U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38288020

Date: JUL. 14, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a mobile technology consultant, 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 record did not establish that the Petitioner merited approval of her EB-1 visa. 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 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 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 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

SCOPS concluded that the Petitioner met four of the ten criteria outlined at 8 C.F.R. § 204.5(h)(3)(i) – (x) but that she did not establish the sustained national or international acclaim and recognition required for this classification. Specifically, SCOPS stated that the Petitioner met the regulatory requirements at 8 C.F.R. §§ 204.5(h)(3)(iii), (iv), (viii) and (ix). After a thorough review of the evidence, we disagree with SCOPS determination and withdraw SCOPS's decision as it relates to 8 C.F.R. §§ 204.5(h)(3)(iii), (viii), and (ix) with the following analysis.

> *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).

In order to fulfill this criterion, the Petitioner must demonstrate published material about her in professional or major trade publications or other major media, as well as the title, date, and author of the material. To fulfill this criteria the Petitioner provided an article published on the Vanguard website in [redacted] 2021 and an article published on the Guardian website in 2023. Both articles contain a date, title and author as well as information related to the Petitioner's opinion on certain topics in the Nigerian IT industry. However, the Petitioner has not established that Vanguard and the Guardian are either trade publications or major media as envisioned by the regulation.

The Petitioner submitted a *SimilarWeb* printout showing statistics for the website Vanguardngr.com including that it received 17.5 million total visits. The printout indicates that no data is available for "Monthly Unique Visitors," and thus the figure provided does not distinguish between repeat and unique visitors. Therefore, the total number of monthly visits is not necessarily a reliable indicator of the number of people visiting the site, and thus of the site's online circulation. The *SimilarWeb* printout gives Vanguard a "Global rank" of #4,426; "Country rank" of #22 in Nigeria; and "Industry rank" of

#590 among "News and Media Publishers." The burden is on the Petitioner to establish that these figures establish that Vanguard qualifies as major media. The *SimilarWeb* printout does not provide a comparison between Vanguard and other media sites in Nigeria, or industry sites worldwide. The Petitioner did not provide any data related to the circulation of The Guardian or any evidence related to its classification as "major media." Therefore, the Petitioner has not met her burden to establish eligibility under this criterion.

> *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 Petitioner provided evidence that she was promoted to Corporate Operations Officer (COO) in 2023. Therefore, she has established that she performed in a leading role for her organization, [redacted]. However, the record does not contain sufficient evidence to establish that i-cell has a distinguished reputation.

In determining whether the organization or establishment, or a department or division thereof, has a distinguished reputation, relevant factors include its size, longevity, scale of its customer base, and relevant media coverage. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual. As evidence to support this criterion the Petitioner provided news articles regarding i-cell's license to be an aggregator, news articles related to the launch of a chat app and prime video launch and correspondence between [redacted] and four clients. The evidence provided did not include information on the size of the organization, how long it has been in operation, the number of customers and consumers it reaches, its market share or its revenue. While the news articles present information related to some of [redacted] projects, they alone are insufficient to establish that [redacted] has a distinguished reputation. As a result, this criterion has not been met.

> *Evidence that the individual 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 regulation at 8 C.F.R. § 204.5(h)(3)(ix) calls for "evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." A credible employment contract or job offer may establish that an alien "has commanded" such salary or remuneration, as may evidence of past earnings such as tax returns and pay statements. Comparative wage or remuneration data that is appropriate for the alien's occupation and location should be submitted to establish that their compensation is high relative to others working in the field. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual.

The Petitioner must submit documentation of the earnings of those in their occupation performing similar work. While we acknowledge that a district court's decision is not binding precedent, we note that in *Racine v. INS*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated, "[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with . . . the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898–99."

The Petitioner must present evidence of objective earnings data showing that they have commanded a "high salary" or "significantly high remuneration" in comparison with those performing similar work during the same time period. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers); see also *Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713–14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444–45 (N.D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

In the present case, the Petitioner provided evidence that she was paid 25 million Nigerian Niara per year with an annual bonus of 5 million Niara in her position as COO. We first note that the Petitioner is not seeking to become a COO in the United States. Her stated proposed endeavor is to become an Information Technology Consultant, a line of work for which she has no prior salary. For comparative salary information the Petitioner provided a printout from Glassdoor dated October 2024 that included 29 submitted salaries for all COOs in Nigeria. Similarly, wage information from payscale.com and worldsalaries.com do not contain a description of the COO occupation or limit the results to the Petitioner's specific industry. Broad descriptions that include multiple occupations or multiple industries may not provide an accurate comparison to others in the field of IT consulting. *See generally*, 6 *USCIS policy manual*, supra at f.2(B)(1). Therefore, the information provided by the Petitioner does not provide estimates for similarly situated individuals in her field. As a result, the Petitioner has not established that she receives remuneration or compensation for services that are higher than those in her field.

