U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43278138

Date: JUNE 4, 2026

Appeal of USCIS Decision

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

The Petitioner seeks to classify the Beneficiary 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.

USCIS denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Beneficiary had received a major, internationally recognized award, nor did it demonstrate that it warranted an approval when considering the totality of the evidence. 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 to U.S. Citizenship and Immigration Services (USCIS) 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)–(x) do not readily apply to the individual's occupation.

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. One-time Achievement

On appeal the Petitioner discusses a one-time achievement and appears to incorrectly surmise that if a petitioner shows they have received a qualifying one-time achievement, that would be the end of the adjudication and USCIS would not perform a final merits determination. The Petitioner does not offer any citation to support this assumption. But the only EB-1A regulation that discusses a one-time achievement is 8 C.F.R. § 204.5(h)(3) that states: "A petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise."

The regulation provides two methods to make such a showing indicating a petitioner's "evidence shall include evidence of a one-time achievement (that is, a major, international recognized award), or at least three of the following," then it lists the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). Also, a one-time achievement is listed in the regulation as initial evidence along with the ten criteria further reflecting it is the first of two steps in this adjudication.

USCIS policy also refutes the Petitioner's contention. Within the initial evidence section, the USCIS Policy Manual provides:

> *The first* step of the evidentiary review is limited to determining whether the evidence submitted with the petition meets the regulatory criteria.[] The evidence must be comprised of either a one-time achievement (that is, a major, internationally recognized award) or at least three of the ten regulatory criteria or be comparable to at least three of the ten regulatory criteria.[] . . . .
>
> For purposes of *the first step of the analysis*, officers should consider the quality and caliber of the evidence to determine whether a particular regulatory criterion has been met, to the extent the criterion has qualitative requirements.[] Officers should not yet make a determination regarding whether or not the person is one of that small

> percentage who have risen to the very top of the field or if the person has sustained national or international acclaim.[]

So, regardless of whether one claims eligibility through a one-time achievement or the ten criteria, they must still move on to step two and show eligibility through the final merits process in which USCIS evaluates the totality of their evidence.

B. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it 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 the Beneficiary met all ten of the regulatory criteria either directly or through comparable evidence. SCOPS decided that the Petitioner satisfied four of the criteria relating to: published material, judging, the authorship of scholarly articles, and performing in a leading or critical role. On appeal, the Petitioner continues to claim each of the denied criteria. We find it necessary to address one criterion that SCOPS previously found satisfied, but upon review, is not actually met.

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).

Although SCOPS made a favorable determination under this criterion under step one, it did so without any explanation. We do not agree with, and we withdraw that favorable outcome.

A review of the articles reveals that instead of being about the Beneficiary and his work in the field, the material is either about the company in which he serves as the chief executive officer and he is briefly mentioned, or the article is about several startup companies and it simply mentions him. "The published material should be about the person, relating to the person's work in the field, and not just about the person's employer and the employer's work or about another organization and that organization's work." *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual; *Gadhave v. Thompson*, No. 3:21-CV-2938-D, 2023 WL 6931334, at *3-4 (N.D. Tex. Oct. 19, 2023) (upholding published material must be specifically about the alien and focus on their personal work in the relevant field, not merely relate to their work, mention their name, or include their photo); *Lapteva v. Schuurmans*, No. 8:24CV83, 2025 WL 815087, at *4 (D. Neb. Mar. 10, 2025) (finding the regulation and USCIS policy clearly intend for evidence under this criterion to say something substantive about the petitioner and their work).

It is insufficient that the Beneficiary be mentioned within published material. As the regulation does not provide that one may satisfy this criterion by relying on evidence that he or she was simply noted within published material, the published piece itself must be about the person and relating to his or her work in the field for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iii); *Kumar v. USCIS*, No. CV RDB-23-2251, 2024 WL 1374794, at *5 (D. Md. Apr. 1, 2024) (upholding determination that the alien's evidence did not include a discussion of him and his work). Articles that primarily focus on a company's

work do not automatically qualify as articles about its leader, even if that leader is the company's head. *Joseph v. USCIS*, No. 24-40249, 2025 WL 458001 *3 (5th Cir. Feb. 11, 2025).

