U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43121310

Date: JUNE 5, 2026

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

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

The Petitioner, a designer of wedding dresses, seeks 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). This EB-1 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. Section 203(b)(1)(A)(i) of the Act.

USCIS denied the petition, concluding that the Petitioner had satisfied at least three of ten initial evidentiary criteria, but the totality of the material provided in a final merits determination did not show sustained national or international acclaim demonstrating that the Petitioner is among the small percentage at the very top of the field of endeavor. 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 they:

- Have "extraordinary ability in the sciences, arts, education, business, or athletics;"
- Seek to continue work in their field of expertise in the United States; and
- Would substantially benefit the United States as an immigrant.

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

The term "extraordinary ability" means expertise commensurate with "one that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Unless 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), they must provide sufficient qualifying documentation that meets at least three of the ten lesser evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable evidence if they are 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.

If a petitioner meets these initial evidence requirements, U.S. Citizenship and Immigration Services (USCIS) must 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, 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), www.uscis.gov/policy-manual.

II. ANALYSIS

The instant petition was filed on November 6, 2025. The Petitioner intends to be a designer of wedding dresses and evening gowns in his own bridal couture store in the United States.[1] The Petitioner studied tailoring at [redacted] in Ukraine and then obtained a diploma in fashion design and pattern development at [redacted] in Greece. He owned and operated [redacted] in Ukraine from 2013 to 2022, then moved to the United States and opened [redacted] Alabama, in 2023. In 2025, he also started [redacted] for children to learn sewing and fashion design.

A. Evidentiary Criteria

Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed to have satisfied the following six initial criteria at 8 C.F.R. § 204.5(h)(3)(iii), (iv), (v), (vii), (viii), and (x), as summarized below:

- Published materials about the alien;
- Participation as a judge of others' work;
- Original contributions of major significance in the field;
- Display of work in the field at artistic exhibitions or showcases;
- Performing leading or critical roles for organizations that have a distinguished reputation; and
- Commercial successes in the performing arts.

USCIS concluded that the Petitioner met three initial criteria but that the record did not demonstrate sustained national or international acclaim, placing him at the very top of the field of endeavor. On appeal, the Petitioner claims that USCIS' final merits determination lacks any statutory or regulatory

[1] On Form I-140, Immigrant Petition for Alien Workers, the Petitioner identified his job title as "Lead Designer/Creative Director."

basis based on the recent U.S. District Court decision, *Mukherji v. Miller,* No. 4:24CV3170, 2026 WL 895708 (D. Neb. Jan. 28, 2026).[2] In the alternative, the Petitioner contends that even if the second step of the *Kazarian* analysis is permissible, USCIS failed to consider the totality of the evidence.

Upon review of the record, we withdraw USCIS' affirmative determination that the Petitioner satisfied three initial criteria at 8 C.F.R. § 204.5(h)(3)(iii) (published materials about the alien), (vii) (display of work at artistic exhibitions or showcases), and (viii) (leading or critical roles for organizations with distinguished reputation). Furthermore, we agree with USCIS' decision that the Petitioner did not meet another criterion at 8 C.F.R. § 204.5(h)(3)(x) (commercial successes in the performing arts). As such, the Petitioner has not met at least three initial evidentiary criteria, and we conclude that he is not eligible for the extraordinary ability visa classification sought, as discussed below.

1. Published Materials

This criterion at 8 C.F.R. § 204.5(h)(3)(iii) requires "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). SCOPS concluded that the Petitioner met the criterion, but we disagree and provide a new analysis of this criterion based on the following published materials in the record:

- Regions News 2023);
- WWNO/NPR Gulf States Newsroom 2023);
- REV , 2023);
- 13 News (NBC Affiliate) 2023);
- Over the Mountain Journal 2024);
- Now 2024);
- ABC News 2024)
- Medium.com 2024);
- The Star 2024);
- The Star 2025);
- CBS News 2025); and
- Vestavia Hills Magazine 2025).

