U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42894240

Date: JULY 6, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

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

The Petitioner 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.

Through its Service Center Operations (SCOPS) USCIS denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner had received a major, internationally recognized award, nor did he demonstrate that he met at least three of the ten regulatory criteria. The matter is now before us on appeal under 8 C.F.R. § 103.3. The Petitioner bears the burden of proof to demonstrate by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The alien enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The alien's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. The term "extraordinary ability" refers only to those in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). *See also* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739 (stating: "In short, admission under this category is to be reserved for that small percentage of individuals who have risen to the very top of their field of endeavor.").

The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-step analysis. In the first step, a petitioner can demonstrate international recognition of his or her achievements in the field

through 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 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).

Where a petitioner meets these initial evidence requirements, we then move to the second step to 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, 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 Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

The Petitioner earned his foreign Bachelor of Engineering in Computer Science and Engineering degree in 2007 and has worked in the United States as an H-1B in senior and management engineering positions with [redacted]

A. 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 alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). Before SCOPS, the Petitioner claimed he met six of the regulatory criteria. SCOPS decided that the Petitioner satisfied the criterion relating to judging but that he had not satisfied the criteria associated with membership, original contributions, the authorship of scholarly articles, performing in a leading or critical role, or commanding a high salary or remuneration. On appeal, the Petitioner maintains that he meets each of those evidentiary criteria. After reviewing all the evidence in the record, we conclude he has not satisfied at least three criteria.

1. "Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." 8 C.F.R. § 204.5(h)(3)(ii).

This criterion contains several evidentiary elements the petitioner must satisfy. First, the Petitioner must demonstrate that they are a member of an association "in the field for which classification is sought." Next, the petitioner must demonstrate both of the following: (1) that the associations utilize nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements are outstanding, and (2) that the associations use this outstanding determination as a condition of eligibility for prospective membership. It is insufficient for the association itself to determine if the achievements were outstanding, unless nationally or internationally recognized experts in the Petitioner's field who represent the association render this determination. It is also insufficient for the Petitioner to indicate that they were admitted to the association because of their outstanding achievements; the Petitioner must show that the association requires outstanding achievements of all prospective members at the alien's level of membership. The

Petitioner must satisfy all of these elements to meet the plain language requirements of this criterion. *Tapia v. Jaddou*, No. 8:23-CV-813-CEH-AAS, 2025 WL 2780815, at *3–4 (M.D. Fla. Sept. 30, 2025).

The Petitioner argues that his fellowship level membership meets this criterion's requirements because that level is the organization's most selective, it is reserved for distinguished engineers, and membership admission decisions undergo a peer-review process by existing fellows. On that basis, the Petitioner alleges this fellowship is an association in the field that limits membership to those with outstanding achievements as judged by experts satisfying each of the required elements under 8 C.F.R. § 204.5(h)(3)(ii).

Even though the Petitioner presumes that those judging membership admittance have demonstrated achievement in their field, that doesn't speak to whether those judges are nationally or internationally recognized which is explicitly mandated in this criterion's plain language. Although the Petitioner notes that experts perform the peer review judging for new member admittance, he has not established that the judges have achieved the requisite level of recognition. Without evidence reflecting such national or international recognition of the panel members, this organization cannot assist the petitioner in demonstrating that he has satisfied the requirements of this criterion.

2. "Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." 8 C.F.R. § 204.5(h)(3)(viii).

The denial decision offers little analysis for its determination stating: "The totality of the record establishes that the petitioner has/had a leading, but not critical role at organizations or establishments of distinguished reputation." Here, the Petitioner has not met the requirements of this criterion.

For a leading role, USCIS evaluates whether the evidence establishes that the person is (or was) a leader within the organization or establishment or a division or department thereof. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual. A title, with appropriate matching duties, can help to establish that a role is (or was), in fact, leading. *Id.* And for a critical role, USCIS looks at whether the evidence establishes that the person has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities or those of a division or department of the organization or establishment. *Id.*

As it relates to the distinguished reputation requirement, the Petitioner only claimed that the two companies themselves enjoy a distinguished reputation rather than for a department or division. So, he must demonstrate that his role was either leading or critical for the entire company at either entity. But he instead argued that he served in leadership positions central to the core architecture, privacy infrastructure, media systems, and artificial intelligence foundation of both companies. Absent is an explanation—either from him or from those submitting letters on his behalf—of how the role was leading or critical to the company as a whole.

