U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39094146

Date: JUL. 17, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a shoe designer, 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 the Petitioner did not establish she met the initial evidence requirements for this classification through evidence of either a one-time achievement or because she meets three of the alternative evidentiary criteria under 8 C.F.R. § 204.5(h)(3). 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 an immigrant 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 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

The Petitioner intends to continue her work as a shoe designer in the United States. In so doing, the Petitioner would create original shoe designs, select the materials to be used in their creation, and select which shoes would be showcased in promotional collaborations. The Petitioner characterizes herself as "one of the very top Hispanic [s]hoe designers."

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). SCOPS determined that the Petitioner met the criteria at 8 C.F.R. §§ 204.5(h)(3)(iii) and (viii), which respectively, relate to published material about the Petitioner and her performance in a leading or critical role for distinguished organizations or establishments. On appeal, the Petitioner claims her work was also displayed in the field at artistic exhibitions or showcases and accordingly met the criterion at 8 C.F.R. § 204.5(h)(3)(vii). Upon de novo review, we conclude the Petitioner has also met the criterion at 8 C.F.R.§ 204.5(h)(3)(vii).[1]

SCOPS determined the Petitioner had not established the display of her designed shoes at a show in [redacted] met this criterion, as a "shoe is primarily designed to be worn by the consumer." On appeal, the Petitioner asserts SCOPS erred in this determination as "fashion is a form of art." The Petitioner contends the display of her shoe at multiple [redacted] shows goes beyond a retail opportunity, as "fashion shows are an artistic exhibition in the field," and [redacted], in particular, "serves as a platform where the most groundbreaking and

[1] The Petitioner also asserts she meets the criterion at 8 C.F.R. § 204.5(h)(3)(x), commercial success in the performing arts, through comparable evidence. However, as she has satisfied three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), we need not consider this additional criterion on appeal.

innovative works of fashion are showcased to the public, offering an artistic lens through which society can appreciate creativity." In support of her assertions, the Petitioner submitted articles explaining the purpose and significance of [redacted] as creative showcases in the fashion world.

Upon consideration of the record, we find the Petitioner has met her burden of demonstrating that the inclusion of her designed shoes in [redacted] shows constitutes a display of her work product at a public showing, which is artistic in nature as required to meet the criterion at 8 C.F.R. § 204.5(h)(3)(vii). As such, we withdraw SCOPS finding and conclude the Petitioner does meet this criterion.

The Petitioner has met the criterion at 8 C.F.R. § 204.5(h)(3)(vii). As she has met at least three of the ten initial evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) as required, we will proceed to a final merits determination.

B. Final Merits Determination

As indicated above, we evaluate whether, by a preponderance of the evidence, the Petitioner has demonstrated her sustained national or international acclaim and that she is one of the small percentage at the very top of the field of endeavor. In a final merits determination, we analyze an individual's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)()(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. In this matter, we determine the Petitioner has not shown her eligibility.

The Petitioner is currently the designer for her own namesake shoe brand [redacted] and the company behind it, [redacted] LLC. The Petitioner also operates as the founder and creative director for [redacted] LLC. The president of [redacted] LLC submitted a letter claiming that [redacted] is "one of the leading designer shoe companies, especially within the Latin market," and that the Petitioner's designs "have been internationally recognized by top editors." The record contains a 2009 [redacted] award certificate granting "the amount of $1,000" to the Petitioner. The record reflects that the Petitioner's designed shoes were included in [redacted] shows including fall/winter 2015, spring/summer 2015, fall/winter 2016, and spring/summer 2016. Previously and contemporaneously to these shows, the Petitioner, her work as a shoe designer, and the inclusion of her designs in [redacted] shows, were featured in digital or print platforms such as [redacted] and [redacted].

