U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40776815

Date: JULY 27, 2026

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

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

The Petitioner, a culinary writer and social media content developer, requests classification under the employment-based, first-preference (EB-1) immigrant visa category as an alien with "extraordinary ability." *See* Immigration and Nationality Act (the Act) section 203 (b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Successful petitioners for U.S. permanent residence in this category must demonstrate "sustained national or international acclaim" and extensively document recognition of their achievements in their fields. Section 203(b)(1)(A)(i) of the Act.

USCIS denied the petition, concluding the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria for this classification, as required. 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

To qualify for this immigrant visa category, a petitioner must demonstrate that he or she:

- Has "extraordinary ability in the sciences, acts, education, business, or athletics;"
- Seeks to continue work in his or her field of expertise in the United States; and
- Would substantially benefit prospectively the country as a permanent resident.

Section 203(b)(1)(A)(i)-(iii) of the Act.

The term "extraordinary ability" means expertise commensurate with "one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).[1] The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial

[1] If an evidentiary criterion does not "readily apply" to a petitioner's occupation, he or she may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

evidence requirements. First, a petitioner can demonstrate 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 documentation that meets at least three of the ten categories 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).

If a petitioner meets either evidentiary standard and the requirements of section 203(b)(1)(A)(ii), (iii) of the Act, U.S. Citizenship and Immigration Services (USCIS) must then make a final merits determination. To merit approval, the record – as a whole – must establish a petitioner's "sustained national or international acclaim" and recognized achievements placing him or her among the small percentage at the very top of his or her field. *See Amin v. Mayorkas*, 24 F.4th 383, 391 (5th Cir. 2022) (finding USCIS' two-step extraordinary ability analysis "consistent with the governing statute and regulation"); *see generally* 6 *USCIS Policy Manual* F.2(B), https://www.uscis.gov/policy-manual.

II. ANALYSIS

Because the Petitioner has not claimed or established her receipt of a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner initially claimed eligibility for the classification based on the following criteria:

- published material about her in professional or major trade publications or other major media, relating her 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)).
- performance in a leading or critical role for organizations or establishments that have a distinguished reputation (8 C.F.R. § 204.5(h)(3)(viii)).
- evidence that the alien 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)).
- documentation of commercial successes in the performing arts, as demonstrated by evidence comparable to box office receipts or record, cassette, compact disk, or video sales. (8 C.F.R. § 204.5(h)(3)(x))

SCOPS issued a request for evidence (RFE) to the Petitioner to provide her with the opportunity to submit additional documentation because the initial record did not demonstrate by a preponderance of the evidence that she met any of the criteria she claimed.

The Petitioner timely responded to the RFE. SCOPS subsequently issued its decision and concluded the Petitioner met the following criteria:

- published material about her in professional or major trade publications or other major media, relating her 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)).

SCOPS concluded the Petitioner did not meet the criteria contained at 8 C.F.R. § 204.5(h)(3)(viii), (ix), and (x) concerning performance in a leading or critical role for organizations or establishments

that have a distinguished reputation, evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field, and documentation of commercial successes in the performing arts, as demonstrated by evidence comparable to box office receipts or record, cassette, compact disk, or video sales. And, in the final merit's determination, SCOPS determined the Petitioner did not demonstrate that she is one of that small percentage who have sustained national or international acclaim to have risen to the top of her field of endeavor.

On appeal, the Petitioner acknowledged SCOPS conclusion that she met the criteria contained at 8 C.F.R. § 204.5(h)(3)(iii) and renewed her claim to the remaining criteria SCOPS concluded she did not meet contained at 8 C.F.R. § 204.5(h)(3)(viii), (ix), and (x).

