U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43393888

Date: JULY 29, 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 business operations specialist 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

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 one of the criteria relating to a high salary or remuneration but that she had not satisfied the criteria associated with membership, original contributions, or performing in a leading or critical role. On appeal, the Petitioner maintains that she meets the evidentiary criteria that SCOPS denied. After reviewing all the evidence in the record, we conclude she has not demonstrated eligibility for this immigrant classification.

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).

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires the Petitioner to submit evidence of a "high salary or other significantly high remuneration for services, in relation to others in the field." That means a petitioner must provide comparative evidence for those performing similar work, during the same approximate time and geographic location, within the field. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual. And the presentation of only average salaries in the field is generally inadequate to demonstrate a petitioner's earnings are high, or their other types of remuneration are significantly high, in relation to the rest of the field.

The Petitioner provided evidence of her wages, tips, and other compensation on federal tax documents and various forms of salary surveys. SCOPS determined that the Petitioner met the requirements of this criterion without any analysis reflecting what led them to that conclusion. We disagree that she has met this criterion's requirements.

The Petitioner relies on her Internal Revenue Service Form W-2 Wage & Tax Statement 2024 to establish her total earnings for the year. That figure possibly includes not only her base wages, but also could include overtime, supplemental earnings such as bonuses or cash awards, restricted stock units, and other non-wage income. The Petitioner is free to claim the full amount as reflected on the

Form W-2, but to do so she must provide comparative data for other significantly high remuneration instead of just salary or wage data. Even after SCOPS requested additional material in the request for evidence (RFE), the Petitioner indicated she was providing her 2024 tax returns that might include more detailed information, but that material is not in the record. The Petitioner included a job offer letter from her current employer reflecting an annual base salary of $164,000. It is this figure on the job offer letter that we will compare to the Petitioner's evidence in her attempt to show she has commanded a high salary in relation to others in her field.

The Petitioner also provided material from the Bureau of Labor Statistics, CareerOneStop, and PayScale. Those forms of evidence reflected salaries for all of the United States and it wasn't oriented to the locality where the Petitioner commanded her current wages. But nationwide statistics are not a proper comparison as the Petitioner will work in [redacted] California. *See generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(1) (repeatedly reflecting that comparative wage or remuneration data should not only be in their field, but also in the geographic area); *see also Berardo v. USCIS*, No. 3:19-CV-01796-SB, 2020 WL 6161459, at *6 (D. Or. Oct. 20, 2020) (citing to agency policy to conclude that "geographic differences are relevant to a determination of whether a salary is high in relation to others in the field").

Next, she offered evidence from U.S. News and World Report, but the figures were for median wages. And even though it reflected the best paying cities in the United States, it didn't indicate whether that was the highest pay overall in those cities, or still the median for the entire city. But still, it was more than the amount in the Petitioner's job offer letter so this evidence does not aid her in meeting this criterion's requirements.

And finally, she provided evidence from Salary.com that reflected a median wage that was well above the amount in the Petitioner's offer letter. Not only did the figures in this material not support the Petitioner's claims under this criterion, but median wages are also not an appropriate comparison. *Kinuthia v. Biden*, 702 F. Supp. 3d 5, 11 (D. Mass. 2023) (finding USCIS reasonably concluded a filing party's evidence comparing average and median salaries was insufficient to establish he commanded a high salary in relation to others in the field); *see also Mussarova v. Garland*, 562 F. Supp. 3d 837, 853 (C.D. Cal. 2022); *Lapteva v. USCIS*, No. 8:24CV83, 2025 WL 815087, at *6 (D. Neb. Mar. 10, 2025) (finding that a filing party's reliance on median wage data failed to they were highly compensated).

Because we do not agree with SCOPS' favorable determination under this criterion, we withdraw it.

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).

When it denied the petition, SCOPS stated: "This criterion has not been met because the evidence does not show that the basis for granting memberships in the submitted associations was the beneficiary's outstanding achievements in the field of endeavor as judged by recognized national or international experts in the field." On appeal, the Petitioner simply provides the following statement about her claims here:

> For this criterion, we continue to rely on the information and documentation contained in Petitioner's Original Submission and RFE response.
>
> We humbly request a de novo review of the entire record regarding Petitioner's Charter Membership status of the Chartered Financial Institute (CFA).

While we have de novo review authority, that does not mean the Petitioner can simply rely on their previous claims and evidence without explaining either how that material overcomes SCOPS' determination, or how SCOPS erred in evaluating the record. The reason for filing an appeal is to provide an affected party with the means to remedy what they perceive as an erroneous conclusion of law or statement of fact within a decision in a previous proceeding. *See* 8 C.F.R. § 103.3(a)(1)(v). It is insufficient to merely assert that SCOPS made an improper determination. Where a question of law is presented, supporting authority should be included, and where the dispute is on the facts, there should be a discussion of the particular details contested. *Matter of Valencia*, 19 I&N Dec. 354, 355 (BIA 1986).

Because we find no error in SCOPS' analysis here, we consider the Petitioner's arguments under this requirement to be forfeited or waived. *Matter of Garcia*, 28 I&N Dec. 693, 693 n.1 (BIA 2023) (finding arguments that do not meaningfully challenge an aspect of the underlying decision are deemed waived on appeal). *Also see Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding the submission of essentially the same brief the filing party previously presented, without identifying the specific errors, will not serve as an adequate filing basis).

But even without that procedural misstep, the primary evidence to demonstrate membership is flawed. The Petitioner initially provided the "BYLAWS OF THE CFA SOCIETY NEW YORK, INC. (A New York Not-for-Profit Corporation)" that were "Effective November 27, 2018," but in the RFE response she offered the "CFA INSTITUTE BYLAWS (A Virginia Nonstock Corporation)" whose bylaws were amended on July 22, 2025. First, these are two distinct legal entities, and the Petitioner did not explain why she provided material from two different corporations. Second, it is unclear which set of bylaws actually apply to her case. And third, even absent these two shortcomings, neither set of bylaws would result in a positive outcome here, as they do not adhere to this criterion's mandates, as SCOPS decided.

B. We Reserve Other Eligibility Determinations

We conclude that although the Petitioner claims she meets four criteria, because her arguments fail on the two criteria discussed above, that means she cannot numerically meet the required number of criteria and it is unnecessary for us to reach a decision on her other claimed elements. As the Petitioner cannot

fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve our evaluation of those requirements. *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 L-R-M-C- & V-A-M-M-*, 29 I&N Dec. 757, 757 n.1 (BIA 2026) (concluding when another issue is dispositive of the appeal, we do not need to address other matters in the appeal).

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 directly 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. at 332 (citing *Bagamasbad*, 429 U.S. at 25–26 (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.