The letters discussed his role relating to systems and projects, but none detail how those systems or projects were critical to the company's success. Nor do they detail how his role on the systems or projects was considered as leading for the company as a whole. We therefore withdraw SCOPS statement that "the record establishes that the petitioner has/had a leading . . . role at organizations or establishments of distinguished reputation."

So even though SCOPS did not grant this criterion, we do not agree with the wording they included in the denial, and we conclude the Petitioner has not satisfied this criterion for alternative reasons.

3. "Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." 8 C.F.R. § 204.5(h)(3)(ix).

The plain language of 8 C.F.R. § 204.5(h)(3)(ix) requires evidence that the Petitioner has received a "high salary or other significantly high remuneration for services, in relation to others in the field," supported by objective earnings data showing that the Beneficiary's pay exceeds that of individuals performing similar work during the same period.

Courts and precedent confirm that the comparison must be to others in the same specific field and role, not to broader or mismatched occupational groups. *See Matter of Price*, 20 I&N Dec. 953, 955 (Assoc. Comm'r 1994); *Skokos v. DHS*, 420 F. App'x 712, 713–14 (9th Cir. 2011); *Tapia v. Jaddou*, No. 8:23-CV-813-CEH-AAS, 2025 WL 2780815, at *6 (M.D. Fla Sept. 30, 2025); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996); *Muni v. INS*, 891 F. Supp. 440, 444–45 (N.D. Ill. 1995).

USCIS policy similarly cautions that broad occupational groupings may not provide an accurate comparison, and courts have upheld USCIS in rejecting salary data drawn from related but distinct occupations or single-role positions to assess a multi-role position, and in requiring geographically appropriate comparators. *See generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(1). Average or median salary information for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison. *Kapoor v. USCIS*, 763 F. Supp. 3d 247, 258 (E.D.N.Y. 2025); *Kinuthia v. Biden*, 702 F. Supp. 3d 5, 9 (D. Mass. 2023); *Mussarova v. Garland*, 562 F. Supp. 3d 837, 853 (C.D. Cal. 2022). Comparisons also must be in the same geographic area to be relevant. *See generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(1); *Berardo v. USCIS*, No. 3:19-CV-01796-SB, 2020 WL 6161459, at *6 (D. Or. Oct. 20, 2020).

Before SCOPS, the Petitioner claimed his total compensation package from two different companies, but on appeal he only claims one of those entities. A petitioner's claims before SCOPS that they do not advance on appeal are deemed waived. *Matter of C-L-R-*, 29 I&N Dec. 726, 728 (BIA 2026) (citing *Matter of V-A-K-*, 28 I&N Dec. 630, 630 n.2 (BIA 2022)). The Petitioner provided his base salary for his current employer that for 2025 was $280,000 and he included a projected bonus, a one-time signing bonus, and restricted stock units amounting to a much larger figure. SCOPS determined that the Petitioner did not meet the requirements of this criterion.

Initially, the Petitioner provided evidence comparing his salary to the Software Developers Standard Occupational Classificational (SOC) code, but in the request for evidence (RFE) response adjusted his claims to a more appropriate SOC code for Computer and Information Systems Managers. The Petitioner's base salary is approximately $5,500 above the Level IV wage rate listed for this SOC code, location, and timeframe. The U.S. Bureau of Labor Statistics' Occupational Employment and Wage Statistics survey assigns the wage levels within four categories:

- Level 1 is the average of the lowest paid one-third in an occupation, or approximately the 17th percentile;

- Level 2 is approximately the 34th percentile;
- Level 3 is approximately the 50th percentile, or the overall average wage for an occupational classification; and
- Level 4 is the average of the highest-paid two-thirds, or approximately the 67th percentile.

So, the Petitioner's compensation rests slightly above the Level IV wage rate around the 70th percentile, not above the 90th percentile as he alleges. We note the Petitioner's 90th percentile figure originated from O*NET under the incorrect SOC code for Software Developers and that is not a relevant comparison.

