U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43354142

Date: JULY 17, 2026

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

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

The Petitioner is a ceramic fabricator who 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 she demonstrate that she 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 eligibility 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 describes herself as "a distinguished contemporary artist, researcher, and educator whose innovative practice blends cultural heritage with modern fabrication technologies, redefining the conceptual and technical possibilities of ceramic art."

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 decided that the Petitioner satisfied two of the criteria relating to judging and display of the Petitioner's work, but that she had not satisfied the criteria associated with prizes or awards, membership, published material, original contributions, the authorship of scholarly articles, or performing in a leading or critical role. On appeal, the Petitioner maintains that she meets each of the evidentiary criteria in which SCOPS issued an adverse determination. After reviewing all the evidence in the record, we conclude she has not demonstrated she is eligible for this immigrant classification.

1. "Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." 8 C.F.R. § 204.5(h)(3)(i).

This criterion contains several evidentiary elements, all of which must be met to satisfy the regulation. According to the plain language of the regulation the evidence must establish: (1) the alien is the recipient of the prizes or the awards; (2) those accolades are nationally or internationally recognized; and (3) each prize or award is one for excellence in the field of endeavor.

The Petitioner claimed two awards before SCOPS, the Honor Award, [redacted] and the [redacted] Graduate Scholarship. SCOPS determined that the Petitioner did not meet the requirements of this criterion. For the Honor Award, SCOPS concluded she documented receipt of the award but provided inadequate evidence to demonstrate it was nationally or internationally recognized or that it was issued recognizing excellence in the field. For the [redacted] Graduate Scholarship, SCOPS made a similar conclusion and also noted the record lacked evidence that she received the award. On appeal, even though she mentions the second award, the Petitioner

only contests SCOPS' decision on the Honor Award, [redacted] She has therefore abandoned her claims relating to the second award. *Matter of Garcia*, 28 I&N Dec. 693, 693 n.1 (BIA 2023) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) and finding issues that are not meaningfully challenged in the appeal are waived).

On appeal, the Petitioner states that SCOPS "does not identify a basis in the regulatory text for requiring separate proof that a juried competition award is itself nationally recognized, beyond the competition's own documentation of its national scope and selection criteria." First, a national pool of candidates is not determinative on this issue as the regulation requires that the award be nationally or internationally recognized and selection from a national pool of candidates does not necessarily impart national significance to an award. And SCOPS does not need to identify the basis to require "proof that a juried competition award is itself nationally recognized" because the justification lies within the regulation's plain language for "nationally or internationally recognized prizes or awards."

Also, even if the Petitioner were to establish that the competition itself was nationally recognized, that form of acknowledgement does not automatically impute such recognition to every prize or award issued during the event. *See Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 183 (D.N.J. 2021) (finding the focus is on the award, not the awarding organization and that evidence about a festival itself does not describe the criteria for the award or speak to the award's recognition); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 136 (D.D.C. 2013). A prize or an award does not categorically garner national or international recognition from the competition in which it is awarded, nor is it automatically derived from the individual or group that issued the award. Rather, national and international recognition results through the awareness of the accolade in the eyes of the field nationally or internationally. USCIS policy speaks to this issue stating:

> Examples of qualifying awards may include, but are not limited to:
>
> - Certain awards from well-known national institutions or well-known professional associations.

See generally 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual. We highlight two important qualifiers within that bullet point: (1) certain awards; and (2) well-known.

In the context in which a petitioner relies on the reputation of the issuing entity or the event, the term "certain awards" in the Policy Manual is best construed as referring to the top prizes or honors from a nationally or internationally recognized competition or institution. In some cases, receiving such a high accolade may be enough to meet the requirements of this criterion. However, a petitioner must provide probative evidence showing that the competition or institution is well known in the field, as well as material showing the significance of their achievement emanating from that event. This should be demonstrated through specific means; for example but not limited to, national- or international-level media coverage.

