U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41806830

Date: MAR. 23, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a musician, 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 petition, concluding the record did not establish that the Petitioner had received a major, internationally recognized award, or that he met at least three of the ten regulatory criteria for this classification. 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

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals who have 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; who seek to enter the United States to continue work in the area of extraordinary ability; and whose entry 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 international recognition of his or her achievements in the field through a one-time achievement, that is, a major, internationally recognized award. If the 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 evidence if they demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

If a petitioner meets the initial evidence requirements through either a one-time achievement or meeting at least three criteria, 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 (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, 391 (5th Cir. 2022) (finding USCIS' two-step analysis of extraordinary ability "consistent with the governing statute and regulation"); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013).

II. ANALYSIS

The Petitioner is a professional guitarist and the creator of several series of online courses in guitar techniques. He indicates that he intends to continue working as a performing musician and music educator in the United States.

A. Evidentiary Criteria

Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the ten alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). He initially claimed to have satisfied seven of these criteria.

SCOPS determined that the Petitioner met the criteria relating to judging and artistic display, under 8 C.F.R. § 204.5(h)(3)(iv) and (vii). The Petitioner documented his participation as a judge in a [redacted]-sponsored music competition for guitarists and established that he has been showcased as a performer at music conferences and other venues. Accordingly, we agree with SCOPS' determination that he satisfied these two evidentiary criteria.

On appeal, the Petitioner asserts that SCOPS misapplied the law and relevant USCIS policy guidance in evaluating the five remaining claimed criteria and contends that he established his eligibility as an alien of extraordinary ability. After reviewing all the evidence in the record, we conclude that the record does not support a determination that the Petitioner satisfies the requirements of at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). We will discuss the remaining claimed criteria below.

1. Lesser Nationally or Internationally Recognized Awards or Prizes

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." We first determine whether the alien is the recipient of prizes or awards, and then whether the award is nationally or internationally recognized and was granted based upon excellence in the alien's field of endeavor. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual.

The Petitioner claims eligibility for this criterion based on his receipt of a certificate from the [redacted]. The certificate was issued "in recognition of [the Petitioner's] participation as Musician on the [redacted] Award-winning recording [redacted]," which was named [redacted] at the [redacted] Awards in [redacted] 2019. Correspondence in the record shows that the Petitioner requested the participation certificate from the [redacted] in September 2024 and the Academy issued it to him by mail after confirming that he was credited as a guitarist on [redacted] album. The Petitioner provided evidence that [redacted], the artist who released the winning album, received a [redacted] statuette and a winner's certificate at the 2019 award ceremony.

SCOPS acknowledged evidence of the Petitioner's contribution to [redacted] album but emphasized he did not demonstrate that his participation certificate from the [redacted] qualifies as an "award or prize," as it does not show he was the recipient or winner of a [redacted] award.

On appeal, the Petitioner contends that SCOPS erred by not acknowledging his certificate as "a formal prize or award in its own right." He claims that SCOPS applied an overly restrictive interpretation of this criterion's evidentiary standard and failed to consider that the [redacted] is an internationally recognized award for excellence in his field. The Petitioner further maintains that "the certificate issued by [redacted] . . . constitutes direct and formal acknowledgement from the awarding institution, expressly recognizing [his] contribution as a musician to an album distinguished for artistic excellence at the highest level." He contends that SCOPS erred by failing to apply *USCIS Policy Manual* guidance applicable to "team awards" to the facts presented here.

The Petitioner's claims are not persuasive. The record does not demonstrate that the Petitioner, as a contributing musician on a solo artist's [redacted]-winning album, was the recipient of a "team award" of the type contemplated in the *USCIS Policy Manual.* The relevant policy guidance states that "[i]n general, qualifying awards include team awards where each member receives a trophy, certification or medal; appears on the podium or stage; or is specifically named in the awarding organization's announcement of the award selection." *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1) n.21.

