U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43246121

Date: JUN. 05, 2026

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

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

The Petitioner, a software development company, seeks classification for 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 petition, concluding that while the Petitioner established that the Beneficiary met the initial evidentiary requirements for this classification by meeting at least three of the criteria under 8 C.F.R. § 204.5(h)(3), the record did not establish that he has garnered sustained national or international acclaim for his achievements and is among the small percentage of technology entrepreneurs at the top of the field. 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 establish eligibility as an individual of extraordinary ability, a petitioner (or anyone on the petitioner's behalf) must establish that they:

- Have extraordinary ability in the sciences, arts, education, business, or athletics;
- Seek to enter the United States to continue work in their area of extraordinary ability; and that
- Their entry into the United States will prospectively substantially benefit the United States.

Extraordinary ability must be demonstrated by evidence of sustained national or international acclaim as well as extensive documentation that the petitioner's achievements have been recognized in the field. Section 203(b)(1) of the Act.

The implementing regulation further states that the term "extraordinary ability" refers only to those aliens in "that small percentage who have risen to the very top of the field of endeavor." A petitioner can demonstrate that they meet the initial evidence requirements for this immigrant visa classification through evidence of a one-time achievement (that is, a major, internationally recognized award). If such evidence is unavailable, then they must alternatively provide evidence that meets at least three of the ten listed criteria, which call for evidence about lesser awards they may have received, published material about them in qualifying media, and their authorship of scholarly articles, among other types of evidence. 8 C.F.R. §§ 204.5(h)(2),(3).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination, assessing whether the record shows that the alien possesses the acclaim and recognition required for this highly exclusive immigrant visa classification. *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 Beneficiary is a co-founder and the chief executive officer (CEO) of the Petitioner. He is primarily responsible for the development of [redacted] an open-source software platform which allows developers to [redacted]. The record indicates that the Beneficiary built [redacted] and released it on the open-source development platform GitHub in late 2024, and founded the Petitioner in early 2025.

USCIS concluded that the Beneficiary met three of the evidentiary criteria for this classification, pertaining to published material about him and his work, his original contributions of major significance to the field, and his leading or critical role for organizations with a distinguished reputation.[1] However, in conducting a final merits determination of the Beneficiary's eligibility as an alien of extraordinary ability, USCIS determined that he had not garnered sustained national or international acclaim as a technology entrepreneur and had not elevated himself to be among the small percentage of technology entrepreneurs at the very top of this field.

On appeal, the Petitioner submits a brief accompanied by evidence already in the record. The brief includes three headings naming the three criteria granted by USCIS and asserts that USCIS employed a "heightened standard" in reviewing the evidence in its final merits determination. For example, when addressing evidence of a leading or critical for organizations with a distinguished reputation, the brief quotes a portion of USCIS' final merits determination and then states the following:

> By this, the NOID [*sic*] reveals material USCIS error with qualitative challenges to objective facts under 8 CFR 204.5(h)(3)(viii), as if constituted a **'one-time achievement'**, such as a major international recognized award per 8 CFR 204.5(h)(3),

[1] USCIS also concluded without analysis that the Petitioner had not established that the Beneficiary meets the evidentiary criteria pertaining to lesser nationally or internationally recognized awards, membership in an association requiring outstanding achievements, display of his work at an artistic exhibition or showcase, and his ability to command a relatively high salary or very high remuneration.

> an accolade USCIS would duly confirm that it sufficiently: indicates one's *sustained national or international acclaim* **and** that *their achievements have been recognized in the field of expertise* to establish their eligibility 8 USC 1153(b)(1)(A)(i).
>
> Yet the absence of a 'one-time achievement' is, itself, why USCIS adjudicates the record in two 'steps', 6 USCIS-PM F.2B (emphasis in original).

This assertion, which is repeated under the brief's discussion of the published materials about the Beneficiary, appears to be based on the premise that a final merits determination is not conducted where a Petitioner has established a one-time achievement (receipt of a major, internationally recognized award). This is not accurate, as the regulation at 8 C.F.R. § 204.5(h)(3) states that meeting at least three of the ten evidentiary criteria is an alternative to providing evidence of a one-time achievement. In either case, a final merits determination must follow to determine eligibility for this classification. *See generally* 6 *USCIS Policy Manual* F.2(B), www.uscis.gov/policy-manual.

Upon review of the record and the Petitioner's brief, we disagree with USCIS' conclusion that the Beneficiary has made original contributions of major significance in the field of technology entrepreneurship, and per the discussion below we withdraw that conclusion.

A. Original Contributions of Major Significance in the Field

The regulation at 8 C.F.R. § 204.5(h)(3)(v) seeks "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only have they made original contributions, but that those contributions have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. *See Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-5 (D.D.C. 2013).

