U.S. Citizenship and Immigration Services

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

In Re: 40999744

Date: JULY 21, 2026

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

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

The Petitioner is an athlete who seeks classification as an alien of extraordinary ability as an athlete. *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 is an athlete who enjoyed success at a young age and has continued her athletic efforts at a U.S. junior college, then at a university that competes in the [redacted] division.

### 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). Before SCOPS, the Petitioner claimed she met four of the regulatory criteria. SCOPS decided that the Petitioner satisfied two of the criteria relating to prizes or awards and published material but that she had not satisfied the criteria associated with membership and performing in a leading or critical role. On appeal, the Petitioner maintains that she meets the evidentiary criteria that SCOPS declined to grant. After reviewing all the evidence in the record, we conclude that she has only met one criterion.

1. "Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation." 8 C.F.R. § 204.5(h)(3)(iii).

This criterion contains multiple evidentiary requirements the Petitioner must satisfy. First, the published material must be about the Petitioner and the contents must relate to the Petitioner's work in the field under which they seek classification as an immigrant. The published material must also appear in professional or major trade publications or other major media. Professional or major trade publications are intended for experts in the field or in the industry. To qualify as major media, the Petitioner must establish the circulation statistics are high relative to other similar forms of media. The final requirement is that the Petitioner provide each published item's title, date, and author and if the published item is in a foreign language, they must provide a translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3). The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The Petitioner provided several print and online articles. SCOPS determined that the Petitioner met the requirements of this criterion without providing any analysis. But we observe that even though the articles are about the Petitioner and her performances in the field, she relies on counsel's assertions in the request for evidence (RFE) response that the articles appeared in one of the three publication types. Without documentary evidence to support the claims, counsel's assertions in a brief do not constitute evidence nor will they satisfy the Petitioner's burden of proof. *Matter of Y-H-L-*, 29 I&N Dec. 698, 700 (BIA 2026) (citing *Matter of Mariscal-Hernandez*, 28 I&N Dec. 666, 673 (BIA 2022) and *Matter of J.J. Rodriguez*, 27 I&N Dec. 762, 765–66 (BIA 2020)). *See also Matter of M-K-*, 29 I&N Dec. 556, 569 (BIA 2026); *Matter of Khan*, 28 I&N Dec. 850, 862 (BIA 2024); *Matter of Arambula-Bravo*, 28 I&N Dec. 388, 396–97 (BIA 2021).

Lacking from the record is any objective and probative evidence demonstrating the material appeared in "either a widely circulated print newspaper or a specialized sports media platform" as counsel asserts in the RFE response. For example, the Petitioner did not include circulation and distribution information about the newspapers and magazines or the viewership of the websites. Additionally, even though the Petitioner provided translation certificates reflecting the publication's name in which the articles appeared (the print version), the majority of the original evidence in a foreign language does not contain the publication's name. The Petitioner, therefore, did not offer probative evidence corroborating her claims and this diminishes the evidentiary value of that material.

Accordingly, we withdraw SCOPS' favorable determination as it relates to 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).

The Petitioner claimed eligibility under this criterion based on three memberships. SCOPS determined that the Petitioner did not meet the requirements of this criterion. On appeal, the Petitioner only claims one membership in the Venezuelan Athletics Federation (FVA). First, she provides letters with her appeal that postdate the petition filing date and the denial. SCOPS requested this type of evidence in the RFE and while she provided letters in response to the RFE, that correspondence was inadequate to demonstrate outstanding achievements were required as a condition of membership, or that the associations utilize nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements are outstanding.

Because the governing regulations and SCOPS' RFE provided the Petitioner with both formal notice and a reasonable opportunity to submit the necessary documentation, we decline to consider new

evidence proffered for the first time on appeal. Under 8 C.F.R. § 103.2(b)(11), all requested evidence must be submitted together at one time. It is well-established that an administrative appellate body will not review or consider evidence first introduced on appeal when the filing party was put on notice of the requirement and given a meaningful opportunity to provide it before the denial. *Matter of Furtado*, 28 I&N Dec. 794, 801–02 (BIA 2024) (citing *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988)); *Matter of Izaguirre*, 27 I&N Dec. 67, 71 (BIA 2017) (same); *Matter of Jin*, 29 I&N Dec. 441, 449 (BIA 2026) (citing *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988)). Additional precedents reinforce this restriction, noting that the appellate process is not a venue for the primary submission of evidence. *See Matter of N-P-A-*, 29 I&N Dec. 347, 349 (BIA 2025) (quoting *Matter of German Santos*, 28 I&N Dec. 552, 561 n.4 (BIA 2022), *aff'd*, No. 22-2072, 2025 WL 2694101 (3d Cir. Sept. 22, 2025) ("[w]e do not consider new evidence for the first time on appeal")); *Matter of D-J-L-*, 29 I&N Dec. 485, 489 (BIA 2026); *Matter of D-G-E-A- & N-G-G-E-*, 29 I&N Dec. 570, 577 n.5 (BIA 2026) (citing *Matter of Fedorenko*, 19 I&N Dec. 57, 73–74 (BIA 1984)).

But she also continues to rely on the FVA bylaws in this appeal. That is the same evidence SCOPS concluded fell short of demonstrating the FVA requires outstanding achievements to become a member. While the bylaws reflect membership on the relevant team is based on certain standards, they are silent regarding a specific international ranking threshold for membership eligibility, what "the minimum marks of the approved year" must be, nor has the Petitioner identified what section of the bylaws—or any other evidence in the record—establish that the achievements of prospective members are judged by recognized national or international experts in their disciplines or fields. As a result, two of this criterion's requirements remain unmet and the Petitioner has not demonstrated that SCOPS erred when they made an adverse determination under this criterion.

B. We Reserve the Petitioner's Remaining Claims

We conclude that although the Petitioner satisfies one criterion, she does not meet the criteria regarding published material and membership. While she argues and submits evidence for one additional criterion on appeal relating to performing in a leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), it is unnecessary that we make a decision on this additional ground because she cannot numerically meet the required number of criteria. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve the remaining issue. *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 F-B-A-*, 29 I&N Dec. 456, 460 (BIA 2026) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

## 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* F.2(B)(1), https://www.uscis.gov/policymanual. *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. 332.

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.