every document in the record, we have reviewed and considered

each one. Based on our de novo review, we conclude the Petitioner has not demonstrated eligibility for this highly restrictive immigrant classification for the reasons we will discuss below.

1. Published Material about the Petitioner

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought." These materials must include "the title, date, and author of the material, and any necessary translation." *Id.* The published material should be about the alien and their work, rather than the alien's employer and its work (or about an organization and its work). Professional or major trade publications may be identified by their intended audience, while other major media and major trade publications should have elevated circulation or readership relative to other media in the field. *See generally 6 USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual.

In support of this criterion, the Petitioner submitted media articles published in outlets including [redacted] and [redacted] The Petitioner asserts numerous articles about the films and TV series that he has held leading roles have been published by these outlets and that outlets constitute major media. He further contends that while the "articles may not always directly discuss" his skills, they highlight his "prominent role in major, widely recognized films and TV series, which is a key indicator of his influence and visibility in the entertainment industry."

SCOPS concluded that the criterion had not been met. Specifically, SCOPS noted that submitted materials only cited, quoted, or referenced the Petitioner, and that the Petitioner did not demonstrate that the circulation (online or in print) or viewership figures were high compared to other statistics. Similarly, SCOPS found that the record lacked information establishing the news outlets as major media. On appeal, the Petitioner asserts that SCOPS misunderstood and misapplied the regulation. The Petitioner contends that the news outlets meet the regulatory requirements and have a "widespread readership and reputational standing in France and internationally." In particular, the Petitioner argues that the newspaper publications were not "incidental or passing mentions," but rather were "fully dedicated" to his work in "lead roles across acclaimed film and television productions." The Petitioner also argues that the articles were "accompanied by editorial photographs" that reinformed the "centrality of his contribution," thus demonstrating that the materials were indeed about him and his work in the field of performing arts.

The record reflects that the articles reference the Petitioner through quotations, photographs or brief mentions in connection with films and TV series in which he appeared. However, the articles do not provide substantive discussion or critical analysis of the Petitioner or his work. Instead, the majority of the materials focus on the productions themselves, such as films or the TV series as a whole, while the Petitioner is referenced as a part of the broader cast. For example, [redacted] mentions the Petitioner as one of the actors portraying a student in [redacted] and briefly notes his role in the TV series. Similarly, articles published in [redacted] discuss the films [redacted] in which the Petitioner appeared, but do not primarily focus on the Petitioner or establish his individual prominence in the field. The articles do not meaningfully discuss the Petitioner's performance or distinguish his contributions from those of other actors.

Likewise, [redacted] identified the Petitioner as a member of the [redacted] cast and describes the production but does not primarily discuss the Petitioner's performance or differentiate his contributions from those of other actors. The presence of photographs or brief descriptions of the Petitioner's role does not, by itself, establish that the published material focuses on him in a manner contemplated by the regulation. The Petitioner provided circulation and website traffic statistics for certain publications. However, the regulatory requirement is not satisfied by the reputation or reach of the publication alone. The evidence must demonstrate that the published material is primarily about the Petitioner and his work.

While we acknowledge [redacted] articles published in 1999 and 2015 do focus on the Petitioner and his work, the Petitioner has not submitted sufficient documentation to demonstrate that [redacted] is a professional or major trade publications or other major media. On appeal, the Petitioner contends that [redacted] has "a nationwide digital footprint receiving approximately 15 million monthly readers, and is one of France's most recognized daily newspapers with a reputation that extends well beyond Brittany." Nevertheless, the Petitioner submitted insufficient evidence to establish that [redacted] is a professional or major trade publications or other major media. On the contrary, the Wikipedia page that the Petitioner submitted states that [redacted] is "a French regional media outlet in [redacted], headquartered in [redacted]." Further, the Petitioner did not establish the significance or relevance of the readership statistics to show the major standing of the publication. *Branski v. Seng*, No. 24-CV-360, 2024 WL 4678939, at *5 (E.D. Wis. Nov. 4, 2024) (indicating that the failure to provide context to circulation figures makes it difficult to assess their significance).

Accordingly, the Petitioner has not met his burden of proof to demonstrate his eligibility for this criterion under 8 C.F.R. § 204.5(h)(3)(iii).

2. Commercial Successes in the Performing Arts

The regulation at 8 C.F.R. § 204.5(h)(3)(x) calls for "evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales." The evidence must show that the volume of sales or box office receipts reflects the alien's commercial success in the performing arts relative to others involved in similar pursuits. Recording and releasing musical compilations or performing in theatrical, motion picture, or TV productions would be insufficient, in and of itself, to satisfy this criterion. *See generally 6 USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual.