[2] The court in *Mukherji* found that USCIS' adoption of the two-tiered system under *Kazarian* is not valid because it was implemented without the proper notice and comment rulemaking process.

The Petitioner claimed that these published materials are published in "major U.S. media outlets"[3] documenting "his recognized standing as couture designer of exceptional talent and international reputation" and span across "multiple jurisdictions and years (2023-2025)." Despite his claims, the Petitioner only provided copies of the articles and did not submit any independent or objective documentation to corroborate that they are published in major media or major trade publications relating to his field. In response to the request for evidence (RFE), the Petitioner provided his own summary chart listing each publication type, its estimated audience reach, and intended audience, but the record still lacked corroborating evidence, such as circulation, viewership, or readership figures from each publication in comparison to other major publications or major trade publications. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Here, the Petitioner has not met his burden.

Therefore, we withdraw USCIS' decision on this matter and conclude that the Petitioner has not sufficiently demonstrated the requirements of this criterion.

2. Display of Work in the Field in Artistic Exhibitions or Showcases

The regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires "[e]vidence of the display of the alien's work in the field at artistic exhibitions or showcases." In addition to demonstrating that the displayed work was the alien's work product, the venues (virtual or otherwise) where the work was displayed must be artistic exhibitions or showcases. USCIS concluded that the Petitioner met this criterion, but we disagree.

The Petitioner claimed that the display of his own fashion designs at [redacted] in [redacted] 2024 and [redacted] 2024 fulfills this criterion. The record indicates that this fashion show was a fundraiser sponsored by the [redacted] and all the fashion models are breast cancer survivors, patients, or healthcare providers. The reference letters that the Petitioner submitted in support of this criterion are from [redacted] executive director and two participants in the fundraiser (a cancer surgeon and a breast cancer survivor who also happens to be a public information officer for the city of [redacted] who walked the runaway wearing dresses designed by the Petitioner. The executive director of [redacted] writes: "As part of [redacted] [the Petitioner] has created and presented original couture gowns for two of the inspiring breast cancer survivors who modeled on our runway" and "[t]hrough his work, [the Petitioner] helps elevate [redacted] creative community, bringing European-level couture craftsmanship to our city and inspiring audiences while honoring those impacted by breast cancer." The other reference letters similarly praise the Petitioner for his dressmaking ability and artistry and confirm his participation as one of the designers who dressed the models at these events.

However, the Petitioner has not demonstrated that the [redacted] shows meet the regulatory definition of an artistic exhibition or showcase. Although Merriam-Webster's online dictionary definition of "exhibition" includes public showings other than those that are artistic in nature, the plain language of the criterion includes the modifier "artistic" and explicitly requires that the exhibitions or showcases be artistic in nature. 8 C.F.R. § 204.5(h)(3)(vii); *see generally* 6 *USCIS Policy Manual* F.2(B)(1). As such, various forms of artistic display, including visual art, performing arts, music,

[3] The Petitioner does not claim that any of these articles are published in "professional" publications. In evaluating whether a submitted publication is a professional publication, a relevant factor includes the intended audience. *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

graphic art, and other examples of the fine arts, may satisfy this criterion's requirements and comparable evidence may be accepted as we evaluate the artistic nature of the display and venue. Here, the Petitioner showed that he participated as one of the designers at [redacted] runway shows and his dresses were displayed publicly but has not submitted sufficient evidence to establish that the shows are artistic in nature.

The Petitioner also claimed that the display of his wedding dresses at [redacted] in 2023 and 2024 meets this criterion and submitted the following evidence: contracts and payments to secure his exhibit booth at the expo, photographs of wedding dresses displayed at his booth, and emails regarding the exhibitor kit. However, the Petitioner has not submitted sufficient documentary evidence that this expo qualifies as an artistic exhibition or showcase. Despite claiming that this expo's "scale, organization, and professional attendance confer artistic and commercial prestige equivalent to recognized couture showcases," the Petitioner has not corroborated his claims with documentary evidence; instead, the record indicates that the expo is a "consumer show" or a "trade show" focused on marketing and selling dresses. *See e.g., Kumar v. Dir. of U.S. Citizenship & Immigr. Servs.*, No. CV RDB-23-2251, 2024 WL 1374794, at *5 (D. Md. Apr. 1, 2024) (upholding plaintiff's display of his book at a book fair was not artistic or the event at the time was artistic in nature). Therefore, we also conclude that this expo does not meet the regulatory definition of being an artistic exhibition or showcase.

