U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 38691528

Date: JUL. 03, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a business owner, 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.

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner had not satisfied any of the ten initial evidentiary criteria, of which he must meet at least three. 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) 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 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 international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten criteria 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 they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to their 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).

## II. ANALYSIS

The Petitioner asserted before SCOPS that he founded a company called [redacted] in his native Brazil over 20 years ago. The Petitioner also stated that he owned a company called [redacted]. He contended that he has been recognized nationally and internationally for designing technological innovations involving access control and event management which have been used at events such as [redacted] one of the largest music festivals in the world. The Petitioner also claimed that he has been honored by the [redacted] in 2021 for his contributions to entrepreneurship and Brazil's economic development.

### A. The Petitioner Does Not Meet at Least Three Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the ten alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). SCOPS acknowledged that the Petitioner claimed to meet four these ten criteria, but determined that he did not satisfy any of the requisite regulatory criteria. SCOPS denied the petition for this reason and did not conduct a final merits determination.

On appeal, the Petitioner re-asserts that he meets the claimed criteria relating to published materials about his work, original contributions of major significance in his field, performing a leading or critical organizational role, and high salary or significantly high renumeration compared to others in the field. *See* 8 C.F.R. § 204.5(h)(3)(iii), 8 C.F.R. § 204.5(h)(3)(v), 8 C.F.R. § 204.5(h)(3)(viii), and 8 C.F.R. § 204.5(h)(3)(ix).

After reviewing the record in full, we agree with SCOPS that the Petitioner has not demonstrated that he meets at least three of the ten criteria.

1. "Published 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. Such evidence shall include the title, date, and author of the material, and any necessary translation." 8 C.F.R. § 204.5(h)(3)(iii).

According to the *USCIS Policy Manual*, the published material contemplated in this requirement should be about the alien and their work, rather than the alien's employer 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.

The Petitioner submitted three articles before SCOPS in support of his claim that he meets this criterion. As two of the articles do not mention the Petitioner individually, merely his company, we cannot conclude that the articles are about the Petitioner's work in the field.[1] The third submitted article was titled [redacted] and appeared in the print version of [redacted] on [redacted] 2003. Although this article mentioned the Petitioner by name, it was not accompanied by corroborating evidence that the publication where the article appeared was a professional or major publication relating to the field for which the classification is sought, as contemplated in the regulation.

The Petitioner submitted information from [redacted] indicating that it its daily circulation was "significant" and that it reached "millions of readers every day." In response to a request for evidence (RFE) from SCOPS, Petitioner claimed that the newspaper, [redacted] currently has a recorded circulation of 135,000 copies and that its Instagram account has 1.1 million followers. However, the Petitioner did not offer objective, independent evidence corroborating such numbers. *Braga v. Poulos*, No. CV 06-5105 SJO FMOX, 2007 WL 9229758, at 7 (C.D. Cal. July 6, 2007), *aff'd,* 317 F. App'x 680 (9th Cir. 2009) (determining that self-serving assertions on the cover of a magazine were insufficient to show the status or standing of a publication). In addition, 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 shown by a preponderance of the evidence that his work in the field has been discussed in professional or major trade publications or other major media relating to his work in the field for which classification is sought.

2. "Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." 8 C.F.R. § 204.5(h)(3)(v).

The regulation at 8 C.F.R. § 204.5(h)(3)(v) calls for "evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." A petitioner may show that their contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance.

[1] The Petitioner submitted two versions of the [redacted] article in [redacted] titled [redacted] published [redacted] 2013. The Petitioner claimed that this article mentioned him by name, but the text that is visible in the documents he submitted does not include such a reference. Some of the article's text appears to be obstructed by advertisements in the web site printouts.

*See Visinscaia v. Beers* at 134-135 (noting that "[a] Petitioner's work must significantly affect [his or her] field of endeavor").

Relevant evidence of the significance of an original contribution may include, but is not limited to:

- Published materials about the significance of the alien's original work;
- Letters providing details about how the alien's original work has been significant in the field;
- Citation of the alien's published scholarly work at a level indicative of major significance; and
- Patents or licenses deriving from the alien's work or evidence of its commercialization.

*See generally* 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual.

The Petitioner stated that he has developed and applied two technologies [redacted] and [redacted] He contended that these have facilitated efficient access control for participants in large events, such as [redacted] that improved security and reduced fraud. In support of his claim that this work constitutes an original contribution of major significance, he submitted letters of recommendation from four individuals.[2]

Most of the letters the Petitioner submitted described his professional achievements in general terms. For example, [redacted] and event creator, attributed the Petitioner's abilities, leadership, and vision to the improved availability of high-quality printing services and praised the Petitioner's creation of business opportunities and jobs. While the author mentions the Petitioner's role in "establishing the raw material supply for [redacted] stores," he does not discuss any specific contributions the Petitioner has made to the field, rather than to his individual business.

A letter from [redacted] asserted that he was hired by the Petitioner to develop two systems: Easy Control and ID Control. He contended that the Petitioner designed these systems. Another letter from the same author, who described himself as a systems developer, stated that the Petitioner led the implementation of advanced access control systems using wristbands and mobile apps that allow for rapid and contactless identification of participants at events. This "innovation" enabled the organizers to facilitate participant access, monitor participants' movement, verify the authenticity of tickets, and speed up the entry process. According to [redacted] this reduced lines and fraud and increased security by 30% at major events in Brazil with over 100,000 participants. But this letter did not elaborate on the Petitioner's specific involvement in their development, or whether these control systems were original or of major significance to the field.

Additionally, letters from [redacted] a franchisee of the Petitioner's company described the Petitioner as a leader and visionary who "revolutionized the printing market in Brazil" and expanded his business to 27 franchisees across Brazil. However, [redacted] did not discuss [redacted] or other specific contributions by the Petitioner at length.

Detailed letters from experts in the field explaining the nature and significance of the person's contribution may provide valuable context for evaluating the claimed original contributions of major

[2] While we discuss a sampling of letters, we have reviewed and considered each one.

significance, particularly when the record includes documentation corroborating the claimed significance. *See generally* 6 *USCIS Policy Manual*, supra, at F.2(B)(1). We acknowledge some evidence in the record indicating the Petitioner's involvement in utilizing access control technology. However, it does not sufficiently demonstrate that the Petitioner made original contributions of major significance in the field. Here, the Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact his work has had on the overall field to establish that it has been of major significance. *See Guida v. Miller*, No. 20-CV-01471-LB, 2021 WL 568850, at 9 (N.D. Cal. Feb. 16, 2021) (concluding that "the agency may reject supporting letters that lack 'specific evidence' about how the plaintiff's contribution was a major contribution").

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

B. Remaining Claimed Evidentiary Criteria

The Petitioner has not demonstrated eligibility for two of the above-noted evidentiary criteria. As the Petitioner cannot fulfill the initial evidentiary requirement of at least three criteria as required by 8 C.F.R. § 204.5(h)(3), we reserve the issue of whether he has satisfied the additional two criteria he claims on appeal, relating to leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii) and high remuneration for services at 8 C.F.R. § 204.5(h)(3)(ix). *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*, -- 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 also decline to reach and hereby reserve any final merits determination in this matter. *See Bagamasbad*, 429 U.S. at 24, 25 (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

The appeal will be dismissed and the petition remain denied.

**ORDER:** The appeal is dismissed.