Upon our de novo review, we agree with SCOPS and conclude the Petitioner satisfied the criteria at 8 C.F.R. § 204.5(h)(3)(iii) but did not demonstrate eligibility under the criteria contained in 8 C.F.R. § 204.5(h)(3)(ix), and (x). As we conclude the Petitioner has not met the initial evidence requirements to demonstrate her extraordinary ability, we are not required to consider the Petitioner's claim of eligibility under the criterion contained at 8 C.F.R. § 204.5(h)(3)(viii) and evaluate the totality of the material provided in a final merits determination and assess whether the record reflects the Petitioner's national or international acclaim and that she is amongst the small percentage at the very top of her field of endeavor. *See Kazarian*, 596 F.3d at 1110-20 (citing section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2) and (3)). Accordingly, we reserve those issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision). So, we will dismiss the Petitioner's appeal.

A. Evidentiary Criteria

1. "Evidence that the alien 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).

To meet this criterion, the Petitioner must establish that his salary or remuneration is high relative to the compensation paid to others working in the field. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual. Evidence relevant to demonstrating high remuneration may include: (1) tax returns, pay statement or other evidence of past salary or remuneration for services, (2) contract, job offer letter, or other evidence of prospective salary or remuneration for services, and (3) comparative wage or remuneration data for the person's field, such as geographical or position appropriate compensation surveys. *Id.* Evidence regarding whether the person's compensation is high relative to that of others working in the field may include: (1) geographical or position appropriate compensation surveys and (2) organizational justifications to pay above the compensation data. *Id.*

As evidence of her earnings, the Petitioner submitted contracts for social media content development for [redacted] and [redacted]. The Petitioner claims that she is a "mega-influencer" on Instagram and TikTok and a "macro-influencer" on YouTube because she has over 1,000,000 followers on Instagram and TikTok and over 617,000 subscribers on YouTube. The Petitioner asserts that "mega-influencers" command the highest compensation rates for their brand collaborations and that "macro-influencers" are "one step under the highest [YouTube] influencer tier." The Petitioner also claims to have higher than average "influencer engagement rates" which allow her to command higher compensation than average. In her response

to SCOPS' RFE, the Petitioner submitted documentation from Indeed, ZipRecruiter, Coursera, InBeat, Billo, and Influencer Marketing Hub to provide additional information about how content creators in general earn income and their purported average compensation. The Petitioner also submitted documentation describing the salaries and wages she had commanded for her services in the USA and abroad. SCOPS concluded the Petitioner did not meet this criterion. On appeal, the Petitioner reiterates her claim to the criterion and asserts SCOPS erred in its conclusion to the contrary.

When evaluating a petitioner's documented remuneration and other data or information submitted as a point of comparison, we consider amongst other things the description of the occupation, the validity of a survey (if that is what is used as a point of comparison), the location and currency of the wage earned, and the salary rate being measured. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

We conclude the Petitioner has not demonstrated her eligibility under this criterion because the evidence in the record does not demonstrate that the Petitioner's compensation is high relative to others working in the field.

In the first instance, it does not appear that the evidence the Petitioner submitted applies to her field. The Petitioner submitted an abstract of an article by Arielle Feger from an unknown source to support her proposition that "[c]ooking is the most popular form of influencer content on social media." The Petitioner describes herself as a culinary writer and social media content developer. But the evidence she submitted to demonstrate that her salary or other remuneration for services is high in relation to other applies to many different fields, such as content creators, authors, content writers, and an unspecified universe of influencers. The data does not cater specifically to culinary writers and social media content developers like the Petitioner claims to be.

And, even setting that aside, we would still conclude the record does not demonstrate the Petitioner's salary or other remuneration for services is high in the field because the documentation does not amount to comparative wage or remuneration data. For example, the Petitioner submitted an Instagram influencer earnings calculator developed by Influencer Marketing Hub aspiring to "provide earning potential guidelines" to influencers in general. It does not consist of actual salary or wage data, nor does it directly apply to culinary writers and social media content developers like the Petitioner.

The Petitioner submitted a table of pricing per video across platforms appearing on Billo. The table expressed what "[i]nfluencers *can charge*." (emphasis in original). But a suggestion of market pricing for services does not provide a basis for a comparison of whether the salary or remuneration an individual receives or commands is higher relative to others working in the field such that we can evaluate that the Petitioner's recompense is indicative of extraordinary ability in her field.

