U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37827014

Date: JUNE 30, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a photojournalist, 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 her sustained national or international acclaim and that she 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 withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

## 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). 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 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 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). If an evidentiary standard under 8 C.F.R. § 204.5(h)(3)(i)-(x) does not "readily apply" to a petitioner's occupation, the petitioner may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

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. USCIS, 596 F.3d 1115, 1121 (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) (upholding USCIS' two-step review process as "consistent with the governing statute and regulation").

## II. ANALYSIS

The Petitioner claims eligibility for this classification based on extraordinary ability in the area of photojournalism.

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must demonstrate that she satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). She provided evidence for five of the ten initial evidentiary criteria. SCOPS determined that she met three criteria relating to published materials, participation as a judge of others' work, and authorship of scholarly articles. SCOPS found that she did not meet the requirements for the criterion of original contribution of major significance, and did not discuss or make a determination whether the Petitioner met the requirements for the criterion of display of work at artistic showcases or exhibitions.

Although the Petitioner met three of the evidentiary criteria, SCOPS concluded that she did not demonstrate, by a preponderance of the evidence, her sustained national or international acclaim, that she is one of the small percentage at the very top of the field, and that her achievements have been recognized in the field through extensive documentation.

On appeal, the Petitioner asserts that having met her burden by satisfying three of the regulatory criteria, she is eligible as an alien of extraordinary ability, unless USCIS sets forth evidence to the contrary. She maintains that according to the Act and regulations, demonstrating receipt of a one-time achievement, or meeting three of the criteria is all that is required to be an alien of extraordinary ability. She argues that neither the Act nor regulations relating to extraordinary ability sets forth a two-part analysis, requiring a review of the totality of the evidence in a final merits determination. Acknowledging the concept of a two-part analysis arose from Kazarian and has been incorporated in

USCIS policy guidance, she explains that the Kazarian decision "mentions the concept of 'final merits determination,'" but "merely in passing and does not explain or provide a structural framework for such a determination." Since Kazarian, she explains that "USCIS has issued no formal rulemaking to clarify the regulatory standard, nor has the 'final merits determination' been incorporated into the regulations." In addition, she contends that while the USCIS Policy Manual provides examples when considering the totality of the evidence analysis, it "does not provide much clarification" with most examples relevant to academic researchers and scientists, not artists. Citing Matter of Price, 20 I&N Dec. 953 (Assoc. Comm'r 1994) and Buletini v. INS, 860 F. Supp. 1222 (E.D. Mich. 1994), she argues that USCIS' evidentiary review for extraordinary ability is limited to the plain language of the regulations and previously issued AAO and federal court decisions

We are not persuaded by the Petitioner's arguments. Her proposed methodology is directly refuted by both the Kazarian decision and the USCIS Policy Manual, and she doesn't argue why those authorities should be set aside in favor of the method she proposes in this appeal, except referencing lower court cases decided prior to Kazarian. As pointed out by the Petitioner, the Kazarian decision described the two-part adjudicative approach to evaluating evidence and in 2010, USCIS amended its policy based on that approach. See generally USCIS Policy Memorandum PM-602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update ADJ 1-14 3 (Dec. 22, 2010). The Kazarian court stated, "[w]hile other authors' citations (or a lack thereof) might be relevant to the final merits determination of whether a petitioner is at the very top of his or her field of endeavor, they are not relevant to the antecedent procedural question of whether the petitioner has provided at least three types of evidence." Kazarian v. USCIS, 596 F.3d at 1121 (emphasis added). This serves as the Kazarian court's acknowledgement that it is within the final merits determination that USCIS is to evaluate the qualitative statutory and regulatory requirements to determine whether a petitioner has demonstrated sustained national or international acclaim and that their achievements have been recognized in the field of expertise, indicating that the petitioner is one of that small percentage who has risen to the very top of the field of endeavor. USCIS will consider all relevant evidence in the record in the totality, even if such evidence does not fit one of the criteria or as comparable evidence. See generally 6 USCIS Policy Manual F.2(B)(1), https://www.uscis.gov/policy-manual.

Next, the Petitioner argues that if we find that a two-part analysis with a final merits determination is required, SCOPS' decision did not consider all the evidence she submitted or adequately explain why the evidence was deemed insufficient. Although we conduct de novo review, we agree with the Petitioner and conclude that a remand is warranted in this case because SCOPS' decision is insufficient for review.

SCOPS' decision does not acknowledge or discuss much of the evidence submitted with the initial petition and in response to the request for evidence (RFE). Both the RFE and the decision contain few specific references to the evidence submitted or the Petitioner's explanation of why the evidence demonstrates her eligibility under the claimed criteria and under the final merits determination. For instance, the RFE does not discuss the claimed regulatory criterion for authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(v). In addition, the decision generally references recommendation letters and other evidence without providing an analysis of the evidence, and it does not address whether the Petitioner meets the criterion for display of work at artistic showcases or exhibitions at 8 C.F.R. § 204.5(h)(3)(vii).

Moreover, we agree with the Petitioner that SCOPS' decision contains factual errors which appear to support the decision. For instance, SCOPS' analysis of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v) included some problematic statements. SCOPS refers to the Petitioner's field, photojournalism, as being "research-driven" and that she "has engaged in extensive original research studies in the field of photograph" which have "a moderate amount of citations to [her] work . . . ." The Petitioner, however, has not submitted evidence of any research work or citation history of her work. The characterization of her field of photojournalism as being related to research is not supported by evidence in the record.

In addition, in the decision's final merits analysis section, SCOPS discusses scholarly articles, characterizing an article published in the L.A. Times as being authored by the Petitioner and having a high citation history. The article, however, was authored by another individual, not the Petitioner, and the record does not include citation record information. We note that considering the factual errors in the final merits discussion of authorship of scholarly articles, it is unclear whether these errors were the basis for SCOPS concluding the Petitioner met the criterion for authorship of scholarly articles. SCOPS' decision did not include an explanation for how the Petitioner met the requirements for the criterion of authorship of scholarly articles.

Finally, SCOPS generally dismisses other materials in the record without providing any specific identification or analysis of the evidence, leaving uncertainty as to what evidence was deemed insufficient. An officer's written decision must fully explain the specific reasons for denial. See 8 C.F.R. § 103.3(a)(1)(i). When a decision does not meet these requirements, the petitioner does not have a fair opportunity to contest the decision on appeal. See Matter of M-P-, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Because SCOPS' decision does not sufficiently address the evidence submitted with the petition and in response to the RFE, we will remand the matter.

## III. CONCLUSION

We will withdraw SCOPS' denial of the petition and remand the matter for further review and entry of a new decision. SCOPS may request any additional evidence considered pertinent to the new determination and any other issues. As such, we express no opinion regarding the ultimate resolution of this matter on remand. On remand, SCOPS is instructed to re-evaluate the evidence submitted in support of the petition to determine whether the Petitioner satisfied the plain language of at least three criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), and to issue a new decision. SCOPS should also review the Petitioner's appellate brief, which further discusses the previously submitted evidence submitted in support of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3), as well as the supplemental evidence submitted on appeal.

If SCOPS determines that the Petitioner satisfied at least three criteria at 8 C.F.R. § 204.5(h)(3), the new decision should evaluate, based on the totality of the evidence in the record, whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim, 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. See section 203(b)(I)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

ORDER: The decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.