The Petitioner has not submitted evidence that meets the plain language requirements of this criterion, and we withdraw SCOPS' favorable determination on this issue.

C. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence we will evaluate whether it has demonstrated, by a preponderance of the evidence, the Beneficiary's 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 Beneficiary'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); *see generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(2) (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. *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.

The Beneficiary is the co-founder and chief executive officer of the petitioning organization, an automated quality assurance platform for software coding. Prior to starting that business, he worked at another company as an engineer with the Petitioner's co-founders. He also earned multiple computer science degrees.

We begin by noting that within the appeal brief, the Petitioner attempts to point out issues with SCOPS' request for evidence (RFE). But what the Petitioner perceives was an issue in the RFE is not a proper basis for the appeal unless the same issues were replicated in the denial decision. The reason for filing an appeal is to provide an affected party with the opportunity to "identify specifically any erroneous

conclusion of law or statement of fact" in the below decision. *See* 8 C.F.R. § 103.3(a)(1)(v). We therefore will not address any issues the Petitioner raises that were only in the RFE.

Additionally, the Petitioner may identify what it considers to be errors in how SCOPS evaluated its claims and evidence under the individual criteria in step one of the adjudication, but even if we agree that any of those claims would result in the satisfaction of additional criteria, that does not necessarily have a decisive impact in the case in step two in the final merits determination. SCOPS did not deny the petition because of a failure to satisfy the criteria. Instead, they denied it because the Petitioner did not offer extensive evidence showing how his achievements illustrated his sustained acclaim on a national or international level, and placed him among the small fraction of individuals at the very top of the Petitioner's field of endeavor. The Petitioner must still explain how SCOPS erred in denying the petition in the final merits analysis.

On appeal, the Petitioner places the majority of its focus on attempting to demonstrate that it has satisfied each of the criteria in step one of this adjudication and it neglects to home in on the actual basis SCOPS put forth in the denial which was its failure to demonstrate eligibility in step two of the final merits determination. When the USCIS Policy Manual discusses the final merits determination process, it requires more than vague references to a petitioner's supporting materials when it provides:

> In all cases, the petitioner must provide sufficient context regarding the above evidence and considerations to demonstrate that the evidence meets the relevant criteria and to establish the person's extraordinary ability in the totality of the circumstances. This means that the petitioner must explain the significance of the submitted evidence, and how it demonstrates that the person has achieved sustained national or international acclaim and recognition in their field of expertise.

See generally 6 *USCIS Policy Manual*, *supra*, F.2(B)(2). It remains the Petitioner's burden to provide sufficient context about the evidence and explain its significance. But as we explain below, it has not done so in this appeal. A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998). As discussed above, the remaining record does not demonstrate the Beneficiary's sustained national or international acclaim or that he has risen to the very top of his field.

SCOPS acknowledged that the Beneficiary obtained venture funding, memberships such as Forbes Councils and Y Combinator, and some media coverage, but concluded that these items do not demonstrate nationally or internationally recognized prizes or awards for excellence, nor a level of press commensurate with a "career of acclaimed work." SCOPS decided the record in its totality did not illustrate that the funding was broadly recognized in the field beyond the organizations that provided it, and the memberships were not shown to signify that only top of the field individuals are selected. Likewise, a few recent articles over a decade-long career were deemed insufficient to establish sustained national or international acclaim or that the Beneficiary is among the small percentage at the very top of the field.

