U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43388518

Date: JULY 24, 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 research scholar and professor 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 warranted an approval within a final merits determination. 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 has enjoyed a notable career as a professor of African History at a university in his home country where he also served as the dean of the faculty of humanities. His research focuses on social, cultural, and political history in Africa. He is a former officer of one of his country's historical associations and he has held visiting and postdoctoral research positions at international universities.

Before SCOPS, the Petitioner claimed he met five of the regulatory criteria. SCOPS decided that the Petitioner satisfied three of the criteria relating to judging, the authorship of scholarly articles, and performing in a leading or critical role but that he had not satisfied the criteria associated with prizes or awards, membership, or a high salary or remuneration.

A. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119–20); *also see generally* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policymanual (stating that in a final merits determination USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification). In this matter, we determine that the Petitioner has not documented his eligibility.

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 v. Allen*, 784 F. Supp. 3d 798, 810 (E.D. Pa. 2025); *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.

First, the Petitioner submits new evidence on appeal. Because he was provided proper notice and a reasonable opportunity to respond to a request for evidence (RFE), we decline to consider new evidence submitted for the first time on appeal, as the appellate process is not a venue for initial filings. Under 8 C.F.R. § 103.2(b)(11), all requested evidence must be submitted together, and administrative bodies consistently refuse to review new evidence first introduced on appeal. *See Matter of Furtado*, 28 I&N Dec. 794, 801–02 (BIA 2024); *Matter of Izaguirre*, 27 I&N Dec. 67, 71 (BIA 2017); *Matter of Jin*, 29 I&N Dec. 441, 449 (BIA 2026). Additional precedent strongly reinforces this restriction. *See Matter of N-P-A-*, 29 I&N Dec. 347, 349 (BIA 2025); *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).

On appeal the Petitioner presents several arguments regarding the manner in which USCIS implements the requirements under the extraordinary ability immigrant visa classification. We will not address his arguments against the agency's established methods that are detailed in its published policies. We will only state that within a final merits determination, a petitioner must demonstrate more than their achievements have been sustained over a duration of time. *See generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(2) (stating that with a final merits determination: "To establish eligibility, the petition must demonstrate that the person has sustained national or international acclaim and that their achievements have been recognized in the field of expertise, indicating that the person is one of that small percentage who has risen to the very top of the field of endeavor.")

While the Petitioner presents an argument claiming that SCOPS erred in administering the final merits determination, our review of their denial decision doesn't bear that out. For instance, SCOPS acknowledged the Petitioner's citation record but noted that the record standing alone was inadequate to reflect he was among those at the top of his field. He characterizes their analysis as a "reevaluation of the sufficiency of the evidence for the already satisfied criteria, imposing unstated requirements that go beyond the regulatory language." But that is not the case as their final merits analysis evaluated whether his citation record was illustrative of one who was among the leaders in the field and he does not explain what relevant claims or evidence he presented before SCOPS that they failed to consider.

It appears the Petitioner simply disagrees with SCOPS' adverse determinations and attempts to characterize his disagreements with allegations that they ignored pivotal evidence, or they applied a heightened standard to it. Much of these arguments focus on the first step in the adjudicative process under the ten regulatory criteria, but that was not the ultimate basis for SCOPS' denial. That basis fell

under step two in the final merits determination and while we will consider the Petitioner's arguments of why his evidence under any particular regulatory criterion illustrated: (1) that he sustained national or international acclaim, (2) that he is one of the small percentage at the very top of the field of endeavor, and (3) that his achievements in that particular area have been recognized in the field through extensive documentation, a rehashing of the criteria SCOPS did not grant would serve no purpose as it would not affect this case's outcome. Even if the Petitioner successfully explained how his evidence actually met the three criteria SCOPS denied, he would still meet at least three criteria; the same as he does now.

