U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37958838

Date: JUN. 13, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an esthetician, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation

Service Center Operations (SCOPS) denied the petition, concluding that the record did not establish that the Petitioner has a one-time achievement (that is, a major internationally-recognized award) or meets at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

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 Petitioner is an esthetician who founded and operates a beauty clinic and school in her native Brazil. She intends to open the same type of business in the United States.

A. Evidentiary Criteria

SCOPS concluded that the Petitioner met only one of the five evidentiary criteria for which she submitted evidence. Specifically, it determined that the Petitioner's awards were sufficiently recognized at the national level to meet the criteria at 8 C.F.R. § 204.5(h)(3)(i), but that the record did not support her qualification under the following criteria:

- Membership in associations in the field requiring outstanding achievements
- Published material about the Petitioner relating to her work in the field
- Display of the Petitioner's work at artistic exhibitions or showcases
- Performance in a leading or critical role for organizations with a distinguished reputation

With her appeal, the Petitioner submits new evidence and asserts that she meets the requirements of the first three of these additional criteria.[1] As discussed below, we disagree with SCOPS' conclusion regarding the awards criterion, and conclude that the Petitioner has not established that she meets the initial evidence requirement for the requested classification by satisfying at least three of the evidentiary criteria.

1. Evidence of Lesser Nationally or Internationally Recognized Prizes or Awards

The regulation at 8 C.F.R. § 204.5(h)(3)(i) calls for "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor."

[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)). Because the Petitioner does not challenge SCOPS' conclusion that she does not meet the criterion at 8 C.F.R. § 204.5(h)(3)(viii), she has waived her claim to this criterion and it will not be considered in our decision.

SCOPS recognized evidence in the record pertaining to three awards claimed by the Petitioner: the [redacted] award, the [redacted] award, and the [redacted] Without analysis of this evidence, SCOPS concluded that the Petitioner met this criterion. Per our discussion below, we disagree and withdraw that conclusion.

The Petitioner initially submitted a photograph showing three trophies. The text on one of these identifies it as the Beauty Minas Prize and includes the Petitioner's name, and includes the year in which it was awarded (2019). The record also includes a photograph of her receiving the award. However, the only information about this award in the record consists of the description provided by the Petitioner herself, and she does not provide objective documentary evidence to support her assertions. As noted above, it is the Petitioner's burden to establish her eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 375-76. Here, her description of the Beauty Minas award as "the Oscars of Minas Gerais beauty" and assertions about the number of competitors and selection process are unsupported and thus insufficient to establish that this award is nationally or internationally recognized in her field. *See Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 182 (D.N.J. 2021) (finding the regulation requires that the petitioner provide evidence of national or international recognition); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 136 (D.D.C. 2013); *Guida v. Miller*, No. 20-CV-01471-LB, 2021 WL 568850, at *8-9 (N.D. Cal. Feb. 16, 2021); *Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885, at *8 (E.D.N.Y. Sept. 30, 2011).

Turning to what the Petitioner describes as the '[redacted] award, the evidence consists of a certificate on which the name of the awardee illegible, stating that the person "participated in" the award event. Even if the certificate verified the Petitioner's participation in this event, which it does not, it does not establish that she received a prize or award for excellence in her field of endeavor.[2]

Another of the trophies included in the photograph includes the name of an industry conference ('[redacted]') at which the evidence shows the Petitioner demonstrated micropigmentation techniques in 2022. However, the remainder of the text on the trophy is not legible or translated, and does not appear to include the Petitioner's name. Further, the record lacks any further evidence of the Petitioner's receipt of an award at this conference, as the certificates from this same conference only verify her role as a speaker. And even if the photograph alone were sufficient to establish the Petitioner's receipt of an award, which it is not, the record does not include information about the criteria for this award and does not support the Petitioner's assertions regarding the criteria, number of awards, and national recognition of any such award.

The Petitioner also submitted evidence that her company received a '[redacted]' award from the [redacted] for 2021/2022 in the category "micropigmentation and esthetics."[3] The certificate states that it was given in recognition for the company's "excellence, quality, commitment and respect for its clients." In her RFE response, the

[2] We note that the Petitioner did not provide further evidence or any additional explanation regarding this certificate in her response to SCOPS' request for evidence (RFE).

[3] The focus for this criterion is on the Petitioner's receipt of an award, as opposed to her employer's. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual. But we note that the record includes photographs of the Petitioner personally accepting this award on behalf of her company.

Petitioner submitted information about [redacted] and the award, including screenshots (in English) from what appears to be the organization's website and its YouTube channel. But this evidence represents [redacted] views of the importance and recognition of its own award in the field of marketing, and does not reflect recognition of the award in the Petitioner's field of esthetics. Nor does it establish recognition of the award in a broader audience beyond the awarding organization. *See Visinscaia v. Beers*, 4 F. Supp. 3d 126, 136 (D.D.C. 2013). The evidence is therefore insufficient to show that the Top of Mind Award received by the Petitioner is nationally or internationally recognized in her field.

For the reasons discussed above, we disagree with SCOPS' conclusion that the Petitioner meets this criterion, and we withdraw that conclusion. The Petitioner has not established that she meets this criterion.

2. Evidence of Membership in Associations Requiring Outstanding Achievements of Members

The regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "[d]ocumentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields."