First, we generally agree with SCOPS that the evidence fails to show that the Petitioner's receipt of venture capital funding confirms that the Beneficiary has received a qualifying award. Second, the record does not clearly show that the funding was awarded to the Beneficiary personally, or that he alone was

responsible for securing it, as opposed to the company or other executives collectively. Third, even if we presume the funding can be credited to him, the Petitioner only stated the total amount raised and did not provide comparative evidence showing how this level of funding ranks against other technology startups or indicates that such funding shows he is among the top in his field. Despite these achievements occurring at a notable level, these examples are not sufficiently representative of sustained acclaim nor are so few accolades indicative of the very high standard to present more extensive documentation. *See* H.R. Rep. No. 101-723 at 59, Employment-Based Immigrants, 56 Fed. Reg. at 30703, 30704 (July 5, 1991).

Under the claimed memberships, Forbes Technology Council membership is primarily a fee-based networking community and conditioned on basic business metrics such as annual recurring revenue or venture funding, rather than on evaluating and selecting only those with outstanding achievements. Further, Y Combinator is an investment program that funds startups, not an association that confers individual "membership" based on evaluating and admitting only those with outstanding achievements. Also, the Petitioner did not establish that recognized national or international experts in the Beneficiary's field judged and approved what the Petitioner characterizes as memberships. Even in instances in which a petitioner's memberships demonstrate their professional stature, they will not establish the exceptional level of distinction required for this restrictive immigrant classification where they do not show that those organizations limit membership to renowned personnel in the field, or that membership requires outstanding achievements. *Hamal v. United States Dep't of Homeland Sec.*, No. 21-5160, 2023 WL 1156801, at *3 (D.C. Cir. Jan. 31, 2023).

The Beneficiary was included in three articles, only one of which was in a notable source. Even if that were not the case, the articles only briefly mentioned the Beneficiary and they were not primarily about him. We do not agree with the Petitioner that because "there are multiple articles within the record about [the Beneficiary] relating to his work in the field, [is] itself favorable" under the final merits analysis. Examples such as this, if they are all the Petitioner can muster, are not indicative of "that small percentage who have risen to the very top of the field of endeavor." A lack of prominent press about the Beneficiary is not consistent with national or international acclaim. *Bodhankar v. USCIS*, No. 119CV706MADCFH, 2020 WL 777211, at *5 (N.D.N.Y. Feb. 18, 2020). Thus, the Petitioner did not establish that the limited media reporting on the Beneficiary and his activities reflects a career of acclaimed work in the field or that it was indicative of the very high standard to present more extensive documentation. *See* H.R. Rep. No. 101-723, at 59 (1990); Employment-Based Immigrants, 56 Fed. Reg. at 30703, 30704 (July 5, 1991).

SCOPS further found that, although the Beneficiary has served as a judge of others' work, authored a small number of articles, given presentations, and held noteworthy roles, the record did not demonstrate that any of these activities resulted from, or in turn reflected, a top of the field reputation. The judging was not shown to have been based on recognized national or international acclaim, the publications record was too limited and not demonstrated to be significant relative to others at the top of the field, and the presentations were not analogous to the exclusive exhibitions contemplated for visual artists under the regulations.

While the Petitioner demonstrated the Beneficiary met the judging criterion through his service as a judge of applications to Y Combinator's Summer 2024 program, a single instance of judging at this level falls far short of depicting a career of acclaimed work at the national or international level. One example that

he is trusted within a certain professional circle is insufficient evidence that he has occupied roles that are reserved for a small percentage of leading figures in the field or are widely regarded as prestigious, highly selective appointments on a national or international scale. "The second step requires USCIS to evaluate the person's judging participation to determine whether it was indicative of the person being of that small percentage who has risen to the very top of the field of endeavor and enjoying sustained national or international acclaim." *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). But the Beneficiary does not measure up to that level in this area.

Further, the Beneficiary authored one article. But as agency policy provides, authorship and publication do not automatically place one at the top of the field. *See generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(2) (providing that publications should be evaluated to determine whether they were indicative of being one of that small percentage who has risen to the very top of the field of endeavor and enjoying sustained national or international acclaim). The Petitioner did not demonstrate how the Beneficiary's limited publication record is consistent with having a career of acclaimed work and sustaining national or international acclaim. The Petitioner did not submit evidence showing the significance of his authorship or how his publications compare to others who are viewed to be at the very top of the field. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act.