In support of this criterion, the Petitioner states that he has "showcased his exceptional acting talent through a diverse range of roles in both film and television, earning recognition for his contributions to critically acclaimed and commercially successful productions." He also states that he has had "impactful roles in major productions that garnered significant achievements and audience reach that underscores his influence in the entertainment industry." Specifically, the Petitioner states that he played a major role in the film [redacted], asserting that his role "added depth to the narrative, contributing to the film's success." He also states that the film grossed $7.5 million worldwide. In support, the film's director submitted a letter stating that the Petitioner's portrayal added "essential emotional nuance and authenticity to the film's narrative." In another film, [redacted] the Petitioner contends that his "portrayal added layers of complexity to the film" and that "the movie achieved a global lifetime box office gross of $3.3 million."

He further asserts that "this success underscores" his ability to "engage with high-profile, internationally recognized projects that attract significant attention and resonate with global audiences." The Petitioner also states that he portrayed "a major recurring character" in a TV series [redacted] which he claims had "an average viewership of 8 million per episode." He maintains that his role contributed to the show's widespread success, and that his performance was recognized by the public.

SCOPS determined that the criterion had not been met because the submitted information does not show that he has achieved commercial success relative to others involved in similar pursuits in the performing arts. In particular, SCOPS determined that the record did not demonstrate that the Petitioner's works have garnered sufficiently critical acclaim or favorable press reviews or otherwise drew a significant level of sales in a manner consistent with sustained national or international acclaim. SCOPS also found that the record lacked evidence of comparison of the Petitioner's evidence with others who are at or near the top of the field, and that he did not demonstrate that he maintained high box office receipts reflecting his recognition in the field.

On appeal, the Petitioner contends that the regulation does not require that the Petitioner have held a "lead role" to qualify under this criterion. He also asserts that he "played critical and integral roles in a series of commercially successful film and television productions." Similarly, he maintains that his roles were "not minor or incidental," but rather "essential to the productions' success." The Petitioner also insists that the "evidence submitted includes box office figures, viewership data, and expert attestation clearly establishing that [his] performances contributed meaningfully to the success of these works."

Although we acknowledge the Petitioner's evidence and assertions, this criterion focuses on volume of sales and box office receipts as a measure of a petitioner's commercial success in the performing arts. Accordingly, the evidence must show that the volume of sales and box office receipts reflect the individual's commercial success relative to others involved in similar pursuits in the performing arts. While the Petitioner has appeared in films and TV series, he has not shown that the success of those productions was attributable to his specific work as an actor. Moreover, while the regulations do not require a petitioner to have exclusively held lead roles, the evidence must still demonstrate that the Petitioner's individual participation contributed to commercial success in a manner that distinguished him from others in similar pursuits. Here, the regulation has not been met.

The Petitioner submitted Wikipedia and IMDb webpage printouts of the films and TV series in which he appeared. However, these sources do not demonstrate that the Petitioner himself achieved commercial success relative to others in the performing arts field. Moreover, the Petitioner has not demonstrated that his parts in films or TV series have attracted substantial audiences. The evidence also does not establish that his work resulted in significant commercial success relative to others at or near the top of the field. Nor is the evidence sufficient to demonstrate that the commercial successes of the aforementioned films or TV series in which he appeared were mainly because of the Petitioner's work. Accordingly, this criterion has not been met.

B. Reserved Issue

We note the Petitioner claims he meets an additional criterion related to, original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field (v). However, as noted above, the Petitioner's unsuccessful demonstration of his eligibility under the criteria we discuss

means he cannot numerically meet the required number of at least three criteria out of the 10 available and the four he claimed. Accordingly, we need not address the Petitioner's claimed eligibility for the fifth criterion. We, therefore, reserve that issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

C. Final Merits Determination

The Petitioner has not submitted the required initial evidence of either a 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. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

III. CONCLUSION

Congress set a very high benchmark for aliens of extraordinary ability by requiring the petitioner demonstrate "sustained national or international acclaim" and present "extensive documentation" to show his or her achievements have been recognized in the field. Section 203(b)(1)(A)(i) of the Act. Here, because the Petitioner has not satisfied the threshold "initial evidence" requirements at 8 C.F.R. § 204.5(h)(3), we cannot conclude that he is an alien of extraordinary ability and need not further analyze the merits under the statute. *See Kazarian*, 596 F.3d at 1119-20; *see also Nagaiah v. Allen,* 784 F. Supp. 3d 798, 814 (E.D. Pa. 2025) (finding the regulation "establishes a necessary, not sufficient, evidentiary requirement for a petitioner who seeks an extraordinary ability visa.").

For the reasons discussed above, the Petitioner has not demonstrated eligibility as an individual of extraordinary ability. 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.