First, the Petitioner relies on his total compensation package and claims that is high compared with the base salary of others performing similar work. But in doing so, he conflates the regulatory elements and only in a way that favors him. The regulation differentiates between a standard salary and other forms of remuneration, but the Petitioner did not stick to a salient comparison here. Comparing an alien's total compensation, which includes various bonuses and stock options, against even the upper percentiles of other's base salary is comparing apples-to-oranges. It artificially conflates guaranteed earnings with highly variable conditions that skew much higher and this creates an illogical, inflated, and fundamentally invalid benchmark of earnings. To make a legally sound comparison, one must measure like with like. *Xia v. Miller*, No. 3:20-CV-01468-JR, 2021 WL 5817324, at *6 (D. Or. Nov. 18, 2021), *report and recommendation adopted*, No. 3:20-CV-01468-JR, 2021 WL 5825999 (D. Or. Dec. 6, 2021) (finding a petitioner must show that salary reports reflect an apples-to-apples, rather than an apples-to-oranges).

So, instead of the invalid comparison the Petitioner presents, we will compare his base salary with the evidence he provided for others performing similar work during the same timeframe. On appeal, the Petitioner discusses the evidence he provided from levels.fyi showing his total compensation package was above the 90th percentile. The evidence holds diminished evidentiary value as portions of the website's content is illegible as if it was "whited out," and we are unable to determine the relevance that missing content. Additionally, the figure the Petitioner relies on for himself was as a new hire and that not only included his base salary, but also a signing bonus, an annual bonus, and restricted stock units. While the levels.fyi evidence included "a base [salary], stock and bonus," the Petitioner did not provide evidence to demonstrate what constituted the bonus for levels.fyi. and whether it also included a signing bonus factored into its 90th percentile figure. As a result, this does not appear to be an apples-to-apples comparison. *See Xia v. Miller*, No. 3:20-CV-01468-JR, 2021 WL 5817324, at *6.

In summary, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

4. "Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." 8 C.F.R. § 204.5(h)(3)(vi).

This criterion contains multiple evidentiary elements the Petitioner must satisfy through the submission of evidence. The first element is that the Petitioner is an author of scholarly articles in his field in which he intends to engage once admitted to the United States as a lawful permanent resident. We consider these articles to fall within two distinct areas.

One area is within the academic arena in which a scholarly article reports on original research, experimentation, or philosophical discourse. It is written by a researcher or expert in the field who is often affiliated with a college, university, or research institution. 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. The next area lies outside of the academic arena in which a scholarly article should be written for learned persons in that field. "Learned" is defined as "having or demonstrating profound knowledge or scholarship." Learned persons include all persons having profound knowledge of a field. *See generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(1).

The second evidentiary element this criterion requires is that the scholarly articles appear in one of the following: (1) a professional publication, (2) a major trade publication, or (3) in a form of major media. Relevant factors a petitioner should demonstrate include the intended audience (for professional and major trade publications) and the relative circulation, readership, or viewership are high relative to similar publications (for major trade publications and other major media). *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). The Petitioner must submit evidence satisfying each of these elements to meet the plain language requirements of this criterion.

The Petitioner claimed he served as the lead author on two articles that appeared on a blog posted on his previous employer's website. When he filed the petition, the Petitioner noted that his previous employer's confidentiality policy did not permit the authors of the content on the blog to display their name with the posting and that letters from former coworkers detailed that he contributed to the blogposts. SCOPS' RFE informed him that such letters were insufficient to meet his burden of proof under this criterion, but he did not provide probative evidence in his RFE response to demonstrate eligibility here. SCOPS determined that the Petitioner did not meet the requirements of this criterion because the blogposts were not scholarly in nature and the evidence was insufficient to establish that he penned the blogs as they do not list his name as an author.

