U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43194757

Date: JUNE 16, 2026

Appeal of USCIS Decision

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

The Petitioner is an athlete who 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.

U.S. Citizenship and Immigration Services (USCIS) denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner had received a major, internationally recognized award, nor did she demonstrate that she 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 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. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she 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 she met four of the regulatory criteria. SCOPS decided that the Petitioner satisfied each of the claimed criteria relating to prizes or awards, membership, published material, and performing in a leading or critical role, although we will withdraw the determination on one of those criteria.

1. "Documentation 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." 8 C.F.R. § 204.5(h)(3)(ii).

SCOPS made a favorable determination under this criterion. The Petitioner directly claimed the membership criterion based on her selection on various prominent diving teams. But as USCIS Policy reflects, this is a claim that better aligns with the comparable evidence regulatory provision at 8 C.F.R. § 204.5(h)(4). *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual (stating that election to a national all-star or Olympic team is better considered under a comparable evidence claim for evidence of memberships in 8 C.F.R. § 204.5(h)(3)(ii)). However, the Petitioner did not make such a claim, and as a result, we withdraw SCOPS' favorable determination here. As the Petitioner still met at least three other criteria, this does not ultimately impact this case's outcome. We will still consider her membership claims in the final merits determination.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence we will evaluate whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim and that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. In a final merits

determination, we analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if her successes are sufficient to demonstrate that she 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); *also 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 her eligibility.

1. Appellate Claims that Two-step Process is not Authorized

The two-step adjudication process is an interpretive rule that does not violate the Administrative Procedure Act, nor is it a legislative rule. *Nagaiah*, 784 F. Supp. 3d at 810; *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.

We start by disposing of the Petitioner's claim that a single district court opinion established the two-step process is ultra vires (i.e., beyond USCIS' legal authority). That opinion has no authority here. We are only bound to follow published case law from a U.S. court of appeals for sufficiently similar situations within the same circuit. *Matter of Anselmo,* 20 I&N Dec. 25, 31 (BIA 1989); *Matter of K-S-*, 20 I&N Dec. 715, 718 (BIA 1993). Cases before us that fall outside a U.S. court of appeals' jurisdiction carry no binding effect. *Matter of Anselmo,* 20 I&N Dec. at 31 (finding administrative appellate bodies "are not required to accept an adverse determination by one circuit court of appeals as binding throughout the United States").

U.S. district courts' opinions carry even less of a binding effect as we are not required to follow their published decisions, not even within the same district. *Matter of Duarte-Gonzalez*, 28 I&N Dec. 688, 690 n.2 (BIA 2023). Although we may consider a district judge's reasoning as a useful aid in our analysis, we are not required to follow it as a matter of law. *Matter of N-A-G-C-*, 29 I&N Dec. 662, 665 (BIA 2026) (citing *Matter of K-S-*, 20 I&N Dec. at 718); *see also Trump v. CASA, Inc.*, 606 U.S. 831, 852 (2025) (concluding that as a matter of law, a district court's findings "extends only to the suing plaintiff—as evidenced by the fact that only the plaintiff can enforce the judgment against the defendant," and if another person or entity wishes to restrict the defendant's actions, they must file their own suit).

But more than that, we do not agree with the district court's reasoning. The opinion the Petitioner references is *Mukherji v. Miller*, No. 4:24CV3170, 2026 WL 895708, at *6 (D. Neb. Jan. 28, 2026). There, the court noted that in 1995 the former Immigration and Naturalization Service proposed a two-step adjudicative process. The court also observed that the Office of Personnel Management's (OPM) docket showed that the 1995 notice of proposed rulemaking (NPRM) was classified as a substantive rule. Based on that classification of the entire NPRM, the court treated the two-step

process as the sole reason the proposed rule was a substantive or legislative rule, and it did not evaluate whether the numerous other provisions within the proposed rule might have been the basis for OPM's classification.

On that understanding, the court concluded that the two-step adjudicative process constituted a legislative or substantive rule that could be implemented only through notice-and-comment rulemaking under the Administrative Procedure Act (APA). In doing so, the court did not fully engage with USCIS's stated rationale for adopting the two-step process, namely that a federal circuit court required it, and that using one approach within that circuit and a different approach elsewhere was not prudent or feasible. USCIS' implementing memorandum discussed the circuit court's decision in detail and expressly adopted that approach. USCIS respectfully submits that this explanation satisfies any obligation to articulate a rational basis for the policy change.

In addition, the *Mukherji* decision did not appear to address how that petitioner's satisfaction of the criteria in that case related to the method of adjudication. The court ordered approval of the petition without analyzing whether any favorable determinations made at step one had been reached under the prior approach in which USCIS did not conduct a qualitative sustained-acclaim analysis under each individual criterion. The five criteria the court found satisfied (awards, published material, judging, contributions, and leading or critical role) thus were not adjudicated in the manner the court seemed to contemplate reinstating. USCIS respectfully submits that this omission was not harmless, because it bears directly on whether the court's remedy accords with the adjudicative framework it preferred.

