U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40778855

Date: JAN. 29, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a software engineer, requests classification under the employment-based, first-preference (EB-1) immigrant visa category as an alien with "extraordinary ability." *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Successful petitioners for U.S. permanent residence in this category must demonstrate "sustained national or international acclaim" and extensively document recognition of their achievements in their fields. Section 203(b)(1)(A)(i) of the Act.

Service Center Operations (SCOPS) denied the petition. SCOPS found that the Petitioner met the requested category's initial evidentiary requirements. But, in a final merits determination, SCOPS concluded that he did not demonstrate his claimed extraordinary ability in his field. On appeal, the Petitioner contends that he satisfied additional evidentiary criteria and demonstrated sufficient acclaim and recognition to establish his place among the small percentage at his field's very top.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we agree with SCOPS that the record does not establish his claimed extraordinary ability in his field. We will therefore dismiss the appeal.

I. LAW

To qualify for this immigrant visa category, a petitioner must demonstrate that they:

- Have "extraordinary ability" in the sciences, arts, education, business, or athletics;
- Seek to continue work in their field of expertise in the United States; and
- Would substantially benefit the country as a permanent resident.

Section 203(b)(1)(A)(i-iii) of the Act.

The term "extraordinary ability" means expertise commensurate with "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).

Unless a petitioner received "a major, international recognized award," they must satisfy at least three of ten alternative evidentiary criteria. 8 C.F.R. § 204.5(h)(3).[1] If a petitioner meets either evidentiary standard and the requirements at sections 203(b)(1)(A)(ii), (iii) of the Act, U.S. Citizenship and Immigration Services (USCIS) then makes a final merits determination. To merit final approval, the record – as a whole – must establish a petitioner's "sustained national or international acclaim" and recognized achievements placing them among the small percentage at their field's very top. *See Amin v. Mayorkas*, 24 F.4th 383, 391 (5th Cir. 2022); *see generally* 6 *USCIS Policy Manual* F.2(B), www.uscis.gov/policy-manual.

II. ANALYSIS

A. The Petitioner

The record shows that a Ukrainian university issued the Petitioner bachelor's and master's degrees in computer science. He has worked as a software developer and engineer for more than 10 years. He developed an award-winning mobile application to help Ukrainian medical students study for their country's medical exams. He also has written technical guides and blogs on software development and has organized developer education initiatives. Now in the United States, the Petitioner works for a large financial services company, developing mobile applications.

The Petitioner states that he wants to continue his software engineering activities in the United States. He stated: "Working with top U.S. tech businesses and research companies, I will continue [to] develop creative software solutions addressing important problems in sectors including healthcare, education, and corporate technology." He also said that "I want to keep working with the U.S. developer community to improve open-source projects" and to "encourage cooperation and knowledge exchange among American developers."

B. The Alternative Evidentiary Criteria

The record does not indicate – nor does the Petitioner claim – his receipt of a major internationally recognized award. He therefore had to meet at least three of the ten alternative evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i-x).

The record supports SCOPS' findings that the Petitioner met four evidentiary requirements. He submitted evidence of:

- Published materials about himself and his work in his field;
- His participation as a judge of others' work in the field;
- His authorship of scholarly articles in the field; and
- His performance in a leading or critical role for organizations with distinguished reputations.

See 8 C.F.R. § 204.5(h)(3)(iii), (iv), (vi). (viii).

[1] If an evidentiary criterion does not "readily apply" to a petitioner's occupation, they may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

On appeal, the Petitioner claims that he also provided evidence of his:

- Receipt of nationally or internationally recognized awards for excellence in his field;
- Membership in associations in the field requiring outstanding achievements;
- Original contributions of major significance in the field;
- Display of his work at artistic exhibitions or showcases; and
- Commandment of a high salary or significantly high remuneration for his services in his field.

See 8 C.F.R. § 204.5(h)(3)(i), (ii), (v), (vii), (ix).

The Petitioner has already satisfied the minimum number of evidentiary criteria. We therefore need not consider his appellate arguments that he met additional evidentiary requirements. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions).

We will next review SCOPS' final merits determination.

C. The Final Merits Determination

To merit final approval as an alien with extraordinary ability, a petitioner must demonstrate – through evidence of sustained national or international acclaim and recognition of their achievements in their field – that they are one of the small percentage who has risen to their field's very top. 6 *USCIS Policy Manual* F.2(B)(2). They "must explain the significance of the submitted evidence, and how it demonstrates that [they have] achieved sustained national or international acclaim and recognition in their field of expertise." *Id.* USCIS must review all evidence in the totality and consider "any potentially relevant evidence in the record, even if such evidence does not fit one of the … regulatory criteria or was not presented as comparable evidence." *Id.*

On appeal, the Petitioner urges us to follow a U.S. district court decision finding that satisfaction of at least three initial evidentiary criteria establishes a presumption that an alien has extraordinary ability. *See Buletini v. INS*, 860 F. Supp. 1222, 1234 (E.D. Mich. 1994). *Buletini* held:

> Once it is established that the alien's evidence is sufficient to meet three of the criteria listed in 8 C.F.R. § 204.5(h)(3), the alien must be deemed to have extraordinary ability unless [the immigration service] sets forth specific and substantiated reasons for finding that the alien does not meet extraordinary ability.