The Petitioner asserts that the Beneficiary's development of [redacted] and its implementation by other companies and software developers is an original contribution of major significance. This assertion primarily relies upon the evidence of the reaction to the software platform since its posting on GitHub and the information relating to its adoption by companies based upon their websites. The Petitioner initially submitted a page from GitHub showing that [redacted] had received 22,300 "stars" and 1,800 "forks," which was updated to 24,000 and 2,000 in its response to USCIS' request for evidence (RFE). Various articles in the record explain these terms, with an article on the website https://shega.co stating that "stars represent the number of users that have favorited or bookmarked the project" and "forks refers to the number of developers who have copied the project to modify or build upon it." Other articles indicate that stars are "a good way to check project popularity" and "show support or appreciation." While a letter from P-K-, a general partner with [redacted], references the number of GitHub stars as a measure of the Beneficiary's contributions to the field, the record does not show that the level of popularity and interest in [redacted] reflect remarkable impact or influence on other developers and entrepreneurs.

Another measure of the significance of the Beneficiary's original contribution mentioned in P-K-'s reference letter is the number of downloads of [redacted], which he states increased to 680,000 a

week in December 2025. But unlike the GitHub data discussed above, the record does not include independent evidence to verify this information, as the source appears to be the Petitioner's website. Further, the record lacks the context to demonstrate that this level of downloads of the Beneficiary's original contribution is indicative of a significant contribution to the field or industry.

As for implementation of [redacted] in the industry, the record includes webpages from companies indicating that they have modified their own software products to integrate or work with [redacted] For example, a page from https:[redacted] shows that that company released a new version of its software which added functionality for "popular auth providers" including [redacted] However, other webpages in the record from companies which the Petitioner claims have adopted [redacted] make no mention of the product, including www.beatbread.com, https://hypermode.com, https://dokploy.com, and https://supermemory.ai. And while the article on https:[redacted] lists several "open-source projects [that] have adopted [redacted] for their authentication needs," it cites the Beneficiary as the source of this information. The sum of this evidence does not support the Petitioner's claim that implementation of the Beneficiary's original contribution has been widely implemented or has otherwise reached the level of major significance.

The Petitioner also highlighted evidence of its funding by several venture capital firms under this criterion, including [redacted] Although the funding by these investors shows their confidence in the ability of the Beneficiary and his co-founder to develop the Petitioner and its product and achieve profitability, the record does not establish that this early-stage funding is indicative of the significance of the Beneficiary's contribution that has already been made to the technology entrepreneur field .

For all of the reasons discussed above, we conclude that the record does not sufficiently demonstrate that [redacted] the Beneficiary's original contribution, is of major significance to his field. We therefore withdraw USCIS's conclusion on this issue.

B. Additional Criteria

As noted above, USCIS concluded in its decision that the Petitioner had not established that the Beneficiary meets an additional four evidentiary criteria under 8 C.F.R. § 204.5(h)(3). On appeal, the Petitioner asserts that USCIS did not give sufficient consideration to the evidence submitted in support of these four criteria, but does not directly challenge USCIS' conclusions regarding the individual criteria. Rather, it states that "USCIS no longer contests this criterion" when referring to evidence of the Beneficiary's remuneration and the display of his work, and the discussion of this evidence takes place within the context of the final merits determination and the three evidentiary criteria which USCIS granted. We will therefore not consider the Beneficiary's potential qualification under these four criteria. *See Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (declining to address a "passing reference" to an argument in a brief that did not provide legal support).

Because per the analysis above we have withdrawn one of the three criteria which USCIS concluded that the Beneficiary met, he no longer meets the requisite three criteria under 8 C.F.R. § 204.5(h)(3). He therefore does not meet the initial evidence requirement for classification as an alien of extraordinary ability. However, as the final merits determination was the primary focus of USCIS' decision and the appeal brief before us, we will review that aspect of the decision below.

C. Final Merits Determination

In a final merits determination, we analyze an individual's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate 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.

Because extraordinary ability is an elite level of accomplishment whose recognition necessarily entails a judgement call, it cannot be established through meeting at least three of the evidentiary criteria alone. The final merits determination is the ultimate statutory inquiry of whether the applicant has extraordinary ability as demonstrated by sustained national or international acclaim. *Amin v. Mayorkas*, 24 F.4th 383, at 395 (2022)(finding USCIS' two-step analysis of extraordinary ability "consistent with the governing statute and regulation").

On appeal, the Petitioner asserts that USCIS did not give sufficient consideration to some of the evidence in the record, particularly pertaining to those evidentiary criteria which they determined the Beneficiary did not meet. We will address the totality of the record below.

As discussed above, the Petitioner has established that under the Beneficiary's leadership, [redacted] has been adopted amongst other developers and technology startups to some degree. But while the evidence indicates that this software platform has achieved a level of popularity in the field and attracted funding from well-known venture capitalist firms, the totality of the record is insufficient to show that this level of interest places the Beneficiary amongst the very few technology entrepreneurs at the top of the field. Notably, some of the Petitioner's claims of implementation by other startups are not supported in the record. Further, while the record indicates that [redacted] is a product focused on user authentication for software applications, the Petitioner has not demonstrated that its popularity in this niche equates to acclaim for the Beneficiary in the broader field of technology entrepreneurialism.

