U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40784362

Date: JAN. 29, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a musician and singer, seeks classification as an alien of extraordinary ability. *See* section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those aliens who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. *Id.*

Service Center Operations (SCOPS) denied the petition, concluding the Petitioner was not the recipient of a major, internationally recognized award, and had not demonstrated at least three of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3) to meet the initial evidentiary requirements of the 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 dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability if: they have an extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry will substantially benefit the United States prospectively. 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 of the evidence to determine whether a petitioner has sustained national or international acclaim and whether their achievements have been recognized in the field. First, a petitioner can provide evidence of either "a

major, international recognized award," or satisfaction of at least three of ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3).[1]

Where a petitioner meets these initial evidence requirements, U.S. Citizenship and Immigration Services (USCIS) then considers the totality of the material provided in a final merits determination and assesses 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 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); *see generally* 6 *USCIS Policy Manual* F.2(B), www.uscis.gov/policy-manual (providing, as guidance, USCIS' two-step extraordinary ability analysis).

II. ANALYSIS

A. Analysis of Evidentiary Criteria

The Petitioner has not indicated or established that he has received a major, internationally recognized award under 8 C.F.R. § 204.5(h)(3). He must therefore satisfy at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Based on our de novo review, the Petitioner has not met this showing.

In the underlying record the Petitioner asserted his eligibility under the criterion at 8 C.F.R. § 204.5(h)(3)(i), (iii), and (v), which require, in general terms, that the Petitioner demonstrate he received lesser nationally or internationally recognized prizes or awards, there was published material about him in professional or major trade publications or other major media, and he has made artistic contributions of major significance in the field. SCOPS determined the Petitioner had not established any of the three criterion. We agree.

1. Evidentiary Criteria Raised for the First Time on Appeal or Waived

On appeal, the Petitioner argues for the first time that he meets the criteria at 8 C.F.R. § 204.5(h)(3)(vii) and (viii), which require evidence of his work being displayed in the field at artistic exhibitions or showcases and that he has performed in a leading or critical role for an organization or establishment with a distinguished reputation. Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider his eligibility for 8 C.F.R. § 204.5(h)(3)(vii) and (viii) for the first time on appeal. *See Matter of Furtado*, 28 I&N Dec. 794, 801-02 (BIA 2024) (declining to consider new evidence on appeal when the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it) (citing *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988)); *see also* 8 C.F.R. § 103.2(b)(11) (requiring that in response to a request for evidence or notice of intent to deny, all evidence must be submitted together at one time and that submitting only some of the requested evidence will be considered a request for a decision on the record). Further, even if he established these criteria, he would not meet the

[1] 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. The Petitioner has not submitted comparable material.

requirement of satisfying at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Therefore, analysis of these two criteria is unnecessary. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

The Petitioner did not assert in the record below or on appeal that he meets the criteria at 8 C.F.R. § 204.5(h)(3)(ii), (iv), (vi) (ix), (x), which require, in general terms, that he demonstrate membership in associations, he has judged the work of others, authorship of scholarly articles, high salary, and commercial successes. We therefore deem the Petitioner's eligibility under these five criteria waived. *See 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))(An eligibility ground that is not raised on appeal is waived.)

2. Lesser Nationally or Internationally Recognized Prize or Award

The criterion at 8 C.F.R. § 204.5(h)(3)(i) requires the Petitioner to establish he received a lesser nationally or internationally recognized prize or award for excellence in his field of endeavor. As part of the analysis, we determine 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, supra,* at F.2(B)(1). SCOPS determined that the Petitioner had not established that the submitted prizes or awards were for excellence in the Petitioner's field of endeavor. We agree. For example, according to the record, his "2019 [redacted]' is a religious award associated with the Ukrainian Orthodox Church and his '[redacted] Regional State Administration Award" was awarded for his contribution to the revival of the traditions of Ukrainian[redacted] The record does not evidence that these awards were given to the Petitioner for being a singer or musician.

In addition, to the extent some of his awards and prizes are within the field, such as his 2014 "First Prize –[redacted]," he does not provide information, such as, the criteria considered in awarding the prize, the number of awardees or recipients, limitations to eligibility for the award, to demonstrate the basis for the awards was for excellence as a musician or singer. *See id.* (providing, as guidance, relevant considerations in determining whether the basis for granting the prizes or awards was for excellence in the field). While we note that Petitioner's counsel makes representations in the underlying record and on appeal about the basis of some of the awards, such as for his 1995 award at the "1st[redacted]," the criteria described by counsel are not in the record. Counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight").

Moreover, SCOPS also determined that the Petitioner had not provided sufficient evidence that his prizes or awards were nationally or internationally recognized in his field of endeavor. We agree. *See Visinscaia v. Beers*, 4 F. Supp. 3d 126, 136 (D.D.C. 2013) (finding that without evidence reflecting how a larger audience viewed the plaintiff's awards, there was no way to evaluate whether those awards were recognized widely enough to satisfy the awards criterion). On appeal, the Petitioner's counsel asserts that all Ukrainian awards are national in scope and all of Petitioner's awards were for excellence because they "were conferred by governmental or recognized cultural bodies." Here again,

counsel's assertions are not corroborated anywhere in the record. Further, counsel states that the Petitioner's support letters demonstrate the prestige and criteria of his awards. We reviewed the Petitioner's support letters, which do not discuss the criteria for his awards or demonstrate that they are national or internationally recognized. On appeal, the Petitioner also asserts that SCOPS conflates its analysis of *Kazarian's* two-step analysis by requiring the Petitioner show he is "at the top of his field" to satisfy this criterion. SCOPS did not use this language in its analysis, and we do not interpret its analysis of this criterion to have conflated *Kazarian's* two-step analysis. For the above reasons, the Petitioner has not established he received a lesser nationally or internationally recognized prize or award for excellence in his field of endeavor.

