U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37016026

Date: JUL. 31, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner 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.

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish that he meets the initial evidence requirements for the classification either through his receipt of a major, internationally recognized award or by satisfying at least three of the ten initial evidentiary criteria at 8 C.F.R. § 304.5(h)(3). 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

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the 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 demonstrating that the individual meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)–(x). If an evidentiary standard under 8 C.F.R. § 204.5(h)(3)(i)–(x) does not "readily apply" to a petitioner's occupation, the petitioner may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

Where a petitioner meets these initial evidence requirements, we then 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 (9th Cir. 2010) (discussing a two-part 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 sought to provide legal consultancy services in the United States as an individual of extraordinary ability. SCOPS determined that the evidence of record did not demonstrate that the Petitioner had received sustained acclaim and recognition for achievements in his field through a one-time achievement. SCOPS further determined that the Petitioner did not meet any of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x), and therefore did not conduct a final merits analysis to determine whether the Petitioner had reached a level of expertise indicating that he had received sustained acclaim as one of the small percentage who have risen to the top of his field of endeavor.

The Petitioner filed his Form I-140 as an alien of extraordinary ability under Section 203(b)(1)(A) of the Act for the employment-based first preference (EB-1) classification; however, as SCOPS explained in denying the petition, the evidence submitted claimed the Petitioner's eligibility as either an advanced degree professional or as an alien of exceptional ability who qualifies for a national interest waiver of the job offer requirement attached to the employment-based second preference (EB-2) immigrant classification.[1]

On appeal, the Petitioner reasserts his eligibility for classification as an alien of extraordinary ability while pointing to evidentiary requirements for individuals under EB-2 classification criteria, stating that he believes that the preponderance of the evidence standard[2] was not correctly applied to his case. He also asserts the following:

> The petitioner notes that a Request for Evidence (RFE) was not issued in this case. The lack of an RFE has prevented the petitioner from providing additional explanations or

[1] *See* section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2).

[2] *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place).

> materials that would have further clarified and strengthened the case. Had an RFE been issued, the petitioner would have had the opportunity to address the concerns raised in the denial and to submit more comprehensive documentation to satisfy the EB-1A criteria.

The USCIS Policy Manual states, "USCIS has the discretion to deny a benefit request without issuing an RFE or NOID [Notice of Intent to Deny]."[3] The USCIS Policy Manual further states, "If the officer determines a benefit request does not have any legal basis for approval, the officer should issue a denial without prior issuance of an RFE or NOID."[4]

Here, the benefit request under the EB-1 classification did not have a legal basis for approval. SCOPS therefore exercised its discretion accordingly. We agree with SCOPS's determination that the Petitioner did not meet any of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x).

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. Here, because the Petitioner has not satisfied the threshold "initial evidence" requirements at 8 C.F.R. § 204.5(h)(3), we cannot conclude that they are an alien of extraordinary ability and need not further analyze the merits under the statute. *See Kazarian*, 596 F.3d at 1119-20; *see also Nagaiah v. Allen*, -- F.Supp.3d ---, 2025 WL 1508028, at *10 (E.D. Pa. May 27, 2025) (finding the regulation "establishes a necessary, not sufficient, evidentiary requirement for a petitioner who seeks an extraordinary ability visa."). Therefore, we decline to reach and hereby reserve any final merits determination in this matter. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

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.

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[3] *See generally* 1 USCIS Policy Manual E.6(F), https://www.uscis.gov/policymanual; *see also* 8 C.F.R. § 103.2(b)(8)(ii).
[4] *See generally* 1 USCIS Policy Manual E.6(F); *see also id.* at E.9(B)(1).