U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39907817

Date: JAN. 28, 2026

Appeal of Service Center Operations Decision

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

The Petitioner, an artist, 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.

The Service Center Operations (SCOPS) denied the petition, concluding the record did not establish that the Petitioner had a major, internationally recognized award, nor did it demonstrate that he met at least three of the ten regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). 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

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- 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,
- [redacted]
- the alien seeks to enter the United States to continue to work in the area of extraordinary ability; and
- 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). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate 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 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

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 individual 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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. at 376.

II. ANALYSIS

The Petitioner is an artist, specializing in realism art. He studied at the [redacted] and the [redacted]

Because the Petitioner has not indicated or established that he 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 determined the Petitioner satisfies two of the ten criteria listed in the regulations, relating to published materials and display of work. On appeal, the Petitioner asserts he meets the evidentiary criteria relating to prizes or awards and authorship of scholarly articles.[1] For the reasons discussed below, the Petitioner does not demonstrate he meets at least three categories of evidence.[2]

A. Prizes or Awards

The regulation at 8 C.F.R. § 204.5(h)(3)(i) calls for "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." We

[1] Although the Petitioner previously claimed to meet the criteria relating to membership and commercial success, he does not contest SCOPS' decision relating to these criteria on appeal or otherwise refer to them in his appeal brief. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330,336 n.5 (BIA 2021) (*citing Matter of R-A-M-*, 25 I&N Dec. 657,658 n.2 (BIA 2012)).

[2] While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety.

first determine whether the alien is the recipient of prizes or awards, and then whether the award is nationally or internationally recognized and was granted based upon excellence in the alien's field of endeavor. *See generally 6 USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual.

On appeal, the Petitioner argues that he has met this criterion because SCOPS previously concluded that he had met this criterion in another petition filing. We are not bound to a finding that SCOPS made in another petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. Mar. 15, 2000). Rather, as we have done in this case, we must consider the evidence before us when deciding whether the Petitioner has satisfied a particular criterion.

Here, the Petitioner claims he has seven awards in support of this criterion. Specifically, the Petitioner highlights his First Place Second Place Award in the) Fall 2018 Award. While the Petitioner submitted copies of online articles about the awards, the articles do not contain sufficient information about the awards such as the criteria for the awards. For example, the articles from *Artists & Illustrators*, *Side Arts, Newsart.net*, invite artists to submit entries for the ARC competition. The article from *Principlearttalk* announces winners and advertises opening of an exhibit for NOAPS, and another article from *Artdeadline* invites artists to apply for the NOAPS exhibit. Moreover, the article from *Secolo d'Italia* is about another artist that has been awarded the and the article from *La Nazione* discusses the events during the ceremony. Further, the record lacks circulation data and lacks evidence demonstrating that these publications have national or international readerships. *See Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 182 (D.N.J. 2021) (quoting *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 136 (D.D.C. 2013)) (requiring evidence showing "how a larger audience viewed [the] awards").[3] We also acknowledge that the Petitioner references on appeal an article entitled ' but it is not included in the record. It is the Petitioner's burden to establish his eligibility by preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

In addition, the Petitioner references a letter from a professor who has served as a judge for ARC. The professor asserts the ARC competition is "one of the largest and most academically rigorous competitions globally, with ARC being among the most prestigious." However, being "one of the largest" competition's is not synonymous with having national or international recognition. Here, the Petitioner has not provided sufficient evidence to show that his First Place is nationally or internationally recognized. The Petitioner also has not provided sufficient information about the and the to determine whether the awards are nationally or internationally recognized. The record therefore does not establish the awards' receipt of national or international recognition.

Accordingly, the Petitioner does not establish that he satisfies this criterion.

[3] On appeal, the Petitioner references an article published in *Fine Art Connoisseur* entitled ' which discusses the significance of the International ARC Salon Competition. However, the article is not included in the record.

B. Published Materials

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* at F.2(B)(1). SCOPS determined the Petitioner submitted sufficient evidence to satisfy this criterion. However, we disagree and withdraw the SCOPS' conclusion.