The Petitioner asserts that the Beneficiary's remuneration is significantly high, noting his 44% equity stake in the Petitioner which it asserts is valued at $17.6 million. We first note that of the SAFE agreements in the record which provide a figure for the "Post Money Valuation Cap" the Petitioner relies upon for this calculation, most place this figure at $35 million, which would put the value of the Beneficiary's stake in the Petitioner at $15.4 million. More importantly, the record shows that this is a highly speculative figure. Notably, the article from https://dlapiperaccelerate.com submitted with the Petitioner's initial filing defines "post-money value" as "the amount that a given pre-money value infers the company to be worth at the moment immediately following an investment." It goes on to define "pre-money value" as "the amount that an investor and the company agree to deem the company to be worth immediately prior to the investor's investment." After humorously explaining the process of determining pre-money value, the article explains that it "is often not derived from accounting measures such as revenue, free cash flow or EBITDA," and "is often highly negotiated, driven by market forces and inherently speculative." Accordingly, the figure proposed by the Petitioner for the Beneficiary's remuneration is insufficiently supported, and the record does not show that his salary or remuneration places him among those technology startup entrepreneurs at the very top of this field.

The Petitioner also refers on appeal to the evidence that the Beneficiary presented his work at the [redacted] Demo Day for his cohort. We first note that the only evidence of this presentation is the letter from P-K-, who indicates that this resulted from his "cohort affiliation." While the record indicates that selection by [redacted] for its accelerator program is considered to be prestigious in the Beneficiary's field and as such represents a certain level of acclaim, the Petitioner has not shown that pitching one's startup at the demo day as the culmination of the program adds any prestige or recognition beyond that already associated with participation in the program.

In addition, when evaluating whether a petitioner has demonstrated sustained national or international acclaim, we consider whether any such acclaim has been maintained. *See generally* 6 *USCIS Policy Manual* F.2(A)(1). "Sustain" is defined per Black's Law Dictionary (11th ed. 2019) as "to support or maintain, especially over a long period of time… To persist in making (an effort) over a long period of time." *Id.* note 5. As noted in the beginning of our analysis, the Beneficiary initially released [redacted] [redacted] on GitHub in late 2024, just over a year prior to the Petitioner filing the instant petition. He co-founded the Petitioner months after this release, has led it as its CEO since, and was accepted into [redacted] Spring 2025 cohort. The entirety of the record proceeds from these events.[2]

For example, the two articles about the Beneficiary and his work that appeared in www.techcrunch.com and www.forbes.com were published in [redacted] 2025. The content of these articles are complimentary towards the Beneficiary and [redacted] but also acknowledge the compact timeframe in which he created the product, made it available as an open source project on GitHub, and attracted funding for the Petitioner. Similarly, all of the "Simple Agreement for Future Equity" (SAFE) agreements which document the venture capital funding received by the Petitioner were executed from March through June 2025.

While the totality of this and other evidence in the record, including comments, videos, and other materials on social media sites, verifies the growing popularity of [redacted] in the software development and technology entrepreneur field throughout this period, the Petitioner has not established that the level of acclaim he has achieved has reached the national or international level, or has persisted over a sufficient period of time to demonstrate his eligibility as an alien of extraordinary ability.

The Petitioner also asserts that USCIS disregarded evidence of the Beneficiary's O-1A nonimmigrant status. The record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. However, the 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. *See Aravamuthan v. Jaddou*, No. 3:23-CV-01412-N, 2025 WL 1708126, at *9 (N.D. Tex. June 17, 2025); *Cuckic v. Jaddou*, No. 21-CV-8395 (JPO), 2023 WL 2586031, at *2 (S.D.N.Y. Mar. 21, 2023); *Lapteva v. Schuurmans*, No. 8:24CV83, 2025 WL 815087, at *1 (D. Neb. Mar. 10, 2025). Many immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29-30 (D.D.C. 2003); *IKEA US, Inc. v. U.S. Dep't of Just. INS*, 48 F. Supp. 2d 22, 23 (D.D.C. 1999), *aff'd sub nom. IKEA US, Inc.*

[2] The Petitioner submitted the Beneficiary's resume which lists education and work experience he obtained prior to beginning development of [redacted], but does not assert that this previous education and experience contributed to sustained national or international acclaim or the placement of the Beneficiary among the small percentage of those at the top of his field.

v. Dep't of Just., INS, No. 99-5159, 1999 WL 825420 (D.C. Cir. Sept. 27, 1999); *Fedin Bros. Co. v. Sava*, 724 F. Supp. 1103, 1104 (E.D.N.Y. 1989), aff'd, 905 F.2d 41 (2d Cir. 1990). Furthermore, our authority over SCOPS, the office adjudicating nonimmigrant visa petitions, 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 immigrant petition. *See Louisiana Philharmonic Orchestra v. INS*, No. CIV. A. 98-2855, 2000 WL 282785, at *2 (E.D. La. Mar. 15, 2000).

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.