U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38246680

Date: JUNE 9, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a professor, 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 the Petitioner did not satisfy at least three, as required, of the initial evidentiary criteria. In addition, SCOPS concluded that the Petitioner did not show his entry would substantially benefit prospectively the United States. The matter is now before us on appeal. 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). *See also Onaghise v. Dep't of Homeland Sec.*, No. 3:20-CV-03033-X, 2022 WL 4073344, at *2 (N.D. Tex. Sept. 2, 2022) (holding that extraordinary ability visas are known as "Einstein" visas, are extremely "coveted," and are "reserved for only the most talented" aliens"). 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 achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories 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 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. U.S. Citizenship & Immigr. Servs.*, 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 Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

Because the Petitioner has not claimed or established his receipt of a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria under 8 C.F.R. § 204.5(3)(i)-(x). SCOPS determined the Petitioner met only one (judging under 8 C.F.R. § 204.5(3)(iv)) of the four claimed categories of evidence.[1] On appeal, the Petitioner asserts that he fulfills three additional criteria.

In addition, the Petitioner offers new evidence on appeal. Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. *See Matter of Furtado*, 28 I&N Dec. 794, 801-02 (BIA 2024) (declining to consider new evidence on appeal when the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it) (citing *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988)); *see also* 8 C.F.R. § 103.2(b)(11) (requiring that in response to a request for evidence or notice of intent to deny, all evidence must be submitted together at one time and that submitting only some of the required evidence will be considered a request for a decision on the record).

A. Published Materials

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field

[1] Any ground of ineligibility that is not raised on appeal is waived. *See Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation."[2]

At initial filing, although the Petitioner submitted various supporting documents, the Petitioner did not specifically claimed eligibility for this criterion. Specifically, in the request for evidence (RFE), SCOPS indicated:

> The petitioner has submitted evidence, but does not specify or detail as to what regulatory areas the petitioner is eligible under and what the documentation supports. The petitioner did not submit a statement detailing which regulatory area the documentation is associated to and how it qualifies under that specific regulatory area. Please refer to the Form I-140 instructions and regulatory policy to submit the necessary evidence to establish eligibility for the classification sought. Without following the Form instructions and abiding by the policy set forth for the classification, the petitioner impedes USCIS from evaluating and analyzing the evidence.

In response, the Petitioner offered material authored by him. However, the Petitioner did not show that the evidence reflects published material *about* him relating to his work consistent with the regulatory criterion.[3] *See Kinuthia v. Rosenberg*, No. CV 17-10255-LTS, 2018 WL 1243955, at *5 (D. Mass. Mar. 8, 2018), *aff'd sub nom.*, *Kinuthia v. Velarde*, No. 18-1244, 2019 WL 11671989 (1st Cir. July 3, 2019), *cert. denied*, 140 S. Ct. 2643, 206 L. Ed. 2d 714 (2020) (finding it is not enough that the material merely relates to the applicant's work); *see also 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 evidence did not include a discussion of the plaintiff and his work); *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 her work).

For the reasons discussed above, the Petitioner did not demonstrate he meets this criterion.

B. Display

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."[4] The Petitioner argues:

> The conference [redacted] held during March 20-21, 2019 in New York, USA" and symposia where I have presented my work are not merely scientific gatherings but are integral to my field, which intersects between science and applied practice. These events serve as crucial platforms for disseminating cutting-edge research and advancements that contribute to the broader scientific and professional community. The term "artistic" in the context

[2] *See also generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[3] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1) (instructing that USCIS determines whether the published material was related to the person and the person's specific work in the field for which classification is sought).
[4] *See also generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

of my petition should be interpreted broadly to include significant contributions to the advancement of knowledge and professional practice in my field.

Merriam-Webster's online dictionary defines "exhibition" as a public showing (as of works of art, objects of manufacture, or athletic skills).[5] While the dictionary definition 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.[6] *See also Kazarian*, 596 F.3d at 1122 (upholding the plaintiff's textbook self-publication, community college lectures, and conference presentations were not displays at artistic exhibitions or showcases consistent with the relevant regulatory language). Here, the Petitioner did establish that his scientific conferences qualify as artistic exhibitions or showcases.

Accordingly, the Petitioner did not demonstrate he satisfies this criterion.

III. CONCLUSION

The Petitioner did not establish eligibility for any of the categories of evidence discussed above. Although the Petitioner also argues eligibility for the role criterion under 8 C.F.R. § 204.5(h)(3)(viii), we need not reach this additional ground because the Petitioner cannot fulfill the initial evidentiary requirement of at least three under 8 C.F.R. § 204.5(h)(3). We also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Moreover, we need not determine whether his entry would substantially benefit prospectively the United States under section 203(b)(1)(A)(iii) of the Act.[7] Accordingly, we reserve these issues.[8]

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought.[9] 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 (stating that EB-1 visa are intended to be available to only an exceedingly small amount of individuals with 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

[5] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[6] *Id.*
[7] *See Job v. Jaddou*, No. 4:22-CV-03017, 2024 WL 2963795, at *4 (S.D. Tex. June 12, 2024) (upholding a determination of whether the plaintiff would substantially benefit prospectively the United States was not needed because the plaintiff did not establish sustained national or international acclaim).
[8] *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).
[9] *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).

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).

For the reasons discussed above, the Petitioner has not demonstrated his 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.