We agree with the Petitioner's claim that SCOPS did not directly discuss all of his evidence, but we also recognize that it is not required to. The lack of a direct discussion of every piece of evidence does not mean that SCOPS ignored it; it instead may mean that they considered it and concluded it was unpersuasive. *See United States v. Teixeira*, 62 F.4th 10, 25 (1st Cir. 2023) (concluding a trier of fact "need not articulate its conclusions as to every jot and tittle of evidence in making a determination"); *United States v. Camillo*, 165 F.4th 134, 141 (1st Cir. 2026); *Hampton v. Shinn*, 143 F.4th 1047, 1087 (9th Cir. 2025); *Pye v. Warden, Georgia Diagnostic Prison*, 50 F.4th 1025, 1036 n.3 (11th Cir. 2022). When SCOPS provides a reasoned consideration of the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the Petitioner presents. *Amin v*, 24 F.4th at 394; *Lafortune v. Garland*, 110 F.4th 426, 441 (1st Cir. 2024); *see also Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993).

Based on our review of SCOPS' denial, we conclude that the Petitioner received a sufficiently thorough analysis of his claims and supporting material. SCOPS must announce their decisions in terms sufficient to enable a reviewing entity to perceive that they have heard and thought and not merely reacted, and they have done so here. *Molina-Diaz v. Bondi*, 128 F.4th 568, 577 (4th Cir. 2025); *Funez-Ortiz v. McHenry*, 127 F.4th 498, 505 (4th Cir. 2025); *Ponce-Flores v. Garland*, 80 F.4th 480, 486 (4th Cir. 2023); *Ibarra Chevez v. Garland*, 31 F.4th 279, 292 (4th Cir. 2022); *Nolasco v. Garland*, 7 F.4th 180, 190 (4th Cir. 2021).

SCOPS requested additional evidence and noted that the Petitioner abandoned several of his claims in the RFE response, one of which was contributions of major significance as part of the final merits determination. As a result, we will not address that category in our analysis below. An RFE is intended to clarify eligibility as of the petition's filing date. *See* 8 C.F.R. § 103.2(b)(8), (12). Under 8 C.F.R. § 103.2(b)(13)(i), failure to respond to specific RFE elements constitutes abandonment or waiver of those claims. A petitioner cannot later revive such claims on appeal after knowingly declining to respond.

The Board of Immigration Appeals' (the Board) precedents favor this reading. In *Matter of R-S-H-*, 23 I&N Dec. 629, 638 (BIA 2003) the Board explained that when faced with an adverse scenario (e.g., SCOPS outlining an evidentiary shortcoming within an RFE) a filing party must offer a response and advance their arguments to preserve that topic for consideration on appeal). The Board concluded the same in *Matter of C-A-R-R-*, 29 I&N Dec. 13, 17 (BIA 2025) in which they decided that when the trier of fact requests supplemental statements or documents it deems necessary to complete an adjudication, but those materials are not timely submitted, the opportunity to make those statements or documents part of the record is waived. Also, in *Matter of Lopez-Ticas*, 29 I&N Dec. 90, 94 (BIA 2025), the Board

determined that an issue is waived or forfeited if we issue a notice, and the filing party fails to address a particular issue within the notice that they disagree with or that they deem is incorrect.

So, we will not entertain new arguments on appeal that were not raised in response to SCOPS' RFE. *Matter of R-S-H-*, 23 I&N Dec. at 638 (citing *Matter of Garcia-Reyes*, 19 I&N Dec. 830, 832 (BIA 1988)). The Petitioner had the opportunity to present these arguments and failed to do so. And federal courts have acknowledged such USCIS action when the agency determines a filing party's failure to respond to a specific eligibility requirement in an RFE means they have abandoned or waived that issue. *See Nagaiah v. Allen*, 784 F. Supp. 3d 798, 807 (E.D. Pa. 2025). Issues not properly developed before SCOPS are not preserved for appeal. *See Santos Garcia v. Garland*, 67 F.4th 455, 460 (1st Cir. 2023); *Ali v. Garland*, 33 F.4th 47, 55 (1st Cir. 2022); *Indrawati v. U.S. Att'y Gen.*, 779 F.3d 1284, 1297 (11th Cir. 2015); *Jeune v. U.S. Atty. Gen.*, 810 F.3d 792, 800 (11th Cir. 2016).