Here, while the Petitioner met the requirements to obtain a participation certificate from the [redacted] upon request, he did not receive the trophy and winner's certificate that were awarded to the [redacted]-winning artist, did not appear on the podium or stage at the award ceremony, and was not specifically named in the Academy's announcement of the award selection. The record does not support his claim that the [redacted] for [redacted] Album awarded to [redacted] was a "team award" nor has he otherwise shown that he received this award or was recognized by the [redacted] as one of the winners.

The Petitioner emphasizes that his [redacted] participation certificate was issued by the same institution that issues the [redacted] award. But he does not provide, for example, evidence of the [redacted] rules regarding the issuance of participation certificates, in support of his claim that the certificate issued to him should nevertheless be deemed an "award for excellence" in his field. Further, it is evident based on the documentation submitted that the [redacted] distinguishes between recipients of [redacted] Awards and recipients of [redacted] participation certificates. [redacted] nominees and award winners are selected through a multi-

stage judging process and recognized at a televised awards ceremony that draws significant media coverage. By contrast, the evidence shows that the Petitioner had to personally request his participation certificate by mail; the recognition is not provided automatically or contemporaneously to every person who participates in a [redacted] winning recording, as may be the case with a qualifying "team award" of the type discussed above.

For all the reasons discussed above, the Petitioner has not shown that his [redacted] participation certificate is equivalent to or indicative of his receipt of a [redacted] Award or that it otherwise qualifies as a lesser nationally or internationally recognized prize or award. As this certificate is the sole basis of his claim for eligibility under 8 C.F.R. § 204.5(h)(3)(i), he has not shown that he satisfies this criterion.

2. Membership

The regulation at 8 C.F.R. § 204.5(h)(3)(ii) calls for "documentation of the alien's membership in associations in the field for which classification is sought." In addition, the association must require "outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." Once membership in a qualifying association has been established, we determine whether the association requires those at the alien's level of membership to have attained outstanding achievements in the field. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual.

The Petitioner claimed eligibility under this criterion, in part, based on his membership in the [redacted], Regional Council of the State of [redacted] He provided a "Certificate of Enrollment" issued by the [redacted] Regional Council, confirming his enrollment as a musician specializing in guitar since 2011. He also submitted a copy of "Law no. 3,857 of December 22, 1960," which established the [redacted] and "provides for the regulation of the exercise of the profession of musician."

SCOPS acknowledged the Petitioner's submission of [redacted] governing law but found this evidence did not demonstrate that outstanding achievements are required for membership and that membership eligibility is judged by recognized national or international experts. On appeal, the Petitioner contests SCOPS' determination that [redacted] does not require outstanding achievements as a condition for membership. He asserts that he provided "clear documentation" of his admission to "a nationally recognized professional body that judges eligibility based on excellence in the field of music."

The Petitioner points to Chapter II, Article 28 of the submitted law, which identifies several categories of musicians eligible to enroll in the [redacted] These categories include graduates of Brazilian or foreign conservatories or schools of music; professors and renowned choir or orchestra conductors; students in their last two years of music studies at a recognized national institution; and "musicians who pass an examination before an examination board, consisting of at least three specialists." The Petitioner maintains that this last provision "establishes that entry into the [redacted] depends on the evaluation of technical and artistic competence by a board composed of recognized experts in the musical field," and that this process "meets precisely the standard articulated in 8 C.F.R. § 204.5(h)(3)(ii)."

We disagree. The record does not demonstrate that the [redacted] offers membership only to individuals with outstanding achievements in music as judged by recognized national or international experts. The Petitioner emphasizes that some musicians who lack the necessary academic or professional background are admitted after passing an examination, but the record does not include evidence describing what this examination process entails. Although the Petitioner claims that one must demonstrate "technical and artistic competence" to pass the examination, he does not explain how demonstrating "competence" on an examination would be equivalent to establishing "outstanding achievements" in the field of music.