Accordingly, we withdraw USCIS' determination and conclude that the Petitioner has not satisfied this criterion.

3. Leading or Critical Role

To meet this requirement, a petitioner must provide "[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." 8 C.F.R. § 204.5(h)(3)(viii). A leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.(2)(B)(1), Criterion 8. A critical role means an alien contributed in a significantly important way to the activities of the organization, establishment, division, or department. *Id.* Additionally, the Petitioner must establish that the organization, establishment, division, or department has a distinguished reputation.

The Petitioner has claimed that his role as the founder and director of the [redacted] satisfy this criterion. However, the Petitioner has not demonstrated that the school or the bridal couture shop are distinguished organizations within the meaning of this regulation. 8 C.F.R. § 204.5(h)(3)(viii). The word "distinguished" ordinarily means "marked by eminence, distinction, or excellence" or "befitting an eminent person." *Distinguished*, Merriam-Webster Online Dictionary, www.merriam-webster.com. Relevant considerations in determining whether an organization is "distinguished" include not only its relative size and longevity but also other factors, such as the scale of its customer base or relevant media coverage of it. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.(2)(B)(1), Criterion 8.

The Petitioner submitted the mission statements, program descriptions, and internal agreement of the [redacted] as well as handwritten reviews from students who took the classes at the school. The

Petitioner also submitted [redacted] limited liability company agreement, invoices to clients, and many letters from community members and friends who attest that he is the lead designer of [redacted] and praise his skills and artistry as a designer. However, none of these letters are from the fashion industry leaders who corroborate the distinguished reputation of both the [redacted] and [redacted] bridal shop. The Petitioner has not otherwise indicated how these organizations have a distinguished reputation with objective and independent documentation showing their prestige or eminence compared to other organizations of the same nature.

Therefore, we withdraw USCIS' decision on this matter and conclude that the Petitioner has not met this criterion.

4. Commercial Successes in the Performing Arts

The regulation at 8 C.F.R. § 204.5(h)(3)(x) requires evidence of the Petitioner's commercial success, "as shown by box office receipts or record, cassette, compact disk or video sales." This criterion focuses on volume of sales and box office receipts as a measure of the person's commercial success in the performing arts. The evidence must show that the volume of sales and box office receipts reflect the person's commercial success relative to others involved in similar pursuits in the performing arts. *See generally* 6 *USCIS Policy Manual, supra*, at F.(2)(B)(1), Criterion 10.

USCIS found that the Petitioner did not submit evidence to meet the plain language of this criterion, pointing out that the submitted evidence did not show "commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales." Although USCIS did not provide analysis of the submitted evidence, we agree that the record is not sufficient to establish this criterion. In support of this criterion, the Petitioner submitted several client contracts, a portfolio of couture designs, and client reviews and testimonials. While the record includes evidence that he has some commercial success by being a lead designer at his own bridal couture shop, these contracts and testimonials do not demonstrate the Petitioner's commercial success in the performing arts, as the plain language of the regulation requires. *See Joseph v. Dir. of Texas Serv. Ctr., United States Citizenship & Immigr. Servs.*, No. 4:22-CV-00973-SDJ-AGD, 2024 WL 1299065, at *5 (E.D. Tex. Mar. 12, 2024), *report and recommendation adopted*, No. 4:22-CV-00973-SDJ-AGD, 2024 WL 1289452 (E.D. Tex. Mar. 26, 2024), *aff'd*, No. 24-40249, 2025 WL 458001 (5th Cir. Feb. 11, 2025) (upholding that the plaintiff who works in the field of 3D Printed construction did not work in the field of performing arts).