Additionally, unsupported conclusory letters from those in the Petitioner's field are not sufficient evidence that a particular prize or award—or a competition or institution—is nationally or internationally recognized. *Krasniqi*, 558 F. Supp. 3d at 184 (upholding a letter describing the award criteria was insufficient to show that the award had national or international recognition). Probative

evidence that a prize, award, competition, or institution is nationally or internationally recognized is generally material from sources besides the issuing entity. *Id.* at 183. Because the record lacks such material, we conclude that the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

2. "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 she is a member of an association in her field. Second, the Petitioner must demonstrate both of the following: (1) the associations utilize nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements are outstanding, and (2) the associations use this outstanding determination as a condition of eligibility for prospective 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).

SCOPS noted that the document titled Editorial Board Membership at the [redacted] appeared to be an unsourced document and they granted it little evidentiary value. But in the interest of offering a full analysis, they also indicated that even if that were not the case, the document still would be insufficient to establish that membership in that organization required outstanding achievements of his members as judged by recognized national or international experts in their disciplines or fields. SCOPS listed the qualifications to become an editorial board member consisting of four years of research or professional experience in the relevant field, having five publications on the same topic as the applied journal, that priority is given to applicants who hold the rank of associate professor or higher position in their field, and that having relevant working experience in editorial roles or similar positions will be prioritized. SCOPS determined these criteria fell short of requiring outstanding achievements as a condition of membership.

On appeal, the Petitioner contests the decision stating that SCOPS cannot mandate the organization utilize the exact wording of the regulation ("outstanding achievements"). But SCOPS did not implement such a requirement and instead evaluated the prerequisites as outlined in the membership document and concluded those elements to be inadequate. The Petitioner claims these requirements "are the criteria by which the art and design academic community assesses scholarly distinction" but distinction is not the standard and we do not agree with her that such scholarly distinction equates to outstanding achievements.

The Petitioner also incorrectly claims that SCOPS determined her appointment to this board occurred after she filed the petition and it did not establish her eligibility at the time she filed the petition. But that was not an aspect within the denial decision, so we will not address it any further.

We therefore conclude that the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

3. "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).

We observe multiple issues with the Petitioner's evidence she relies on under this criterion. Except for one form of evidence that the Petitioner discusses on appeal, the remaining published material was originally from foreign language websites, and those sites do not appear to be English versions sponsored and translated by the original media source. This raises questions with regard to the manner in which the evidence was translated (i.e., using Google Translate or a similar service). Moreover, it is not accompanied by a certified translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3). Not only does this not comply with evidence that originated in a foreign language, but it also diminishes the value of the material because when we consider a piece of evidence, we evaluate its quality to determine to what extent it supports a petitioner's claims. *Matter of Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 79–80 (Comm'r 1989)).

For the article that she did submit a certified translation into English, it was titled [redacted] The Petitioner claims the article was published in "*YOK+ Magazine*" but there is no indication on the document to connect it to that publication. Even if we presume this article was published in the magazine that the Petitioner claims, the evidence she relies on to demonstrate *YOK+ Magazine* is a form of major media in the request for evidence (RFE) response bears a different name (*YOK Art Magazine*) than the certified translation in the initial filing. But also setting that aside, even if we presume that *YOK+* is the same publication as *YOK Art Magazine*, the RFE response material also falls short of meeting the Petitioner's burden of proof. The Petitioner provided what appears to be a copy of the magazine, a letter signed from their founder and editor-in-chief, and a separate templated letter in which every word is identical to the founder's correspondence containing the following closing:

> *[Name]*
> *[Title / Editorial Position]*
> *[Institution / Publication]*

It appears that the Petitioner, or her counsel, provided the content for *YOK Art Magazine's* founder as a template reflecting what he should precisely state in his correspondence to ensure that his letter would adequately support her eligibility claims under this criterion. While that does not appear to clearly meet all the elements necessary for us to determine that she misrepresented a material fact and violated section 212(a)(6)(C)(i) of the Act, this apparent conduct narrowly misses that threshold. This results in a significant discrepancy in the record, rendering the letter from *YOK Art Magazine's* founder to be of no evidentiary value here. *Matter of Ho*, 19 I&N Dec. 582, 591–92 (BIA 1988).