And about congressional intent, USCIS understands Congress to have intended that qualifying candidates for this immigration benefit be among those at the top of their field. The House Judiciary Committee explained: "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." H.R. Rep. 101-723, 59 (Sept. 19, 1990), reprinted in 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739 (House Committee Report). *Mukherji*, however, understood the legislative history differently, stating that the Conference Report on the Senate bill that ultimately became law "says absolutely nothing" about a requirement that persons seeking priority-worker extraordinary ability classification be part of "that small percentage of individuals who have risen to the very top of their field" or any similar formulation. H.R. Conf. Rep. 101-955, 101st Cong., 2d Sess. (Oct. 26, 1990).

USCIS respectfully reads the legislative history differently. The "Senate Bill" material the court cited is from a Conference Report, while the "small percentage" language appears in a House Judiciary Committee Report. These documents serve different functions in the legislative process. When a conference report does not address a particular substantive issue, as is the case here, the committee reports that originally developed and explained the provision remain the most authoritative evidence of congressional intent. *See Zuber v. Allen*, 396 U.S. 168, 186 (1969) (noting that committee reports "represent the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation"); *Garcia v. United States*, 469 U.S. 70, 76 (1984) (explaining that "[i]n surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill").

The House Judiciary Committee Report, H.R. Rep. 101-723, supplies the substantive explanation of Congress's intent for the Immigration Act of 1990's extraordinary-ability classification, including the

"small percentage" formulation. As summarized by the Congressional Research Service, committee reports typically outline the need and purpose of legislation and may include statements of legislative intent to guide both the executive branch in implementation and the judiciary in interpretation. *See Committee Reports: Required Contents*, Congressional Research Service Products (Library of Congress) (Jan. 22, 2008).

By contrast, the Conference Report, H.R. Conf. Rep. 101-955, primarily reconciles differences between the House and Senate versions and describes how those differences were resolved. Its focus is on the compromise text rather than on restating all underlying policy judgments that were already addressed in the committee reports. A conference report is just the final, official version of a compromise bill that only lists the specific legal text and the formal steps the House and Senate must take to pass it. *Conference Reports and Joint Explanatory Statements*, CONGRESS.GOV (Jun. 11, 2015), https://www.congress.gov/crs-product/98-382. In that light, the Conference Report's silence on the "top of the field" requirement is most reasonably understood as reflecting acceptance, rather than rejection, of the House Judiciary Committee's previously articulated intent.

Accordingly, USCIS respectfully understands H.R. Rep. 101-723 to remain the controlling statement of congressional intent on this point. That understanding is reflected in 8 C.F.R. § 204.5(h)(2), which requires "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor."

Not only is the Petitioner incorrect in relying on this flawed analysis, but she also did not assert these claims in the proceedings before SCOPS and she may not advance them for the first time in this appeal. *Whitton v. Dixon*, No. 25–580, 2026 WL 1513270, at *2 (U.S. June 1, 2026) (declining to evaluate new claims, legal theories, or evidence that were not before the original deciding authority in the first instance); *Santana-Gonzalez v. Bondi*, 172 F.4th 736, 744 (9th Cir. 2026) (finding a filing party cannot raise new issues on appeal that it did not present to the lower trier of fact); *Matter of G-C-I-*, 29 I&N Dec. 176, 177 n.2 (BIA 2025) (citing *Matter of H-L-S-A-*, 28 I&N Dec. 228, 240 n.10 (BIA 2021) and noting that issues presented for the first time on appeal will not be addressed).

2. Final Merits Analysis

The Petitioner is a [redacted] elite diver who claimed senior international gold medals in the 10-meter platform at the [redacted] and [redacted] She represented [redacted] at the [redacted] where she placed seventh in the 10-meter synchronized event, and subsequently joined the [redacted] to compete in NCAA events. We take administrative note that the Petitioner does not address her absence from the [redacted]. While some of the support letters address the [redacted] the reason for her lack of involvement with the [redacted] games remains unclear.

We begin discussing the topical area of her prizes or awards. The record reflects that the Petitioner began her diving career with junior national titles in 2016 and made her senior debut in 2017. She reached a high point early in her career with a gold medal in the 10-meter synchronized event at the [redacted] followed by a silver medal in the mixed 10-meter platform synchronized event and a bronze medal in the team event at the [redacted] She

subsequently earned a silver medal in the 10-meter synchronized event at the [redacted] which secured her qualification for the [redacted].

Later, she won a silver medal at the [redacted] and a gold medal at the [redacted] These international, post-2020 [redacted] competitions reflect that she continued to compete internationally, raising further questions why the record lacks information about the [redacted] More recently, while attending [redacted] the Petitioner has achieved strong results in national collegiate competitions, including conference [redacted] honors, a team scoring record for [redacted] in 2024, multiple second and third place conference finishes that year, and a 10th-place finish at the [redacted] in 2025.