Now on appeal, the Petitioner claims that SCOPS did not meaningfully engage with his explanations or properly assess them. But they did evaluate his claims and evidence in the RFE response and found them wanting. Simply because SCOPS did not treat his claims and evidence in the manner he wished does not mean they ignored them and committed an error. The final determination of whether evidence satisfies the requirements of a regulation or meets the burden of proof lies with USCIS. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988) (finding that the appropriate entity to determine eligibility is USCIS); *see also Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (2012). SCOPS is not required to interpret evidence in the manner a petitioner advocates. *Matter of Landers*, 29 I&N Dec. 240, 245 (BIA 2025); *Matter of G-C-I-*, 29 I&N Dec. 176, 179–80 (BIA 2025); *Matter of M-D-C-V-*, 28 I&N Dec. 18, 32 (BIA 2020); *Matter of J-C-H-F-*, 27 I&N Dec. 211, 217 (BIA 2018); *Matter of Z-Z-O-*, 26 I&N Dec. 586, 592 (BIA 2015); *Matter of D-R-*, 25 I&N Dec. 445, 454–55 (BIA 2011) (explaining that triers of fact may make reasonable inferences from direct and circumstantial evidence in the record as a whole and are not required to accept a respondent's account where other plausible views of the evidence are supported by the record).

Here, the Petitioner was unable to produce probative evidence that preponderantly satisfied this criterion's requirements. We do not need to look beyond the fact that the record does not establish that he authored the blogposts. It is therefore unnecessary that we delve into what type of publication

the material appeared in, or whether they were scholarly in nature and intended for learned persons in the field. *Matter of Vizcaino Aybar*, 29 I&N Dec. 736, 738 (BIA 2026) (finding it unnecessary to decide on other eligibility requirements when one issue is dispositive of the appeal). We also note that not all material found on internet sites, such as a blog, "may be equivalent to material with stringent vetting and high standards for publication." *Strategati, LLC v. Sessions*, No. 3:18-CV-01200-H-AGS, 2019 WL 2330181, at *6 (S.D. Cal. May 31, 2019).

In the end, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

B. We Reserve the Petitioner's Remaining Claims

We conclude that although the Petitioner claims he meets at least three criteria, because he has only satisfied one criterion and his arguments fail on the remaining criteria discussed above, that means he cannot numerically meet the required number of at least three criteria and it is unnecessary for us to make a decision on any of his additional claims. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve his additional claims or issues. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also Matter of Vizcaino Aybar*, 29 I&N Dec. at 738 (finding it unnecessary to decide on other grounds when one is dispositive of the appeal).

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. 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 we need not further analyze the merits under the statute. *See Kazarian*, 596 F.3d at 1119–20; *see also Nagaiah v. Allen*, 784 F. Supp. 3d 798, 814 (E.D. Pa. 2025) (finding the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x) "establishes a necessary, not sufficient, evidentiary requirement for a petitioner who seeks an extraordinary ability visa.").

The two-step adjudication process is an interpretive rule that does not violate the Administrative Procedure Act, nor is it a legislative rule. *Taneja v. USCIS*, No. 24-CV-05657 (RER), 2026 WL 1734266, at *8 (E.D.N.Y. June 16, 2026); *Nagaiah*, 784 F. Supp. 3d at 810; *Agrawal v. Miller*, No. 4:24CV3143, 2025 WL 2879217, at *12 (D. Neb. Sept. 12, 2025); *Etsy, Inc. v. Jaddou*, No. 4:22CV3022, 2023 WL 3689555, at *23 (D. Neb. May 25, 2023) (citing *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 96 (2015). This approach is rooted in an exhaustive historical review of the congressional record, the governing statutory language, and the comprehensive regulatory scheme intended to ensure only those at the very top of their field receive this classification. To date, no other federal court has offered an alternative framework that is similarly grounded in such a thorough analysis of the legislative and agency history. *See generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(2). *Contra Mukherji v. Miller*, No. 4:24CV3170, 2026 WL 895708, at *6 (D. Neb. Jan. 28, 2026) (concluding the two-step framework was adopted without required notice-and-comment

rulemaking). But that appears to misconstrue a conference report—which serves solely to explain how the House and Senate resolved differences between their two versions of the bill—as being more authoritative on this issue than a Judiciary Committee Report, the purpose of which includes guiding the executive branch in implementing the law and assisting the judicial branch in its interpretation. That view has been rejected by numerous federal courts before and since the *Mukherji* court made it. Therefore, we decline to reach and hereby reserve any final merits determination in this matter. *Patel*, 596 U.S. at 332.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an alien of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

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 visas or other immigration benefits.