SCOPS decided against allowing the Petitioner's comparable evidence claims under the display criterion. Notwithstanding that, the Petitioner claims the Beneficiary's work in the field was displayed at Y Combinator's Demo Day and that performance's qualitative attributes demonstrate his eligibility when considering the totality of the evidence in the final merits determination. While participation in Y Combinator's Demo Day is an indicator of entrepreneurial merit, it is more of an investor pitch event designed to secure seed funding and having less to do with being a recognized exhibition or industry showcase of an alien's work. The record contains no evidence that the Beneficiary's work was selected for display at other prominent industry showcases, national trade expos, or public exhibitions. The Petitioner's single presentation does not demonstrate the sustained national or international acclaim required for this stage of this restrictive immigrant visa.

SCOPS acknowledged the Beneficiary's role with the Petitioner is noteworthy, but determined it did not rise to the level of establishing that he was at the top of the "field of technology entrepreneurship," as the Petitioner characterizes it. And we agree that his performance for the petitioning organization not only satisfies the step one requirements, but it is also notable. But the Petitioner's appeal, and the Petitioner's appellate arguments are not persuasive. The Petitioner claims SCOPS applied an elevated standard of review, and it intermingles elements from this adjudication's step one and step two when it states:

> The USCIS Denial concedes the regulatory elements of the criterion at 8 CFR 204.5(h)(3)(viii) are objectively met, which, while accepting facts of [the Beneficiary's] critical leadership of [the Petitioner] to numerous distinguishing milestones, (1) USCIS narrowly scrutinizes facts for this criterion per an elevated standard that should consider the full record, and (2) fails to qualitatively review facts by which this criterion is a mark of the beneficiary's national or international acclaim.

Considering their totality argument, the Beneficiary's performance for the Petitioner is one instance in which his role at a distinguished organization was leading or critical. But the Petitioner does not explain how this singular achievement in the Beneficiary's performance history places him among the top of the

field of technology entrepreneurship. *Churyumov v. USCIS*, No. 2:18-CV-00841-RAJ, 2019 WL 5802041, at *3 (W.D. Wash. Nov. 7, 2019), *aff'd*, No. 2:18-CV-00841-RAJ, 2019 WL 5802041 (W.D. Wash. Nov. 7, 2019) (upholding that success of one business does not equate to national or international acclaim).

The Beneficiary's performance in their leading or critical roles should reflect their performance led to, or illustrates, sustained national or international acclaim. *Nagaiah*, 784 F. Supp. 3d at 820. The Petitioner has not demonstrated that one successful venture is demonstrative of acclaim that has been sustained. A leading role in a successful or distinguished company does not demonstrate that a beneficiary "has a sustained career or that the impact of his work has risen to the level where it places him at the very top of the field." *Joseph*, No. 24-40249, 2025 WL 458001 *4. *See also Agrawal*, No. 4:24CV3143, 2025 WL 2879217, at *23 (concluding that a petitioner's roles at the second ranked hospital in the nation and the first ranked in heart care were inadequate to establish the alien's place at the top of the field or to demonstrate sustained national or international acclaim).

SCOPS also determined that the Beneficiary's original contributions, while valuable to his employers and clients and supported by letters and funding articles, did not rise to the level of major significance in the field as a whole and did not show that his work was recognized as being at the level of one of that small percentage who have risen to the very top of their field. They also indicated that although his salary and compensation were a positive element, it did not elevate him in a manner this benefit requires.

While the appeal contests SCOPS' analysis relating to the Beneficiary's contributions to the field under step one's individual criterion, they devote no time responding to the adverse final merits analysis on this subject. There is little doubt regarding the originality about the Beneficiary's role in establishing and developing a technology company that has some impact in the field. But what's not reflected in the record is the level at which the Beneficiary's contributions have impacted his field as a whole. That is a key factor in this analysis as it helps show whether he is among that small percentage who has risen to the very top of the field of endeavor and has sustained national or international acclaim at such an elevated level. *See* 8 C.F.R. § 204.5(h)(2).