These accomplishments collectively show that she has competed at a high level and has experienced periods of notable success, particularly during the 2018 to 2020 timeframe. However, the record indicates that her most significant international achievements occurred several years ago, and her more recent results are concentrated in the collegiate sphere rather than at the highest levels of international competition. Also weighing against her here is a lack of information pertaining to her efforts and a lack of selection for the [redacted] When viewed as a whole, the evidence reflects strong but episodic success rather than a consistent pattern of recognition at the very top of the field over time, and therefore does not clearly demonstrate sustained acclaim at the level contemplated for individuals who have risen to the small percentage at the pinnacle of their discipline.

Even though we withdrew SCOPS' favorable finding under the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii), we also find that the same evidence could have been sufficient under the comparable evidence provision at 8 C.F.R. § 204.5(h)(4) if she had clearly raised and supported that claim. *See generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(1) (stating that election to a [redacted] or [redacted] team can serve as comparable evidence for evidence of memberships in 8 C.F.R. § 204.5(h)(3)(ii)). Here, the Petitioner claims eligibility based on her memberships on the [redacted] diving teams associated with the [redacted] as well as the [redacted] diving team representing [redacted].

The Petitioner's memberships on the [redacted] Team including service on junior and senior squads and prior [redacted] squads, reflect that she has competed at a very high level. The record indicates that selection to these teams is governed by performance-based, objective criteria under [redacted] Diving regulations and the [redacted] qualification systems. Her prior selection to represent [redacted] at the named events distinguishes her from the general pool of competitive divers and demonstrates that she has, at times, been among a limited group of athletes capable of competing on the international stage.

However, the record does not address whether the Petitioner qualified for the [redacted] diving team. In the absence of more recent evidence of comparable national team placements, major international selections, or similar high-level achievements, the memberships and representations documented in the record reflect peak accomplishments over a limited period rather than a continued pattern of recognition at the highest levels of the field. Taken together, this evidence does not establish the Petitioner's acclaim has been sustained over time at the level contemplated for individuals who have risen to the very top of their field.

Moving to media coverage, the Petitioner presented several articles about her performances from major [redacted] outlets, including [redacted] primarily between 2018 and 2023. Coverage of this nature, particularly by [redacted] indicates that her achievements during this period were of sufficient prominence to warrant reporting by nationally recognized media. However, the articles appear to be tied to specific competition results rather than in-depth features or ongoing commentary about her broader prominence in the field, and there is no indication of comparable coverage beyond 2023. The record does not show similar media attention related to the [redacted] cycle or more recent international competitions. Taken together, the media evidence reflects episodes of notable attention over a limited timeframe rather than a consistent, ongoing level of coverage that would clearly support a finding of sustained national or international acclaim at the highest level.

And we end on the topic of the Petitioner's leading or critical roles for distinguished entities. She has performed at a high level for [redacted] including European junior gold and junior records, European senior gold in women's synchronized 10-meter platform at age 15, subsequent European and Commonwealth silver medals, [redacted] medals, and representation at the [redacted]. Letters from coaches describe her high-difficulty dives as central to [redacted] team strategy, assert that younger athletes model their technique on her, and state that she took on training-environment responsibilities such as leading warmups, mentoring junior divers, and stabilizing synchronized pairs. While these statements acknowledge her impact during the period around the [redacted] they are primarily testimonial and focus on past achievements. The record does not show formal leadership titles within the [redacted] team or continued comparable roles in connection with the [redacted] cycle. This absence of more recent top-tier international participation undermines the claim that she has maintained an ongoing leading or critical role at the highest level.

At the collegiate level, the Petitioner has served as team captain and a member of the [redacted] with responsibilities such as organizing training, coordinating competition plans, mentoring younger athletes, and acting as a liaison between coaches and teammates. These accomplishments show that she plays an important role within her collegiate program, but they are limited to a single university team and supported largely by internal letters and team-level honors. Taken together with the [redacted] team evidence, and in light of the lack of documentation of recent, formally recognized leadership at the highest levels of international competition, the record reflects notable but context-specific roles rather than clearly sustained leading or critical roles.

To summarize our analysis in its totality, the Petitioner has earned notable prizes and awards, secured selection to highly competitive national teams, received episodic coverage in major media outlets, and played important roles within the [redacted] team and [redacted] However, her most significant international achievements and media attention are concentrated in the 2018 to 2023 timeframe, her recent accomplishments are primarily in the collegiate arena, and the record does not document selection for the [redacted] or other recent top-tier international competitions. When viewed as a whole, the evidence reflects strong but time limited and context specific success when this classification demands candidates illustrate their sustained acclaim, leadership, and recognition among those at the top of the field. She has therefore fallen short of establishing that she is among the small percentage who have risen to the pinnacle of her discipline.

III. CONCLUSION

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