And the Petitioner's purported status as a "micro-influencer" or a "macro-influencer" on the social media platforms she participates with does not demonstrate that her salary or other remuneration is high in relation to others in her field. The influencer rate sheet the Petitioner submitted does not support the Petitioner's assertion of eligibility under the claimed criterion because it states "the numbers [in the rate sheet] are just ballpark figures. The actual rates depend on multiple factors, not just macro vs. micro-influencers."

The remaining evidence does not evidence that the Petitioner's salary or other remuneration is high compared to others in the field. The information maintained by Coursera applies to general content creators and does not express the median salary figures it contains in geographically or positionally appropriate segments. The ZipRecruiter information applies to Food Writers but does not appear to take into account any food related social media content development as performed by the Petitioner. The documentation from Indeed purportedly pertains to food authors, food bloggers, and food content writers but, like the evidence from Coursera, does not express this information in geographical segments as a relevant point of comparison to evaluate if the Petitioner's commanded remuneration or salary is indicative of extraordinary ability. In fact, the Indeed "influencer salary" information relates to the United States in general and not one specific geography within the United States and makes no distinction between general influencers and influencers like the Petitioner who conduct culinary writing and social media content development.

So, for the foregoing reasons, we conclude the Petitioner did not demonstrate her eligibility under the claimed criterion.

2. Comparable "evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales." 8 C.F.R. § 204.5(h)(3)(x).

In order to satisfy this criterion, the Petitioner must establish that she has enjoyed commercial success in the performing arts. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). This criterion focusses on volume of sales and box office receipts as a measure of a person's commercial success in the performing arts. *Id.* The evidence must show the volume of sales and box office receipts reflect her commercial success relative to others involved in similar pursuits in the performing arts. *Id.*

The regulation at 8 C.F.R. § 204.5(h)(4) provides petitioners with the opportunity to submit comparable evidence to establish eligibility if a regulatory criterion or criteria do not readily apply to the Petitioner's occupation. When evaluating such comparable evidence, we consider whether the regulatory criteria are readily applicable to the person's occupation and, if not, whether the evidence provided is truly comparable to the criteria listed in the regulation. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). A general unsupported assertion that the listed evidentiary criterion does not readily apply to the person's occupation is not probative. *Id.* If a petitioner demonstrates that a particular criterion does not readily apply to the person's occupation, a petitioner may submit evidence that is of comparable significance to the criterion to establish sustained acclaim and recognition. *Id.*

The Petitioner maintains her eligibility for this criterion based on comparable evidence, such as social media metrics, sales and pre-orders of a book she authored entitled [redacted], evidence of sales of ticket to culinary events and tours that she developed and hosted with [redacted] and [redacted]. SCOPS concluded that the Petitioner had not established a claim of eligibility under the criterion with comparable evidence because she had claimed four of ten regulatory criteria. We do not agree with SCOPS and withdraw its statement. Nevertheless, we conduct de novo review and conclude the Petitioner did not demonstrate that she met this criterion with comparable evidence.

A statement from a petitioner can be sufficient to establish whether a criterion is readily applicable if that statement is detailed, specific, and credible. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). But a general unsupported assertion that the listed evidentiary criterion does not readily

apply to the petitioner's occupation is not probative. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). In her initial petition, the Petitioner did not specify why the criterion did not readily apply to her occupation. In response to SCOPS' RFE, the Petitioner asserted that the criterion did not readily apply to her occupation because "her artistic skills are not applied in venue performance scenarios." But the Petitioner's assertion is not supported by a detailed, specific, and credible statement citing applicable supporting evidence in the record. The Petitioner is a culinary writer and social media content developer. The record reflects that she conceives and develops written and visual content that she performs in, typically by "narrat[ing] short stories related to each dish presented, inspired by the literary trend of magical realism." The Petitioner has not demonstrated why her performative content consisting of the narrating of stories whilst preparing dishes in a manner that "embraces five senses" on video format media such as TikTok, Instagram, and YouTube could not be sold alongside the "high end culinary related products" she sells on the [redacted] website. And the evidence in the record does not demonstrate how social media metrics compares to "box office receipts" or "sales" in the context of the Petitioner's occupation. Generally, such receipts or sales represent direct consumer payment for a particular performance or artistic presentation. The social media metrics, on the other hand, demonstrate the amount of people who engaged with the Petitioner's social media accounts, presumably free of charge to them, and the Petitioner is compensated in the form of ad revenue based on total number of views. The source of the Petitioner's compensation, ad revenue, is different than the individuals actually consuming the product, so we conclude that this is not comparable to the sales and receipts as contemplated in the criterion.