Even though the Petitioner's appeal brief quotes from SCOPS' final merits analysis relating to his remuneration, the appeal brief cites to the portion of the USCIS Policy Manual under the individual criteria—or step one—and not how his achievements in this area pan out when considering the record in its totality. Even if we were to agree that the submitted evidence satisfies a criterion either directly or through comparable evidence, that has an insignificant effect in step two. For USCIS to evaluate whether his compensation packages are high in relation to others in the field, that requires a comparison to others similarly situated at or near the top of the field. So even if the Petitioner's evidence met the criterion, the record does not show that the Beneficiary's "earnings were so high as to indicate that they are one of a small percentage at the top of the field, or that the salary is reflective of sustained national acclaim." *Nagaiah*, 784 F. Supp. 3d at 820.

Finally, SCOPS noted that certain criteria, such as commercial success in the performing arts, did not apply to the beneficiary's occupation, and found that the Petitioner had not shown that the regulatory criteria were inapplicable so as to justify reliance on "comparable evidence." Ultimately, SCOPS decided that the Beneficiary's claims of sales failed to provide a comparison to others involved in similar pursuits and that the success of the petitioning company did not illustrate his sustained national or international

acclaim as one who has risen to the very top of the field of endeavor. Setting aside that some of SCOPS' discussion on this topical area included analysis that belonged under the individual criterion in step one, it remains that the Petitioner still does not advance any rebuttal to the denial that in the final merits, the Beneficiary's commercially successful achievements do not place him among the top echelon in his field. The appeal brief's commercial success portion is completely lacking in that area.

When the denial decision contains a specific basis for the adverse decision, it is the Petitioner's responsibility to demonstrate in their appeal that SCOPS made a prejudicial error when it denied on that basis. The failure to make such a demonstration—as we have here—means the below decision on this topic will stand. And by not raising issues relating to a final merits totality analysis, as the Petitioner has failed to do in several topics here, they have waived those topics in this appeal. *Matter of Garcia*, 28 I&N Dec. 693, 693 n.1 (BIA 2023) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) and finding issues that are not meaningfully challenged in the appeal are waived); *Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (finding when a filing party mentions an issue without developing an argument, the issue is deemed waived).

And the Petitioner cannot revive it by filing a motion on this decision as a filing party cannot cure their failure to preserve an argument in a previous stage of the same proceedings through a post-adjudicative motion. *Philipp v. Stiftung Preussischer Kulturbesitz*, 77 F.4th 707, 709–10 (D.C. Cir. 2023); *United States v. Campbell*, 26 F.4th 860, 875–76 (11th Cir.), *cert. denied,* 143 S. Ct. 95, 214 L. Ed. 2d 19 (2022) (finding that unless it would result in a miscarriage of justice, in most cases an issue abandoned on appeal should still be dismissed in any subsequent motion without addressing the merits). Instead, if they wish to raise those issues again, it should achieve that by filing a new petition.

Overall, SCOPS concluded that, even considering all the evidence in the aggregate, the Petitioner had not demonstrated a record of sustained national or international acclaim or that the Beneficiary has risen to the very top of the field of technology entrepreneurship, and therefore that he did not qualify for this classification.

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. 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 the Beneficiary has but one example for each of the following: securing funding for a startup, contributing to the field through that startup's work, judging others in the field, authoring scholarly work, displaying his work at an investor event, performing in a leading role for a distinguished organization, commanding a salary or remuneration, and enjoying commercial success. He further claims two memberships that were not shown to set him apart from others in the field, and only three published articles that briefly mentioned him. And the vast majority of these claims emanate from his dealings with the one organization.

Considering the full measure of the Beneficiary'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, the Petitioner has not submitted extensive

documentation exhibiting the Beneficiary 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 the Beneficiary's 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.