U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40735553

Date: JUNE 30, 2026

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

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

The Petitioner 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 he demonstrate that he met at least three of the ten regulatory criteria. 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).

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

The Petitioner is a composer, music minister, and educator in the field of ethnomusicology.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). Before the Service Center Operations (SCOPS), the Petitioner claimed he met six of the regulatory criteria. SCOPS decided that the Petitioner satisfied the judging and authorship of scholarly articles criteria but that he had not satisfied the criteria associated with prizes or awards, published material, performing in a leading or critical role, or commercial success. On appeal, the Petitioner only contests SCOPS' adverse determination for the published material criterion. As a result, he has waived his claims of the remaining criteria: prizes or awards, leading or critical role, and commercial success. An issue that is not presented in an appeal is not before us "so we do not decide whether it is correct." *Blanche v. Lau*, No. 25-429, 2026 WL 1791339, at *5 n.2 (U.S. June 23, 2026); *Matter of C-L-R-*, 29 I&N Dec. 726, 728 (BIA 2026) (citing *Matter of V-A-K-*, 28 I&N Dec. 630, 630 n.2 (BIA 2022)). After reviewing all the evidence in the record, we conclude he has not demonstrated eligibility.

1. "Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation." 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner provided two articles claiming they were about him in a form of major media. SCOPS determined that the Petitioner did not meet the requirements of this criterion.

On appeal, the Petitioner alleges that SCOPS acted ultra vires when it required him to prove superior media traffic metrics relative to other publications in his home country when the regulation does not contain any such requirement. The Petitioner does not claim this was a statutory violation and his alleged breach of the regulation is not an ultra vires act. An ultra vires claim generally requires proof that an agency exceeded the bounds of its *statutory* authority, not in how it applied a regulation. *See*

Ayala Chapa v. Bondi, 132 F.4th 796, 799 (5th Cir. 2025); *see also Nuclear Regul. Comm'n v. Texas*, 605 U.S. 665, 681 (2025) (quoting *Railway Clerks v. Association for Benefit of Non-contract Employees*, 380 U.S. 650, 660 (1965) and finding that nonstatutory ultra vires review "applies only when an agency acts entirely 'in excess of its delegated powers and contrary to a specific prohibition' in a statute"). Here, the Petitioner has not explained how USCIS acted entirely in excess of its delegated powers.

As it relates to material appearing in a form of major media, agency policy provides in pertinent part: "In evaluating whether a submitted publication is . . . major media, relevant factors include the intended audience . . . and the relative circulation, readership, or viewership." *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual. While the Petitioner claimed two articles before SCOPS, on appeal he limits his claims to only one and he has waived his claims to the second published article. *Lau*, 2026 WL 1791339, at *5 n.2; *Matter of C-L-R-*, 29 I&N Dec. at 728.

The Petitioner initially provided evidence relating to "Brand Trust Scores" for the media entity, not for the publication's reach and evidence of other media sources to demonstrate the submitted material qualifies as a form of major media instead of simply media. That same resource included bar charts of various media as represented through a percentage of weekly usage for "TV, RADIO AND PRINT" and "ONLINE" but that information was not for the media source he provided and instead it was a source bearing a similar name. In response to the request for evidence, the Petitioner supplied the same evidence that he previously submitted.

Now, on appeal, the Petitioner claims SCOPS erred by dismissing the significance of the coverage of him "in an objectively top-tier national newspaper in a country of over 230 million people that plainly qualifies as major media and a major trade publication under any reasonable reading of the regulation relying instead on invented comparative analytics standards that disregard both the regulation's text and the publication's established prominence in his home country." First, although the Petitioner included the text "major trade publication" in the request for evidence response, he never asserted and explained how any of his evidence qualified as a major trade publication. As a result, he may not assert that for the first time on appeal and expect a favorable determination. Issues not meaningfully addressed in the below proceedings will not factor into a subsequent appeal. *Matter of C-L-R-*, 29 I&N Dec. at 730 (citing *Matter of J-Y-C-*, 24 I&N Dec. 260, 261 n.1 (BIA 2007)). Second, within his appeal he merely alleges a general error on SCOPS' part, but he has not explained how the evidence he previously submitted satisfies the requirements as detailed in the regulation and in agency policy. As a result, he has not satisfied this criterion's plain language requirements.

Because the identified basis for the petition's denial is dispositive of this appeal, we will not address and we reserve the Petitioner's remaining appellate arguments relating to a final merits determination. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also Matter of G-L-C-*, 29 I&N Dec. 717, 720 n.6 (BIA 2026) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

Congress set a very high benchmark for aliens of extraordinary ability by requiring the petitioner demonstrate "sustained national or international acclaim" and present "extensive documentation" to show his or her achievements have been recognized in the field. Section 203(b)(1)(A)(i) of the Act. Because the Petitioner has not satisfied the threshold "initial evidence" requirements at 8 C.F.R. § 204.5(h)(3), we cannot conclude that he is an alien of extraordinary ability and we need not further analyze the merits under the statute. *See Kazarian*, 596 F.3d at 1119–20; *see also Nagaiah v. Allen*, 784 F. Supp. 3d 798, 814 (E.D. Pa. 2025) (finding the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x) "establishes a necessary, not sufficient, evidentiary requirement for a petitioner who seeks an extraordinary ability visa.").

The two-step adjudication process is an interpretive rule that does not violate the Administrative Procedure Act, nor is it a legislative rule. *Taneja v. USCIS*, No. 24-CV-05657 (RER), 2026 WL 1734266, at *8 (E.D.N.Y. June 16, 2026); *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. *See generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(2). *Contra Mukherji v. Miller*, No. 4:24CV3170, 2026 WL 895708, at *6 (D. Neb. Jan. 28, 2026) (concluding the two-step framework was adopted without required notice-and-comment rulemaking). But that appears to misconstrue a conference report—which serves solely to explain how the House and Senate resolved differences between their two versions of the bill—as being more authoritative on this issue than a Judiciary Committee Report, the purpose of which includes guiding the executive branch in implementing the law and assisting the judicial branch in its interpretation. That view has been rejected by numerous federal courts before and since the *Mukherji* court made it.

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we do not need to 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 it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

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 that goal. 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, 954–55 (Assoc. Comm'r 1994). Here, the Petitioner has not shown the significance of their 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, at 59 (1990); *see also* section 203(b)(1)(A). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) and 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.

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.