The Petitioner also asserted her book sales and sales of tickets to culinary events and tours she participated in is comparable to box office receipts or removable media sales such as compact disks, records, cassettes, or videos. We do not agree. The Petitioner does not explain how authorship of a book is comparable to sales of compact disks, records, cassettes or videos, which relate to artistic performances. Or, in other words, the Petitioner has not demonstrated how a book is comparable to a recording of a visual acting or musical performance such that the magnitude of its sale could demonstrate eligibility under the criterion as indicative of her extraordinary ability.

And it is not sufficiently clear what the Petitioner is actually engaged in when she is participating in the events and tours. The record does not demonstrate that she is engaged in a performance "narrat[ing] short stores related to" dishes she is cooking inspired by the trend of magical realism. Instead, for example, the [redacted] tour is "an opportunity to learn new recipes" from the Petitioner wherein the participant will "recreate delicious and healthy recipes." A letter from [redacted], co-founder of [redacted], describes the Petitioner's work as a "workshop" wherein she is expected to "teach recipes or cooking techniques" curated based on history, environment, and gastronomic aesthetics in the context of Mexican culinary traditions. And in a similar vein, the letter from [redacted] general manager and co-owner of [redacted] describes the service the Petitioner participates in as a "luxury gastronomic tour" which the Petitioner participates in "as guest chef and content creator." It appears that the [redacted] and [redacted] are akin to a cooking class in an exotic destination. The record does not demonstrate that a historically, environmentally, and aesthetically curated cooking class is akin to a performance as contemplated by the criterion.

Moreover, the Petitioner's collaborations with fashion magazines like [redacted] and [redacted] and with brands such as [redacted] and [redacted] appear to be paid endorsement appearances in print advertising spreads. It is not clear how appearance in print

advertising spread as an endorser compares to performances for which tickets or recorded media are sold.

We acknowledge that the Petitioner has been able to garner a degree of positive financial recompense from her social media activity, book sales, cooking class tours, and print advertisement appearances. However, the Petitioner had not preponderantly demonstrated with material, relevant, and probative evidence in the record how that financial benefit compares to the level of commercial success as demonstrated by box office receipts of sales of recorded media contemplated in the criterion. So, we conclude the Petitioner has not demonstrated her eligibility under the criterion by providing comparable evidence.

B. Summary and Reserved Issues

As stated above, the Petitioner cannot fulfill the initial evidentiary requirement for three criteria under 8 C.F.R. § 204.5(h)(3). Consequently, we reserve evaluation of the Petitioner's claim of performance in a leading or critical role for organizations or establishments that have a distinguished reputation and need not provide the type of final merits determination referenced in *Kazarian*. *See INS v. Bagamasbad*, 429 U.S. at 25 (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision.

Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought. 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"); *Visinscaia v. Beers*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316 at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan 41, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"); *see also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3,2020) (citing *Kazarian v. USCIS*, 596 F.3d at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F.Supp. 2d 914, 918 (N.D. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for the visa as a baseball coach).

Here, the Petitioner has not shown the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress, H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate the Petitioner has garnered national or international acclaim in the field, and that she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

C. O-1 Nonimmigrant Status

Service records reflect that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved an O-1 nonimmigrant visa petition filed on behalf of the Petitioner, that prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers is comparable to the relationship between a court of appeals and a district court. Even if SCOPS has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another nonimmigrant or immigrant visa petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

III. CONCLUSION

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, and the petition remains denied.

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.