Final Merits Determination

On appeal, the Petitioner argues that SCOPs imposed a novel evidentiary requirement in the final merits determination. The Petitioner also argues that the two-part test in *Kazarian* is improper and that SCOPS was required to set forth specific and substantiated reasons for finding that she did not meet the extraordinary ability standard in line with *Buletini v. INS*, 860 F. sup. 1222, 1231 (E.D. Mich. 1994).

The Petitioner does not explain how *Buletini*, a district court case published within the Sixth Circuit in 1994, may supersede *Kazarian*, a circuit court case published in 2010 within the Ninth Circuit. *See, e.g., Matter of K-S-*, 20 I&N Dec. 715, 718-20 (BIA 1993) (contrasting the precedential value of circuit court cases for matters arising therein from the non-precedential value of district court cases, especially district court cases within other circuits). Moreover, the *Buletini* decision does not clearly conflict with the *Kazarian* court's characterization of the adjudication process as including a final merits determination. The *Buletini* opinion indicates that the court considered the possibility that a petitioner can submit evidence satisfying three criteria and still not meet the extraordinary ability standard if USCIS provides specific and substantiated reasoning for its conclusion. *See Buletini*, 860 F. Supp. at 1234. The court in *Buletini* did not reject at any time the concept of examining the quality of the evidence presented to determine whether it establishes a petitioner's eligibility for this highly restrictive classification.

Contrary to the Petitioner's assertions on appeal, the burden of proof in visa proceedings does not shift to the government. Section 291 of the Act. 8 U.S.C. § 1361. The Petitioner mischaracterizes the extent to which *Kazarian* not only acknowledges but also articulates the requisite two steps of analysis for a request for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act. The Ninth Circuit began by noting that a petitioner may satisfy initial evidentiary criteria by establishing receipt of a one-time achievement of a major, internationally recognized award, or through at least three of the criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(x). The Ninth Circuit continued, stating:

> If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the [individual] has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only [individuals] whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Kazarian, 596 F.3d at 1119-20.

In addition to acknowledging that the analysis for a request for classification as an individual of extraordinary ability entails a two-step process, specifically citing section 203(b)(1)(A) of the Act and 8 C.F.R. §§ 204.5(h)(2)-(3) as the basis for such a process, the Ninth Circuit itself declined to conduct the second step of the analysis because the individual in that case did not satisfy the first step. Specifically, the Ninth Circuit determined that the record in that case satisfied only two of the criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(x), and it concluded the following:

> Whether an applicant for an extraordinary visa [sic] presents two types of evidence or none, the proper procedure is to count the types of evidence provided (which the AAO did), and the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded).

Kazarian, 596 F.3d at 1122 (citing 8 C.F.R. § 204.5(h)(3)).

The *Kazarian* court then declined to conduct the second part of the analysis for that case by omitting a discussion of 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, because that petitioner did not satisfy the initial evidentiary requirements. *Id.*

Here, SCOPS found that the record satisfies the plain language of the criteria at 8 C.F.R. §§ 204.5(h)(3)(iii), (iv), (viii), and (ix). We have withdrawn the Director's finding in three of those categories, however, the primary issue on appeal is whether the Director erred by concluding that the totality of the evidence does not show both sustained national or international acclaim and that the Petitioner is among the small percentage at the very top of the field of endeavor. On appeal, the

Petitioner does not clarify how the Director erred in concluding the record does not satisfy both of those requirements.

Black's Law Dictionary defines "sustain" as "to support or maintain, especially over a long period of time" or "to persist in making (an effort) over a long period of time." *Sustain*, Black's Law Dictionary (11th ed. 2019). In general, the record contains limited information pertinent to any particular criterion, which does not demonstrate that the Petitioner has supported or maintained any level of acclaim she may have earned in any particular capacity, especially over a long period of time. For example, the copies of published material about the Petitioner, as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(iii), are limited to four paragraphs in a 2021 article and a brief summation of a 2023 interview, shortly before the Petitioner filed the Form I-140, Immigrant Petition for Alien Worker; thus, they are not supported or maintained especially over a long period of time. *See id.*

We evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim,[1] she is one of the small percentage at the very top of the field of endeavor, and her achievements have been recognized in the field through extensive documentation. In this matter, we determine the Petitioner has not shown her eligibility.

According to the Petitioner's initial cover letter:

> Since March 2023, I have held a managerial and C-level executive role as the Chief Operating Officer (COO) at [redacted].. In this leading and critical role, I developed a digital service product to a customer base of about 40 million users with over 90% penetration rate for Operator X. In addition to this, I have been developing new products based on emerging product lines and technology trends. Essentially, I provide leadership in the development of new end user products and interests.