The Petitioner asserts that her membership in the [redacted] qualifies under this criterion. SCOPS concluded that based upon the evidence of the organization's bylaws, the minimum requirement at the Petitioner's level of membership was a bachelor's or technologist's degree, and that this was insufficient to show that it required outstanding achievements of its members.

On appeal, the Petitioner asserts that in addition to a minimum level of education, [redacted] requires "certification and training from a duly recognized institution." However, the language of article 1, paragraph 1 of the bylaws indicates that "a certificate proving training at a duly recognized institution" is a reference to a bachelor's or technologist's degree, not additional education or training beyond that level. Also, the Petitioner has not established that if additional training beyond a degree was required for [redacted] membership, that such training would be outstanding versus a minimum occupational requirement for estheticians.

The Petitioner also refers to article 50 of [redacted] bylaws, which mentions the appointment of state or regional leaders of the organization. But the Petitioner has not submitted evidence that she serves in this role, or that this can be considered to be a level of membership in the organization. Further, nothing in article 50 supports her assertion that appointment in this role requires "demonstrated professional expertise, recognition, and leadership in the field."

In addition to the above, the Petitioner also extrapolates from other portions of the bylaws, asserting that "the organization only accepts those with significant professional standing and contributions in the field." However, the plain language of articles 1 and 5 show that the only requirements for membership are an application with biographic information and a certificate showing "training at a duly recognized institution." We therefore agree with SCOPS' conclusion that the Petitioner has not demonstrated that her [redacted] membership meets this criterion.

3. Display of the Petitioner's Work at 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." We first consider whether the displayed work was the alien's work product. If so, we determine whether the venues (virtual or otherwise) where the work was displayed were public showings which were artistic in nature. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual.

The Petitioner asserts that her work as a speaker/demonstrator at the [redacted] conference in 2022, previously mentioned in our discussion of the awards criterion, qualifies under this criterion. She submitted photographs of herself which appear to show her demonstrating esthetician techniques at the conference, as well as a certificate acknowledging that she "delivered a lecture" about eyebrow micropigmentation. Other photos show her standing in front of an exhibition booth for her company at the conference. Based on this evidence, SCOPS determined that the Petitioner had not established that the conference constituted an artistic display or showcase.

On appeal, the Petitioner asserts that the [redacted] conference serves "as a significant platform for showcasing innovations, techniques, and artistic applications in micropigmentation." She also submits a new letter from D-B-D-S-, who writes that he "was a representative of the [redacted] event." 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 requested evidence will be considered a request for a decision on the record).

The record does not include evidence demonstrating that the Petitioner's presentation at the [redacted] conference constituted a display at an artistic exhibition or showcase. The conference is described as a meeting of estheticians and other industry workers, and the Petitioner acknowledges in her own descriptions of the event that most of the exhibitors were companies, presumably those promoting their beauty products and services. We note that a certificate acknowledging the Petitioner's presentation at the conference refers to it as a "scientific conference." As such, the record does not support the Petitioner's claim that her presentation at the [redacted] conference took place at an artistic exhibition or showcase.

For the first time on appeal, the Petitioner asserts that interviews of her on Brazilian television shows also qualify as displays of her work as an esthetician at artistic displays or showcases.[4] She also submits two new letters from employees of the television channel on which these programs were aired. However, as discussed above, because the Petitioner was notified of deficiencies in the record in SCOPS' RFE and provided with ample opportunity to respond, we will not consider this new evidence on appeal. *Id.* The evidence initially submitted regarding these interviews consists of three

[4] The Petitioner initially claimed that this evidence constituted published material about her and work in the field under the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

screenshots showing the Petitioner speaking, one in which she appears to be performing a live demonstration of esthetician techniques. These screenshots were accompanied by the Petitioner's own description of the interviews, and the record did not include transcripts of the television segments. The Petitioner did not submit additional evidence regarding her appearance on these programs when responding to SCOPS' RFE. As the record does not include verifiable documentary evidence regarding the content of the program segments in which the Petitioner appeared, it does not demonstrate that she displayed her work in the field on these occasions.

In addition, other than the new letters, the record lacks documentary information beyond the Petitioner's own statements about the television shows and channels or stations on which the segments about the Petitioner were supposedly displayed. This includes an absence of evidence in support of the Petitioner's claim that these programs constituted an artistic display or exhibition, as opposed to their apparent commercial or informational purpose.

Per the discussion above, the Petitioner has not shown that she has displayed her work as an esthetician at artistic exhibitions or showcases, and we therefore agree with SCOPS' conclusion that she does not meet this criterion.

B. Final Merits Determination

Although the Petitioner claims eligibility for an additional criteria on appeal, relating to published material about her and her work at 8 C.F.R. § 204.5(h)(3)(iii), we need not reach these additional grounds. As the Petitioner cannot fulfill the initial evidentiary requirement of meeting at least three of criteria under 8 C.F.R. § 204.5(h)(3), the identified basis for denial is dispositive of the appeal. We therefore reserve the Petitioner's appellate arguments regarding this additional evidentiary criteria. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). In addition, because the Petitioner has not met the initial evidence requirement for this classification, as she has not submitted evidence of a one-time achievement or that she meets at least three of the evidentiary criteria under 8 C.F.R. § 204.5(h)(3), we need not provide the type of final merits determination referenced in *Kazarian,* 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

III. CONCLUSION

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 the top. 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 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered

national or international acclaim in the field, and that she is one of the small percentage who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.