SCOPS acknowledged his awards and his fellowships the Petitioner claims are of such a distinguishing nature that they situate him "among the very top echelon of scholars" and they noted that while impressive, the Petitioner did "not establish that they were awarded to those at the top of the field." On appeal, the Petitioner points to letters to support his contention that his awards and fellowships show he is at the top of the field. While those letters claim his fellowships are at the apex of peer recognition, the institution's own documents did not bear out that assertion. Nor did the Petitioner identify what evidence he submitted before SCOPS that might support the claims in the letters. USCIS policy provides that "[l]etters of support, while not without weight, should not form the cornerstone of a successful claim for this classification. Rather, the statements made by the witnesses should be corroborated by documentary evidence in the record." *See generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(2). While we agree with SCOPS that his fellowships are in historied organizations, he did not establish that they are illustrative of the types of sustained acclaim that are required by the statute and regulation.

As it relates to the Petitioner's memberships in associations, in his appeal he presents the same claims and evidence in one fellowship that he relied on in the prizes or awards category. That runs contrary to the statutory requirement for the Petitioner to demonstrate his "achievements have been recognized in the field through extensive documentation." Section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i). Congress's intent that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required for lesser classifications. Employment-Based Immigrants, 56 Fed. Reg. at 30703, 30704 (July 5, 1991).

The Petitioner's appeal notes his judging roles as a Ph.D. and Master's external examiner, assessor for professorial promotions, peer reviewer for journal outlets, and selector of winners of scholarly awards, and he alleges that "the denial ignores the context and significance of his judging roles." SCOPS noted the Petitioner's judging experience is not unusual or particularly notable for someone in his field, and we agree. Participation in the peer review process as represented here does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of his field. Without evidence pre-dating the filing of the petition that considerably sets the Petitioner apart from others in his field, we cannot conclude that he is among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). Salient examples might consist of a combination of the following: (1) receiving and completing independent requests for review from a substantial number of journals or conferences; (2) reviewing abstracts or speaker submissions where the event itself is recognized for attracting eminent experts in the field; (3) chairing a technical committee for a reputable

conference; (4) evaluating proposals for government or prestigious grant agencies; or (4) serving in an editorial position for a distinguished journal. The ultimate question is whether the Petitioner's peer review activities illustrate his national or international acclaim or placement among those at the top of the field. And the Petitioner has not made such a showing here.

SCOPS concluded the Petitioner did not demonstrate that his publication record is consistent with having a career of acclaimed work and sustained acclaim. The Petitioner discusses his citation and publication history and notes the denial failed to compare his citation counts to field benchmarks, to the h-index of journals in which he has published, and that his citation impact places him among the top 10–20 percent of his peers globally, and the top tier of black scholars. The Petitioner did not identify what evidence supports these assertions and his statements do not satisfy his burden of proof. *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). Additionally, he did not advance some these arguments before SCOPS and we will not consider them for the first time on appeal. *See, e.g., Matter of Furtado*, 28 I&N Dec. at 801–02.

The appeal brief reflects that SCOPS downplayed the Petitioner's leading roles. He identifies his roles as a professor, head of department, and dean of the faculty of humanities at [redacted]. He alleges that his leadership at that institution contributed to the advancement and reputation of the institution, shaping the very foundation of a very new university. While the record reflects he held those positions for the university, he did not establish that the institution is one that warrants the level of acclaim necessary to aid him in demonstrating he is among those in the top of his field. Nor did his roles as a visiting scholar and lecturer at an American university or delivering a public lecture at a military think tank.

And finally, his claims regarding his salary only serve as a detriment to his eligibility under a final merits determination. Not only did he fail to satisfy the regulatory requirements under step one, but he has also not established his earnings were indicative of or consistent with sustained national acclaim or a level of expertise representing that he is one of that small percentage who have risen to the very top of his field.

In summary, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those progressing toward that goal. A favorable final merits determination requires a showing that one's extraordinary ability is an elite level of accomplishment. *Amin*, 24 F.4th at 394–95. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954–55 (Assoc. Comm'r 1994). The Petitioner's evidence confirms that he has he is an accomplished scholar. However, considering the full measure of the Petitioner's ability and achievements, the level of his national or international acclaim and the extent to which his achievements have been recognized in the field are not indicative of a record of sustained acclaim. Also, he has not submitted extensive documentation exhibiting he has attained a level of expertise placing him 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 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. 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 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.