In support, the Petitioner submitted copies of articles from magazines and newspapers that feature photographs of his work but there is no accompanying narrative discussing the Petitioner and his work. *See Gadhave v. Thompson*, No. 3:21-CV-2938-D, 2023 WL 6931334, at *4 (N.D. Tex. Oct. 19, 2023) (upholding that the articles do not qualify as they only include a photograph of the beneficiary).

The Petitioner also submitted articles published in books entitled [redacted], which he claims are professional publications. In evaluating whether a submitted publication is a professional publication, relevant factors include the intended audience and the relative circulation, readership, or viewership. *See generally 6 USCIS Policy Manual* at F.2(B)(1). Here, the Petitioner has not provided evidence to establish the circulation statistics or evidence of the intended audience for the publications to establish that they qualify as professional or major trade publications as required.

In addition, the Petitioner provided an article from the *China Reform News*, as well as screenshots and transcripts of an interview he gave on the China Travel Channel. The Petitioner's supporting evidence relating to these publications derives from *Wikipedia* and *Baidu*. However, with information from *Wikipedia* and *Baidu*, there are no assurances about the reliability of the content from these open, user-edited internet sites. *See United States v. Lawson*, 677 F .3d 629, 650-51 (4th Cir. 2012)(given the open-access nature of Wikipedia, danger of relying on a Wikipedia entry is "obvious and real"); *Badasa v. Mukasey*, 540 F .3d 909, 910-11 (8th Cir. 2008)(criticizing immigration judge's use of Wikipedia and observing that an entry "could be in the middle of a large edit or it could have been recently vandalized"); *see also Sibanda v. Holder*, 778 F.3d 676, 680 (7th Cir. 2015)(immigration judge could just as easily retrieved more reliable country reports since he already had found the Wikipedia entry). Thus, this information is not reliable and does not meet the Petitioner's burden of proof.

For the above reasons, we disagree with SCOPS's conclusion that the Petitioner satisfies this criterion.

C. Scholarly Articles

The regulation at 8 C.F.R. § 204.5(h)(3)(vi) calls for "evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." In academia, a scholarly article reports on original research, experimentation, or philosophical discourse, is generally

peer reviewed, and may be published in professional or scientific journals or conference presentations. In other fields, a scholarly article should be written for others who have profound knowledge in the field. *See generally 6 USCIS Policy Manual* at F.2(B)(1).

To determine whether the publication qualifies as a professional or major trade publication or other major media, we consider such relevant factors as the circulation or readership relative to other media in the field and the intended audience (for professional journals). *Id.*

The Petitioner claims eligibility for this criterion based on his article published in the [redacted] Magazine. As defined in the academic arena, a scholarly article reports on original research, experimentation, or philosophical discourse. *Id.* It is written by a researcher or expert in the field who is often affiliated with a college, university, or research institution. *Id.* Scholarly articles are generally peer reviewed by other experts in the field of specialization. *Id.* In general, it should have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts expressed in the article. *Id.*

Here, the record does not establish his writing as a "scholarly article" in the academic arena. Specifically, it lacks footnotes, endnotes, or bibliographies and does not demonstrate its pre-publication review by experts in the art field. In non-academic fields, a scholarly article should be written for learned persons in that field. *Id.* Learned persons include all persons having profound knowledge of a field. *Id.* The Petitioner does not show that his article was written for leaned persons in the art field or for other particular learned persons. Moreover, the printout from [redacted] website, submitted on appeal, states that it "aims to let the world know [redacted] and is responsible for displaying and promoting [redacted] from multiple aspects, including politics, economy, and culture." This statement does not indicate that [redacted] targets learned persons but it appears to appeal to a general audience. Furthermore, while the Petitioner asserts [redacted] is a major trade publication, the record lacks circulation and comparative data showing that [redacted] Pictorial has high readership relative to other media.

For the foregoing reasons, the Petitioner does not submit evidence of his authorship of scholarly articles in his field. We will therefore affirm SCOPS' finding regarding this criterion.

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 they are 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*, -- F.Supp.3d ---, 2025 WL 1508028, at *10 (E.D. Pa. May 27, 2025) (finding the regulation "establishes a necessary, not sufficient, evidentiary requirement for a petitioner who seeks an extraordinary ability visa."). Therefore, we decline to reach and hereby reserve any final merits determination in this matter. *See INS v. Bagamasbad*, 429 U.S. at 25.

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

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 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.