Based on these shortcomings, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

4. "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 primary requirements here are that the Petitioner's contributions in their field were original and they rise to the level of major significance in the field, rather than to a project or to an organization. *See Amin*, 24 F.4th at 394 (citing *Visinscaia*, 4 F. Supp. 3d at 134). The regulatory phrase "major significance" is not superfluous and, thus, it has some meaning. *Nielsen v. Preap*, 586 U.S. 392, 415 (2019) (finding that every word and every provision in a statute is to be given effect and none should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence). Contributions of major significance connotes that the Petitioner's work has significantly impacted the field. Further, the Petitioner's contributions must have already been realized rather than being potential, future improvements. The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The Petitioner provided her published work, articles, presentations, and support letters among other evidence. SCOPS determined that the Petitioner did not meet the requirements of this criterion. On appeal, the Petitioner addresses support letters, alleges SCOPS did not specifically state what evidence she could provide to demonstrate eligibility, and that one of her peer reviewed works was of major significance simply for being published in that publication.

After reviewing the entire record, to include the arguments and evidence submitted on appeal, we agree with SCOPS' ultimate determination under this criterion. *See Matter of J-A-*, 29 I&N Dec. 253, 254 (BIA 2025) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below "is not only common practice, but universally accepted"); *see also Garland v. Ming Dai*, 593 U.S. 357, 370–71 (2021) (noting an administrative appellate body's act of adopting and affirming the below decision is legitimate, incorporating the lower decision's analysis and reasoning on the issues into the appellate determination).

5. "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).

SCOPS concluded that even though the Petitioner demonstrated she published the article [redacted] in a publication that she claimed was a professional journal, "USCIS does not consider documentation from the publishing entity regarding their own status as professional or major trade publications or other major media to be sufficient to meet this criterion." *See Krasniqi*, 558 F. Supp. 3d at 185 (citing *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). In the appeal, the Petitioner alleges that this article was published in "an internationally indexed, peer-reviewed academic journal." The Petitioner did not offer evidence to corroborate the claim that this is an internationally indexed publication, and it appears to lack some of the hallmarks of a reputable publisher. It is not indexed in the Clarivate Analytics Web of Science Core Collection or in Scopus, and the record contains no evidence of an associated Journal Citation Reports impact factor or recognized field-specific metrics.

For the AART International Anatolian Art Symposium, the Petitioner focused on the scholarly nature of her work, but she did not address the requirement as outlined in USCIS policy. That policy states:

> Examples of scholarly article authorship include, but are not limited to:
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> - Publications in professionally-relevant peer-reviewed journals; and
> - Published conference presentations at nationally or internationally recognized conferences.

The Petitioner did not offer any independent or objective evidence that the conference where she provided an oral presentation, was nationally or internationally recognized. While she asserts on appeal that this was an international academic symposium, such claims are inadequate here. *Matter of L-R-M-C- & V-A-M-M-*, 29 I&N Dec. 757, 758 (BIA 2026) (concluding assertions without corroborating evidence are generally inadequate to meet a filing party's evidentiary burden).

And we will not address the claim that SCOPS granted her this criterion in a different petition, as this case will be adjudicated based on the record before us. The regulation repeatedly reflects that an eligibility determination on a benefit request will be based on information contained in the record of proceeding. 8 C.F.R. § 103.2(b)(10), (11), (14), (16)(i)–(ii). Each case must be decided on its own facts with regard to the sufficiency of the evidence presented. *See, e.g.*, *Matter of H-C-R-C-*, 28 I&N Dec. 809, 812 (BIA 2024). The Petitioner's claims to the contrary while citing to *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) do not bear out.

The Petitioner has not demonstrated that SCOPS erred in their adverse determination under this criterion.