3. Published Material in Professional or Major Trade Publications or Other Major Media

The criterion at 8 C.F.R. § 204.5(h)(3)(iii) requires the Petitioner to submit evidence of published material about himself in professional or major trade publications or other major media, relating to his work in the field. 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, supra,* at F.2(B)(1). The Petitioner submitted a Wikipedia[2] article and YouTube screenshots evidencing that he was a contestant on '[redacted]" a Ukrainian reality talent show in 2011. The Petitioner does not explain how the article or screenshots meet the plain language of the criterion requiring published material. On appeal the Petitioner summarily states that published material includes national broadcasts but provides no explanation or authority in support of this assertion.

The Petitioner also submitted an article from [redacted] and [redacted] discussing his selection to be on the reality talent show in 2011, and a 2013 article in [redacted] titled, '[redacted] [sic]," which includes an interview of the Petitioner. SCOPS determined the Petitioner had not demonstrated that the above articles were in professional or major trade publications or other major media. On appeal, Petitioner's counsel asserts that "[c]irculation and audience reach place these firmly within professional or major media." However, the Petitioner did not submit evidence to establish the circulation statistics for [redacted] or [redacted] along with comparative circulation data, to establish the publishers are major media, or information about the intended audience of the publishers to demonstrate they are professional or major trade publications. Further, we do not consider counsel's uncorroborated assertions evidence. *See Matter of S-M-*, 22 I&N Dec. at 51. The Petitioner has therefore not provided sufficient evidence of published material about himself in professional or major trade publications or other major media, relating to his work in the field.[3]

[2] Wikipedia is an open, user-edited website, that does not guarantee the validity of its content. *See* Wikipedia, *General disclaimer*, http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer (last visited January 29, 2026).

[3] We note there were a number of advertisements with the Petitioner's photo or name contained in the record. The Petitioner did not explain the relevance of these documents, and we do not conclude they sufficiently support the criterion. *See Gadhave v. Thompson*, No. 3:21-CV-2938-D, 2023 WL 6931334, at *3-4 (N.D. Tex. Oct. 19, 2023) (upholding published material must be specifically about the applicant and focus on his personal work in the relevant field, not merely relate to the applicant's work, mention his name, or include his photo).

4. Original Contributions of Major Significance in the Field

The criterion at 8 C.F.R. § 204.5(h)(3)(v) requires evidence of the Petitioner's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. The first step in the analysis is to determine whether the person made an original contribution to the field. *See generally* 6 *USCIS Policy Manual, supra,* at F.2(B)(1). However, in the underlying record, although he claims he has made original artistic contributions, the Petitioner does not identify them. Rather, he asserts his reference letters demonstrate his eligibility for the criterion. Detailed letters from experts in the field may provide valuable context for evaluating claimed original contribution of major significance. *Id.* Here, the Petitioner's letters lack detail and make no mention of the originality or major significance of the Petitioner's contributions to the field. The letters provide compliments such as, he is a gifted vocalist, his concerts at church are the most popular, and claim that he is an accomplished musician, listing some venues he has performed, but they give no details on his original work as a musician and singer. One letter describes his music as being part of a unique genre called modern ethno-folk but does not explain how he has originally contributed to this genre. On appeal, he states that his music is a unique blend of Ukrainian opera and folk traditions. But, he does not explain how his blend of music amounts to an original contribution to the modern ethno-folk genre.

Moreover, SCOPS determined the Petitioner's supporting documentation does not establish his work has been widely implemented throughout the field, has remarkably impacted or influenced the field, or has otherwise risen to a level of major significance. On appeal, the Petitioner argues he has performed internationally and on television, he is celebrated across two continents, and his music advances Ukrainian cultural identity. While the record corroborates that the Petitioner has, for example, performed in the Ukraine and the United States and made an appearance on a talent show, he has not submitted objective evidence corroborating his contributions were of major significance to the field. As a result, he has not established his original artistic contributions of major significance in the field.

B. The Petitioner's O-1B Visas

The Petitioner also asserts on appeal that SCOPS did not properly consider that he is the Beneficiary of three approved O-1B nonimmigrant visa petitions. Although USCIS has approved O-1B nonimmigrant visa petitions filed on behalf of the Petitioner, these prior approvals do not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different statute, regulations, and case law. The nonimmigrant and immigrant categories have different criteria, definitions and standards for persons working in the arts. "Extraordinary ability in the field of arts" in the nonimmigrant O-1B category means distinction. 8 C.F.R. § 214.2(o)(3)(ii). But in the immigrant context, "extraordinary ability" reflects that the alien is among the small percentage at the very top of the field. 8 C.F.R. § 204.5(h)(2).

C. Summary of Evidentiary Criteria and Reserved Issue

The Petitioner has not established that he has received a major, internationally recognized award under 8 C.F.R. § 204.5(h)(3), or that he satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter*

of L-A-C-, 26 I&N Dec. at 526 n.7. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields. *See* 8 C.F.R. § 204.5(h)(2) (explaining "extraordinary ability" refers only to those in "that small percentage who have risen to the very top of the field of endeavor"). 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 record as a whole does not demonstrate a level of recognition that indicates the required sustained national or international acclaim or demonstrates 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 otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated 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.