Also, the plain language of the regulation does not allow for submission of evidence other than box office receipts, video sales, or sales of other recorded media. *See Sarin v. United States*, No. 2:22-CV-07498-SVW-JS, 2023 WL 5667531, at *11 (C.D. Cal. July 27, 2023) (holding "as shown by" in the regulatory language indicates that the subsequent list is not a list of examples but is rather an exclusive list). Here, the Petitioner has not submitted such receipts and sales attributable to work in the performing arts.

We note that the Petitioner misidentified this criterion as criterion "ix" in the initial filing and may have confused this criterion with another criterion at 8 C.F.R. § 204.5(h)(3)(ix) (commanding a high salary in the field). It is unclear whether he intended to raise claims on both criteria (ix) and (x). However, in his response to the RFE, the Petitioner did not attempt to clarify his intention or submit

additional evidence to support that he earned a high salary or renumeration in the field; therefore, we deem that the Petitioner waives his claim under the criterion at 8 C.F.R. § 204.5(h)(3)(ix). Under 8 C.F.R. § 103.2(b)(13)(i), failure to respond to specific RFE elements constitutes abandonment or waiver of those claims. *See also Matter of R-S-H-*, 23 I&N Dec. 629, 638 (BIA 2003) (citing *Matter of Garcia-Reyes*, 19 I&N Dec. 830, 832 (BIA 1988) in holding that when a filing party fails to respond to a specific eligibility requirement in the record, they abandoned or waived that issue on appeal); *Indrawati v. U.S. Att'y Gen.*, 779 F.3d 1284, 1297 (11th Cir. 2015) (issues not properly developed in the record are not preserved for appeal).

Accordingly, we affirm USCIS' conclusion that the Petitioner did not meet this criterion.

B. Final Merits Determination

As discussed above, the Petitioner has not met four out of the six criteria that he initially claimed. Therefore, we need not discuss the remaining two criteria or conduct a final merits determination under *Kazarian* as it would not change the outcome of the decision.[4] *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 evidence shows that the Petitioner is an experienced tailor and designer of wedding dresses and evening gowns who operates both his own wedding dress boutique and a sewing school for students. The Petitioner has successfully rebuilt his wedding bridal shop in the United States, and the community members praise his business and skills as a tailor and designer. But the Petitioner has not provided sufficient evidence that he has earned sustained national or international acclaim as a fashion designer or reached a small percentage at the very top of the field, as the Petitioner contends on appeal.

The record as a whole does not establish the Petitioner's eligibility for the benefit sought.[5] The Petitioner has not demonstrated that his achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).[6] Here, 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,"); *Amin v. Mayorkas*, 24 F.4th at 394 (stating that extraordinary ability is such an elite level of accomplishment); *Lapteva v. Schuurmans*, No. 8:24CV83, 2025 WL 815087, at *1 (D. Neb. Mar. 10, 2025) (stating that EB-1 visa are intended to be available to only an exceedingly small amount of individuals with

[4] For the same reason, we decline to address the Petitioner's appellate argument under *Mukherji*. But we note that the *Mukherji* decision issued by a district court in Nebraska is not a binding precedential authority for the Petitioner who is in Alabama. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993) (in contrast to the precedential authority of the case law of a United States circuit court, the Board of Immigration Appeals is not bound to follow a decision of a United States district court).

[5] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (providing that some evidence weighs more favorably on its own, while other evidence is more persuasive when viewed with other evidence).

[6] The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provides that the "intent of Congress 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. 56 Fed. Reg. 30703, 30704 (July 5, 1991).

extraordinary ability). In this case, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or it is consistent with a career of acclaimed work in the field. *See* Section 203(b)(1)(A) of the Act. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, the record is insufficient to demonstrate that he is among the small percentage at the top of his field. *See* 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual 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.