Id.

U.S. district court decisions, however, do not bind USCIS in other matters. *See Trump v. CASA, Inc.*, 606 U.S. 831, 858 n.17 (2025) (noting that "district court opinions lack precedential force even vis-à-vis other judges in the same judicial district"). Thus, we need not follow *Buletini* in this matter. Moreover, since *Buletini*'s issuance more than 30 years ago, USCIS has adopted a different policy to adjudicate extraordinary ability petitions. As previously indicated, USCIS now uses a two-step analysis. *See Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (9th Cir. 2010). If a petitioner received a major international award or meets at least three alternative evidentiary criteria, the Agency then

determines whether the record – as a whole – establishes "sustained national or international acclaim" and recognized achievements sufficient to place the alien among the small percentage at their field's very top. *Id.; see also Amin*, 24 F.4th at 391 (finding USCIS' current adjudication method to be "consistent with the governing statute and regulation"). We therefore decline to follow *Buletini*.

The record establishes the Petitioner as a very talented software engineer, specializing in mobile applications. But the record lacks independent, objective evidence sufficient to place him among the small percentage at his field's very top.

The Petitioner documented that, in 2021, he won a "[redacted]" contest sponsored, in part, by an online Ukrainian technology publication. The award stemmed from his mobile application for Ukrainian medical students. A panel of software developers and investors, as well as the publication's readers, judged the contest. The record shows that the award brought the Petitioner international acclaim and recognition. But he has not demonstrated that this single award, alone, reflects "sustained" acclaim or recognition commensurate with one of that small percentage at his field's very top.

The Petitioner submitted evidence of his membership in three international professional associations in his field. Two of the memberships, including a senior membership in the Institute of Electrical and Electronics Engineers (IEEE), required "significant performance" or "significant achievements" in his field for at least five-year periods. But he has not established that the memberships' requirements necessarily place him among the small percentage at his field's very top. *See Hamal v. United States Dep't of Homeland Sec.*, No. 21-5160, 2023 WL 1156801, at *3 (D.C. Cir. Jan. 31, 2023) (finding that memberships demonstrated an alien's "professional stature" but "did not establish the exceptional level of distinction required for this extraordinary-ability visa."); *see also Nagaiah v. Allen*, 784 F. Supp. 3d 798, 820 (E.D. Pa. 2025) (finding that USCIS properly "explained that [the petitioner's] IEEE membership did not show extraordinary ability because the eligibility requirements were not stringent enough and that he lacked evidence that he became an IEEE senior member because of his sustained national or international acclaim").

The record contains copies of nine online published articles about the Petitioner and his work in his field. The record indicates that, not only readers in his home country of the Ukraine, but also some in other nations viewed the writings. But the articles, by themselves, do not place him at his field's very top. Seven of the nine articles were published in 2024, suggesting that they do not reflect "sustained" acclaim as the requested immigrant visa category requires. *See Hamal v. U.S. Dep't of Homeland Sec.*, No. CV 19-2534 (RC), 2021 WL 2338316, at *4 (D.D.C. June 8, 2021), *aff'd sub nom. Hamal, supra*) (affirming USCIS' finding that a petitioner did not show that "his press coverage is indicative of a level of success consistent with being" at his field's top).

The Petitioner submitted evidence that he participated as a panel judge at two software development competitions. But the record does not demonstrate that the competitions held prestige or attracted significant attention in the field. *See Joseph v. Dir. of Texas Serv. Ctr., USCIS*, No. 24-40249, 2025 WL 458001, at *4 (5th Cir. Feb. 11, 2025) (upholding USCIS' finding that a petitioner did not establish that his judging of others' work "set [him] ... apart from others in the field" or established "a career of acclaimed work").

The Petitioner argues that he has made several original contributions to his field. He cites: his development of the mobile application for Ukrainian medical students and an online library facilitating multilingual applications; his online, 17-lecture course for building user interfaces in mobile applications; his authorship of a blog on software development; and his role as one of 11 experts at a central Asian "technopark" for startup companies.[2] But the record lacks sufficient evidence that these contributions have generated acclaim and recognition sufficient to establish his claimed extraordinary ability in the field. *See Joseph*, 2025 WL 458001, at *4 (finding that the petitioner's evidence of original contributions did not demonstrate "sustained national or international acclaim").

As proof of the significance of his contributions, the Petitioner points to the six recommendation letters on his behalf. These letters provide detailed examples of specific software projects he has developed within time and cost constraints and praise his combination of technical skills, leadership, and innovative thinking. A former manager of the Petitioner described him as "one of the most talented and dedicated software engineers I have ever encountered." The former manager said: "He is not just a software engineer; he is a visionary who understands the bigger picture and works hard to create solutions that make a difference."

