U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40230069

Date: JAN. 28, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a cardiologist, seeks classification as an alien of extraordinary ability in the sciences. *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.

Service Center Operations (SCOPS) denied the petition, concluding the Petitioner did not establish, as required, either a one-time achievement or that he met at least three of the ten initial evidentiary criteria for this immigrant classification. 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 withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with 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, provided that the alien seeks to enter the United States to continue 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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or 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 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 Amin v. Mayorkas*, 24 F.4th 383 (5th Cir. 2022); *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).

Because the Petitioner has not claimed or established his receipt of 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). The Petitioner initially claimed to have satisfied five of these criteria, but SCOPS determined the Petitioner fulfilled only two: judging the work of others at 8 C.F.R. § 204.5(h)(3)(iv) and authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). On appeal, the Petitioner maintains that he meets three additional criteria, relating to membership, original contributions, and high salary.

Upon further review, we conclude that the Petitioner also satisfies the high salary criterion at 8 C.F.R. § 204.5(h)(3)(ix). This criterion requires "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." The Petitioner initially submitted a December 2024 employment confirmation letter from the [redacted] stating that it has "entered into an employment contract under which [the Petitioner] will begin employment as a Cardiac Electrophysiologist starting on February 23, 2025. . . . [The Petitioner] will receive an annual guaranteed salary of at least $650,000.00." He also provided salary survey data for Indiana cardiologists, and in response to SCOPS' request for evidence, for Indiana cardiac electrophysiologists, showing that his salary is high relative to others in both occupational categories. In addition, the Petitioner's RFE response included his earnings statements for March 2025 through April 2025 and an updated employment letter (dated May 2025) from the [redacted] confirming that he was receiving a salary of $650,000.00.

SCOPS' decision stated that because the Petitioner's March to April 2025 earnings statements and his most recent employment letter post-date the January 28, 2025 filing of the petition, the salary he earned after the initial filing date does not meet the criterion at 8 C.F.R. § 204.5(h)(3)(ix).[1] The December 2024 letter from the [redacted] he initially submitted as well as the other supporting evidence, however, sufficiently demonstrate that he "has commanded" a high salary in relation to others in the field at the time of filing. "USCIS does not interpret the phrase 'has commanded' to mean that the person must have already earned such salary or remuneration in order to meet the criterion. Rather, a credible contract or job offer showing prospective salary or remuneration may establish that the person has been able to command such compensation." *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2. Here, the Petitioner provided a credible employment letter from the [redacted] at the time of filing indicating his salary. He also provided compensation data showing the salary he commanded was high relative to others in the field. Accordingly, his evidence satisfies the salary criterion at 8 C.F.R. § 204.5(h)(3)(ix).

[1] The Petitioner has the burden of proof to establish eligibility for the requested benefit at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12).

The Petitioner has therefore met three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Nevertheless, granting the third initial criterion does not suffice to establish eligibility for classification as an individual of extraordinary ability. As the Petitioner has met the initial regulatory criteria, we remand the matter for SCOPS to undertake a final merits determination in the first instance to analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if they establish that he has sustained national or international acclaim in the field and that 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)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.

We remand this proceeding so that SCOPS can render a final merits determination in the first instance.

ORDER: The decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.