The Petitioner's claim that prospective members in the [redacted] are judged by "recognized national or international experts" in the field of music is similarly unsupported in the record. The law specifies that the "specialists" who form the [redacted] examination board are appointed by the [redacted] by "local musicians' unions" and by "the competent authority of the Ministry of Labor, Industry and Commerce." This language, on its own, does not satisfy the Petitioner's burden to show that the "specialists" on the [redacted] examination board are recognized national or international experts, and the record lacks any further information or evidence related to the [redacted] examination board. A "specialist" in any given field is not necessarily a "recognized national or international expert" in that field.

Further, passing an examination is only one possible path for enrolling in the [redacted] as the evidence indicates that individuals with post-secondary degrees in music, and even some music students who have completed two years of studies, are eligible for enrollment without undergoing an examination or undergoing review by the examination board. Given these alternate bases for admission, the record does not indicate that demonstrating outstanding achievements in music, as judged by experts in the field, is an essential condition for membership. For all these reasons, the Petitioner has not demonstrated that his membership or enrollment in the [redacted] satisfies the plain language of 8 C.F.R. § 204.5(h)(3)(ii).

In response to SCOPS' RFE, the Petitioner also provided evidence that he was admitted as an "Associate Member" of the Latin Recording Academy several months after filing his petition. SCOPS, citing *Matter of Katigbak*, 14 I&N Dec. 45, 26 (Comm'r 1971), stated that it would not consider this evidence because the Petitioner must establish eligibility at the time of filing. The Petitioner claims on appeal that SCOPS erred by excluding evidence of this membership "on the basis of timing." He asserts that admission as a member of the Latin Recording Academy "formalizes an achievement already earned through a recognized and mandatory process of evaluation by experts" and "differs fundamentally from cases in which a qualification arises after the filing date."

We disagree. SCOPS properly excluded evidence of the Petitioner's Latin Recording Academy membership in determining his eligibility under this criterion. A petitioner must establish that he or she is eligible for the requested benefit at the time of filing the petition and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1). Therefore, to establish eligibility under the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(ii), a petitioner must provide evidence of his or her qualifying membership as of the date of filing. The Petitioner cannot demonstrate eligibility under this criterion based on an unsupported claim that he had outstanding achievements on some earlier date that made him eligible for membership in the Latin Recording Academy, such that the date of his actual admission is irrelevant. Regardless, the Petitioner did not provide supporting evidence demonstrating that the Academy requires its associate members to have outstanding achievements in

music as judged by recognized national or international experts in the field. The evidence he provided merely confirms his membership, and by itself, could not demonstrate eligibility under this criterion.

Finally, we observe that the record contains a letter from [redacted], which states that the Petitioner was admitted as a member in January 2022. The Petitioner submitted this evidence as a "reference letter" and did not articulate a claim that he satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(ii) based on his membership in [redacted]. Nevertheless, we note that based on the membership requirements briefly described in its letter, the record does not demonstrate that this association requires its members to have outstanding achievements as judged by recognized national or international experts in the field.[1]

For the reasons discussed, the Petitioner has not established that he satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(ii).

3. Published Materials

To satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(iii), a petitioner must provide published material in professional or major trade publications or other major media, and such material must be about the petitioner and relating to their work in the field for which classification is sought. This evidence must include the title, date and author of the material and any necessary translation. In evaluating whether a submitted publication is a professional publication, major trade publication or other major media, relevant factors include the intended audience (for professional and major trade publications) and the relative circulation, readership or viewership (for major trade publications and other major media). *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

SCOPS acknowledged the Petitioner's submission of numerous published articles but determined that none of them satisfied all elements of the plain language of this regulation. On appeal, the Petitioner claims that he submitted two articles that meet this criterion's requirements and asserts that SCOPS erred by concluding that the articles were not published in "major media."[2]

Specifically, the Petitioner's brief highlights the following online articles submitted at the time of filing: (1) [redacted]' published by [redacted] and (2) [redacted]' published by [redacted].com). Both articles are about the Petitioner and his work as a musician, include the author, title and date of the article, and are accompanied by an English translation.