The Petitioner further highlights her career by stating:

> Based on my industry reputation and contributions to the field, I was entrusted with key areas of the projects, on which its success largely depended. Few of my accomplishments on the project include the resolution of the long-term card payment situation in Nigeria by substituting with Airtime payment. I also designed an easy flow for end users to subscribe easily and use. I designed a seamless GO-TO-MARKET plan for the launch. I also secured all approvals necessary for launch from all regulators involved in Nigeria.

The Petitioner's leading or critical role for an organization or establishment that has a distinguished reputation, as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(viii), appears to be limited to 2023 when she assumed the role of COO at [redacted] The record does not establish how the Petitioner may have sustained any acclaim acquired by taking this role or even that the

[1] *See generally* 6 *USCIS Policy Manual* F.2(A)(1), https://www.uscis.gov/policy-manual (according to *Black's Law Dictionary* (11th ed. 2019), the definition of sustain is "to support or maintain, especially over a long period of time . . . To persist in making (an effort) over a long period of time").

company itself has generated sufficient revenue or acquired sufficient contracts to be considered a top organization in their field in Nigeria, let alone on a global scale. While we recognize the submission of letters of support from past clients, notably absent from the record is any indication that the organization for which the Petitioner works has been successful. The record contains no industry reports related to her organization, no corporate financial statements or annual reports highlighting any growth or sustained success in the industry based on the Petitioner's contributions. *See id.* The few news articles related to [redacted] business dealings and the letters of support from various individuals who have contracted with [redacted] contain no substantive discussion of the Petitioner's contributions to the successful completion of the contracts or endeavors for which i-Cell was hired.

The record establishes that the Petitioner served as an abstract reviewer for the [redacted] in 2019 put on by [redacted] and as a "judge" for the [redacted] research project sponsored by [redacted] as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(vi). The Petitioner provided limited evidence related to the organizations for which she acted as a judge, their role in her industry, or what acclaim she gained from the event other than the thanks of the sponsoring organization. The record does not establish how reviewing the work of two research projects and the abstracts of "promising talents" demonstrates that the Petitioner is among the small percentage at the very top of the field of endeavor, or how she may have sustained whatever acclaim she may have garnered by agreeing to assist those organizations. The Petitioner did not show, for example, how her judging experience compares to others at the very top of the field. In addition, the Petitioner did not establish that she garnered wide attention from the field based on her evaluation work. Moreover, appearing as a judge on two occasions does not automatically demonstrate that an individual has extraordinary ability and sustained national or international acclaim at the very top of her field. Without evidence that sets the Petitioner apart from others in her field, such as evidence that she has a consistent history of reviewing or judging recognized, acclaimed experts in her field, the Petitioner has not shown that her narrow judging experience places her among that small percentage who has risen to the very top of the field of endeavor. *See Hamal v. United States Dep't of Homeland Sec.*, No. 21-5160, 2023 WL 1156801, at *2 (finding the petitioner did not show that he served as a judge of renowned directors as opposed to aspiring artists or the competitions were considered prestigious or attracted significant attention by the field).

The Petitioner argues that she commands a salary that is in the top 10% of COOs in Nigeria. However, the Petitioner does not directly compare her salary with others directly in her field. COO is a broad category of employment that could range from leading a company of 10 to leading a company of many thousands. The Petitioner's comparative data lacks any analysis of pay data of individuals in her specific industry or for technology organizations of similar size. She did not demonstrate that she received notoriety or attention based on her profits or salary separating herself from others in the field or placing her in the upper echelon. *See Bodhankar v. United States Citizenship & Immigr. Servs.*, No. 119CV706MADCFH, 2020 WL 777211, at *5 (finding that the plaintiff's high salary was not so high as to indicate that he has risen to the very top of the field).

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought.[2] Here, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. at 954 (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2002) (stating that extraordinary ability is such an elite level of accomplishment); *Onaghise v. Dep't of Homeland Sec.*, No. 3:20-CV-03033-X, 2022 WL 4073344, at *2 (N.D. Tex. Sept. 2, 2022) (holding that extraordinary ability visas are known as "Einstein" visas, are extremely "coveted," and are "reserved for only the most talented" aliens"). In this case, the Petitioner has not shown the significance of her work is indicative of the required sustained national or international acclaim or it is consistent with a career of acclaimed work in the field. Section 203(b)(1)(A) of the Act. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, the record is insufficient to demonstrate that she is among the small percentage at the top of her field. *See* 8 C.F.R. § 204.5(h)(2). USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard.[3] The Petitioner's evidence confirms that she has received attention from those in her field. However, considering the full measure of the Petitioner's ability and achievements, the level of her national or international acclaim and the extent to which her achievements have been recognized in the field are not indicative of a record of sustained acclaim. Also, she has not submitted extensive documentation exhibiting she has attained a level of expertise or remuneration placing her among that small percentage that has risen to the very top of the field of endeavor.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden here.

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.

[2] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (providing that some evidence weighs more favorably on its own, while other evidence is more persuasive when viewed with other evidence).
[3] *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994).