U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41457066

Date: MAR. 3, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a lawyer in her home country with a specialization in conflict mediation, 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.

SCOPS denied the Form I-140, Immigrant Petition for Alien Workers (petition), deciding that the Petitioner's achievements and occupation or position did not properly fall under one of the statutorily mandated fields of the sciences, arts, education, business, or athletics. The matter is now before us on appeal under 8 C.F.R. § 103.3. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) 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 withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

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).

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 has been a licensed attorney since 2009 in her home country and has both engaged in the practice of law as well as performing much of her work as an arbitrator or mediator. On the petition, the Petitioner indicated that her occupation was considered under the occupation of "Lawyers and Judges" and that her job title was an "Arbitrators, Mediators, and Conciliators." SCOPS issued a notice of intent to deny (NOID) the petition putting forth the following reasoning:

- The phrase "in the sciences, arts, education, business, or athletics" is not superfluous and must be understood to have a specific meaning;
- A qualified beneficiary who is a member of the professions and who holds an advanced degree qualifies for an EB-2 immigrant visa;
- The practice of law is a profession for purposes of eligibility for the EB-2 immigrant visa;
- The practice of a profession is not one of the fields within the EB-1 category;
- Congress specifically included members of the professions in sections 203(b)(2)(A) and 203(b)(3)(A)(ii) and excluded them from section 203(b)(1)(A);
- If Congress had intended all aliens of extraordinary ability, regardless of their field, to qualify under section 203(b)(l)(A), there would have been no purpose in including the phrase "in the sciences, arts, education, business, or athletics";
- As Congress did use that phrase, we can presume that there may be aliens of extraordinary ability who enjoy sustained national or international acclaim that are nevertheless ineligible for classification under section 203(b)(1)(A) solely because their occupation does not fall within the sciences, arts, education, business, or athletics; and
- To hold otherwise would render the clear language of the statute meaningless and undermine Congressional intent.

The Petitioner's NOID response reflected the following:

> The record demonstrates, beyond doubt, that [the Petitioner] is not seeking to practice law in the United States. Instead, she intends to establish a business consultancy in advanced Alternative Dispute Resolution (ADR), mediation, and arbitration, with applications across corporate, cultural, and social sectors. Her work involves creating systems of negotiation and conflict prevention, not representing parties in litigation. This is why her endeavor falls within the statutory field of business, not "law."

Within the NOID response, the Petitioner cited to this office's non-precedent decisions that she characterizes as "a consistent adjudicative pattern: when the petitioner shows that their extraordinary ability will be exercised in the statutory field of business, EB-1 eligibility is proper-even if their professional background includes law."

SCOPS denied the petition unpersuaded by the Petitioner's claims. SCOPS determined that the Petitioner's "occupation as an Arbitrator/Mediator/Conciliator has been determined to be directly related to the field of law" and as such, "the record indicates that you intend to continue practice Arbitration/Mediation/Conciliation as a lawyer in the field of law in the United States." Relying on the reasoning in the NOID, SCOPS made a conclusion similar to the following under each regulatory criterion:

> You only provided material regarding your [claim under this criterion] as a Arbitrator/Mediator/Conciliator in the field of law. The field of law is not within the sciences, arts, education, business, or athletics required by this immigrant classification. As such, your evidence [under this criterion] does not fall within the fields of science, art, education, business, or athletics. Consequently, the submitted evidence does not indicate that you are eligible for this immigrant classification, nor does the evidence indicate that you meet this criterion.

Based on SCOPS' reasoning, it appears that any occupation that meets the standards of being a member of the professions who holds an advanced degree is precluded from consideration as an immigrant of extraordinary ability, except for those who can dissect their extraordinary ability to also fit under one of the statutory and regulatory categories (i.e., the sciences, arts, education, business, or athletics). That would apply to every occupation listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32) as well as any occupation for which a U.S. bachelor's degree (or its foreign equivalent) is the minimum requirement for entry into the occupation. *See* 8 C.F.R. § 204.5(k)(2). SCOPS did not cite to agency policy or another legal resource to support their reasoning to preclude lawyers simply because they are included as a profession. However, a 1995 legal opinion from the Office of General Counsel within the former Immigration and Naturalization Service states:

> First, although most lawyers are properly classified as EB-2 immigrants, a legal scholar of great distinction could well qualify for an EB-1 immigrant visa as an "outstanding professor or researcher." INA § 203(b)(1)(B), 8 U.S.C. § 1153(b)(1)(B). Secondly, an alien who is of extraordinary ability in business or in some other EB-1 endeavor would not be ineligible for EB-1 classification simply because the alien is also a lawyer, or a member of any of the other professions that are more properly considered EB-2 endeavors.

See Genco Op. No. 95-3 (INS), 1995 WL 1796310, *5 titled "Construction of 'sciences' and 'arts' in Section 203(b)(1) and (2): Reconsideration of our March 3, 1994, Legal Opinion." We note that General Counsel opinions are advisory in nature and are not binding. *R.L Inv. Ltd. Partners v. INS*, 86 F. Supp. 2d 1014. 1022 (D. Haw. 2000), *aff'd.* 273 F.3d 874 (9th Cir. 2001); *see also Mitchell v. Advanced HCS, LLC*, No. 4:21-CV-00155-P, 2021 WL 1247884, at *4 (N.D. Tex. Apr. 5, 2021), *aff'd and remanded sub nom. Mitchell v. Advanced HCS, L.L.C.*, 28 F.4th 580 (5th Cir. 2022).

So, to the extent that SCOPS' reasoning relied on this General Counsel opinion, they should review its contents when compared with the Petitioner's claims throughout these proceedings. Here, the Petitioner has argued that the focus of much of her evidence and claims is not on her legal license establishing her ability to work as a lawyer in the United States, but on the functional impact of her work within the business sector. The record indicates the Petitioner's intended employment will be in a business-related role. So, consistent with section 203(b)(1)(A)(i) of the Act, a preponderance of evidence demonstrates the Petitioner's proposed employment in the field of business. SCOPS did not provide analysis for the Petitioner's evidence under the regulatory criteria. *See* 8 C.F.R. § 204.5(h)(3)(i)–(x). We will therefore withdraw SCOPS' decision and remand this matter.

On remand, SCOPS should review the entire record, including the Petitioner's submission and arguments on appeal. If they find that the Petitioner satisfies the minimum number of regulatory criteria, they should consider whether the evidence demonstrates that she has demonstrated sustained national or international acclaim that places her among the small percentage at the very top of her field. *See Kazarian*, 596 F.3d at 1119–20 and issue a new, fully reasoned decision. SCOPS may request any additional evidence considered pertinent to the new determination. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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