The Petitioner asserted before SCOPS that she "is at the top of her game and clearly has sustained acclaim working at the very top of the [f]ashion industry," due to her continued critical role for a distinguished organization and major media coverage of "her moves in the business" and "her designs." In support of this claim, the Petitioner submits a [redacted] article about her from 2018, a [redacted] article from 2019, a [redacted] article from 2019, and a [redacted] article from 2020. The Petitioner also submits evidence that her designed shoe was recently featured in a list of fashion picks for [redacted] and [redacted] from 2024. However, though we acknowledge the Petitioner's work has recently been selected for fashion lists in these publications, which indicates some measure of acclaim, the Petitioner has not demonstrated this acclaim rises to the level of sustained national or international. We note that several submitted articles written about the Petitioner

featured a full-length article about the Petitioner and her designs, but they were from six years ago or longer and the more recent 2024 publications merely list the Petitioner's designed shoe as one item amongst others. In addition, while the record contains an expert opinion letter claiming that the inclusion of any accessory, such as a shoe, in [redacted] is uncommon and shows the Petitioner "is among the very top artists in her field," the record does not indicate her designs were included in any [redacted] shows beyond 2016. Similarly, the record contains a letter from designer [redacted] asserting that the Petitioner "is one of the top Footwear Designers from [redacted]," and "a top Hispanic Footwear Designer" whose designs were utilized in the aforementioned [redacted] shows and also '[redacted]' for his collections. However, it appears he last included the Petitioner's work in '[redacted]' in 2019. And though we acknowledge his and the Petitioner's assertion that she is a top Hispanic designer, we consider not whether the Petitioner tops her field within a smaller subset of Hispanic shoe designers, but rather whether she "is one of the small percentage who has risen to the very top of the field of endeavor" as a shoe designer. *See generally 6 USCIS Policy Manual*, supra, at F.2(B)(2).

As noted above, the Petitioner provided evidence related to whether she performed a leading or critical role for a distinguished organization under 8 C.F.R. § 204.5(h)(3)(viii). We acknowledge that the Petitioner operates as the founder and creative director of [redacted] LLC and received a thousand-dollar award in 2009 for her work. However, fulfilling these roles for this organization and receiving a related award over fifteen years ago falls short of the high standard applicable when considering whether the Petitioner is among those at the top of her field of endeavor.

The Petitioner asserted before SCOPS that her company and "artistic work are continuing to expand into major retailers due to their demand and intense popularity." The record contains evidence that the Petitioner's shoes are being sold through a number of stores including [redacted] and [redacted]. The Petitioner contends this evidence establishes a "demand by top companies for her shoes [which] clearly demonstrates she is one of the very top artists in her field as well as her sustained international acclaim." We acknowledge the Petitioner's shoe designs are being sold with these retailers and the submitted underlying contracts evidence orders placed by these stores for her products. The record also contains a contract for the Petitioner with [redacted] LLC detailing her "[m]inimum base fee of $25,000.00 per collection." However, without further evidence providing relative context for these figures and corroborating the claimed demand and popularity relative to other shoe designers to demonstrate the Petitioner is set apart from others in her field, the Petitioner has not shown that her work as a shoe designer places her among the small percentage who have risen to the very top of her field of endeavor. *See generally 6 USCIS Policy Manual*, supra, at F.2(B)(2) (providing examples of evidence that may help evaluate the quality of the evidence in a totality analysis for a final merits determination).

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. 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. 953, 954 (Assoc. Comm'r 1994) (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 at 394 (stating that extraordinary ability is an elite level of accomplishment); *Lapteva v. Schuurmans*, No. 8:24CV83, 2025 WL 815087, at *1 (D. Neb. Mar. 10, 2025) (stating that the EB-1 visa is intended to be available to only an

exceedingly small amount of individuals with extraordinary ability). In this case, for the reasons discussed above, the Petitioner has not shown sustained national or international acclaim for her work or that she is among the small percentage at the very top of the field of endeavor.

III. CONCLUSION

The Petitioner has not demonstrated her eligibility as an individual 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 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.