6. "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 regulation at 8 C.F.R. § 204.5(h)(3)(viii) calls for "evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." A qualifying role may be shown to be leading or critical for a division or department of an organization or establishment, or for the organization or establishment overall. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual. Evidence of a leading role should show that the alien was a leader for the claimed component, and a job title with matching duties may help top establish that a role was leading. A leading role should be apparent by its position in the overall hierarchy and the role's matching duties. *Aravamuthan v. Jaddou*, No. 3:23-CV-01412-N, 2025 WL 1708126, at *7 (N.D. Tex. June 17, 2025).

For a critical role, evidence should show that the alien 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. 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*, *supra*, F.2(B)(1). Organizations, establishments, divisions, or departments that enjoy a distinguished reputation are "marked by eminence, distinction, or excellence." *Id.* The Petitioner must submit evidence satisfying all of these elements to meet the plain language

requirements of this criterion. *Branski v. Seng*, No. 24-CV-360, 2024 WL 4678939, at *7 (E.D. Wis. Nov. 4, 2024).

The Petitioner initially claimed eligibility under this criterion under multiple organizations but in the RFE response she only claimed her roles at [redacted]. SCOPS determined that the Petitioner did not meet the requirements of this criterion based on her service at [redacted] On appeal, the Petitioner only claims her performance for that same university.

The Petitioner contests SCOPS' evaluation of the evidence under this criterion and their determination that evidence of an alien's leading or critical role should include letters from the employers themselves. The USCIS Policy Manual on this issue clearly states: "Evidence of experience must consist of letters from employers" while citing to the regulation at 8 C.F.R. § 204.5(g)(1) for that prospect. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual. The Policy Manual reasons that previous employers are the persons with firsthand and "personal knowledge of the significance of the person's leading or critical role" and those individuals "can be particularly helpful to officers in making this determination, so long as the letters contain detailed and probative information that specifically addresses how the person's role for the organization, establishment, division, or department was leading or critical." *Id.* The Petitioner has not identified an error in SCOPS' reasoning here.

The Petitioner argues that playing a leading or critical role in a minor university office allows her to inherit the prestige of the larger institution. However, a smaller office cannot automatically leverage or "bootstrap" the distinguished reputation of the entire university. While USCIS policy offers flexibility in what the regulation's language of "organizations or establishments" means, it does not allow petitioners to impute a university's broader prestige to the specific subdivision where the Petitioner worked. Each entity must be evaluated on its own merits, and assuming the part inherits the reputation of the whole commits a fallacy of division. Within the appeal, the Petitioner discusses the various roles she held at [redacted] and states:

> These concurrent roles-through which national and international academic exchange for the Faculty's programs was administered and through which the entering student body of the fine arts programs was selected-constitute leading and critical roles for programs of [redacted] The denial's refusal to engage with these roles as potential qualifying roles under criterion (viii) is inconsistent with the Policy Manual's own guidance and with the regulatory text.

We note her focus remains on "programs of [redacted]" We further note that SCOPS did not refuse to engage with the roles that she performed for the university. Instead, they required that she demonstrate the "programs" themselves have a distinguished reputation, or that she demonstrate the leading or critical roles had the university itself as the focus. In other words, if she performed in a leading role, she must show that she "is (or was) a leader within the" university's hierarchy. *See generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(1). And if she claims a critical role, she is required to show that she "has contributed in a way that is of significant importance to the outcome of the [university's] activities." *Id.*

USCIS policy provides that the identified entity in which the Petitioner claims she performed in a leading or critical role, must be the same entity that has a distinguished reputation. It would be illogical for one to perform in a leading or critical role for a small unknown administrative office at Harvard University, then turn around and rely on the university's reputation for the distinguished reputation element. Doing so would divorce the evidentiary weight of the reputation from the actual significance of the alien's role within that specific operation.

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

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 she 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 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)).

For the reasons discussed above, the Petitioner has not demonstrated her 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.