But, despite the high praise, the recommendation letters do not demonstrate the Petitioner's place among the small percentage at his field's top. The record lacks sufficient independent expert testimony about his skills and abilities. All of his recommendation letters come from people who personally know him, including current and former co-workers and managers. "[I]t is generally expected that one whose accomplishments have garnered sustained national or international acclaim would have received recognition for their accomplishments well beyond the circle of their personal and professional acquaintances." *Mishra v. Richardson*, No. 120CV991LMBTCB, 2021 WL 1566071, at *3 (E.D. Va. Apr. 20, 2021) (quoting 6 *USCIS Policy Manual* F.2(B)(3)).

The Petitioner submitted evidence of his first or sole authorship of five scholarly articles in his field. But the record lacks evidence of the rankings of the journals that published his work. *See generally* 6 *USCIS Policy Manual* F.2(B)(2) (stating that publication in highly ranked journals may indicate prestige or acclaim). Also, the evidence indicates that the Petitioner's articles generated a total of two citations. He has not established that this total reflects extraordinary ability in his field. *See Agrawal v. Miller*, No. 4:24CV3143, 2025 WL 2879217, at *23 (D. Neb. Sept. 12, 2025) (upholding USCIS' finding that "the evidence does not demonstrate that the research reported in [the petitioner's] articles has made an impact on the field sufficient to provoke widespread commentary throughout the [field] or major press describing her or her contributions"); *see generally* 6 *USCIS Policy Manual* F.2(B)(2) (stating that a relatively high rate of citations may indicate a petitioner's high overall standing in their field). Further, the Petitioner's scholarly articles do not demonstrate sustained acclaim, as they all were published in 2024. *See* section 203(b)(1)(A)(i) of the Act (stating that the requested immigrant visa category requires "sustained national or international acclaim").

[2] On appeal, the Petitioner argues that his authorship of an online "weekly brief" for mobile developers is another original contribution to his field. But the record shows that he did not begin writing the weekly brief until 2025, after the petition's December 2024 filing. As the weekly brief would not establish his eligibility for the requested benefit at the time of filing, we will not consider it. *See* 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to demonstrate eligibility "at the time of filing the benefit request").

The record contains evidence that the Petitioner presented educational information on mobile development testing to employees of a large Ukrainian information technology company, which uploaded a video of the presentation to its website. The Petitioner claims that his presentation helped to "enhance the understanding and implementation of testing processes across 10 distinct projects within the organization." But the record lacks sufficient independent evidence of the presentation's purported influence on the company. *See* 6 *USCIS Policy Manual* F.2(B)(2) ("Approval or denial of a petition is based on the type and quality of evidence submitted.") Also, the Petitioner has not explained how the presentation demonstrates his claimed extraordinary ability in his field.

The Petitioner submitted evidence that, during his tenure with his current employer, he has improved user interfaces in its mobile applications, implemented a tool that detects and eliminates redundant code, introduced "snapshot testing" to reduce systems' testing times, and designed enhanced security protocols. But the record lacks sufficient evidence that the Petitioner's role with his employer has garnered national or international acclaim or significant recognition beyond the organization. *See Bodhankar v. USCIS*, No. 119CV706MADCFH, 2020 WL 777211, at *5 (N.D.N.Y. Feb. 18, 2020) (finding that "the record does not indicate that [the petitioner's] work to develop [his employer's] organization has resulted in national or international acclaim").

The Petitioner also provided evidence that his current base annual salary of $172,300 exceeds the average annual salary of U.S. software engineers ($137,350), the mean annual wage of U.S. software engineers ($138,110), and the average annual salary of software engineers in his state ($135,040). But he has not demonstrated that his salary is so high that it indicates his claimed extraordinary ability in his field. *See Nagaiah*, 784 F. Supp. 3d at 820 (affirming USCIS' finding "that while [a petitioner's] high salary demonstrated recognition of his skillset, the record did not show that his earnings were so high as to indicate that he is one of a small percentage at the top of his field, or that his salary was reflective of sustained national acclaim").

Congress intended to set "a very high standard" for aliens of extraordinary ability. Proposed Rule for Employment-Based Immigrants, 56 Fed. Reg. 30703, 30704 (July 5, 1991). The legislature indicated that this immigrant visa category was meant "for that small percentage of aliens who have risen to the very top of their field of endeavor." *Id.* Considering the evidence as a whole, the Petitioner has established that he is a very talented software engineer. But the record falls short of demonstrating his receipt of sustained national or international acclaim or identifying him as one of that small percentage at his field's very top. *See Amin*, 24 F.4th at 386 ("[G]iven the lofty bar for extraordinary ability classifications, we cannot say that the agency acted arbitrarily when it determined that [a petitioner] was not 'extraordinary' but merely very good."); *Matter of Price*, 20 I&N Dec. at 954 (holding that even athletes performing in their sports' premier leagues do not automatically meet the extraordinary ability standards).

III. CONCLUSION

The Petitioner did not demonstrate his claimed extraordinary ability in his field. We will therefore affirm the petition's denial.

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 U.S. visas or other immigration benefits.