The Petitioner's initial evidence did not include information regarding the relative circulation, readership or viewership for these online publications. Further, the record shows the Petitioner did

[1] The letter from [redacted] states: "Our eligibility requirements for membership include ownership of copyright or related rights, as long as they fall into the categories set out in our bylaws. This can be proven by declaring works and phonograms by presenting recorded media with an insert attesting to ownership or by registering works with a public agency."

[2] The Petitioner does not contest SCOPS' determination regarding any of the other published materials in the record. Therefore, we will not address them here and will focus on the two articles the Petitioner references in his brief. Nevertheless, we have reviewed the other published materials and agree with SCOPS that none of them satisfied the plain language requirements of 8 C.F.R. § 204.5(h)(3)(iii).

not provide this evidence in response to a request for evidence (RFE) despite SCOPS' request. Instead, he claimed that the request was beyond the scope of what the regulation requires and asserted that [redacted] and [redacted] are "widely recognized media outlets" in Brazil that have "large readerships."

On appeal, the Petitioner claims that [redacted] and [redacted] both qualify as major media as contemplated by the regulation and the *USCIS Policy Manual*, because they are "high circulation media outlets with national and international audiences." He states that USCIS "disregards the extensive documentation provided, including the [redacted] – all of which present audited audience and circulation data . . . establishing their credibility as major professional media organizations." However, the referenced [redacted] are not in the record, nor is this type of evidence identified in the exhibit lists accompanying the Petitioner's initial filing, RFE response, or appeal. The Petitioner's claim that SCOPS "failed to accord due weight to the documentary proof of the outlets' professional status and reach" is not persuasive as the record does not indicate this claimed "documentary proof" was submitted.

Absent objective evidence that [redacted] and [redacted] qualify as major media publications based on their relative circulation, readership or viewership data, the Petitioner has not met his burden to demonstrate his eligibility under 8 C.F.R. § 204.5(h)(3)(iii).

4. Original Contributions of Major Significance

The regulation at 8 C.F.R. § 204.5(h)(3)(v) calls for "evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." A petitioner may show that their contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. *See Visinscaia*, 4 F. Supp. 3d at 134-35.

The Petitioner claimed eligibility based on his development of a guitar education system consisting of e-books and over 300 recorded lessons. He claims that he developed a distinctive, structured methodology that "merges techniques, improvisation and music business concepts" and reflects "a novel and forward-looking approach to music education."

SCOPS determined that the Petitioner had made an original contribution based on evidence that he is the creator of several guitar technique courses that are available for sale online. However, SCOPS concluded that he did not meet his burden to demonstrate the major significance of his contribution. SCOPS emphasized that the testimonial evidence in the record was not supported by sufficient objective evidence of the Petitioner's substantial impact or influence in the field of music or music education.

On appeal, the Petitioner emphasizes that he provided "expert attestations from established figures in the music industry confirming both the originality and impact of [his] work," referring to previously submitted letters from [redacted] and [redacted].[3] He asserts

[3] We note that these were the only reference letters submitted specifically in support of this criterion, and the only letters referenced by the Petitioner on appeal. Although we limit our discussion to these letters, we have reviewed all testimonial evidence in the record in evaluating whether the Petitioner demonstrated the major significance of his claimed original contributions to the field.

that those letters "directly align with the Policy Manual's instruction that evidence from recognized professionals in the field may establish both originality and major significance when accompanied by verifiable context."

The Petitioner further states that his educational model "has demonstrably influenced over 10,000 students across Brazil, with several achieving national prominence" and has thus contributed to "Brazil's thriving music education market." He asserts that this level of dissemination provides "quantitative evidence of reach and adoption" and reinforces the major significance of his work. Finally, the Petitioner claims he demonstrated that "many of his students have gone on to successful professional careers," thus showing that his instructional system, has had a "transformative impact on guitar instruction and performance in Brazil" and a "measurable influence on a generation of professional musicians."

Upon review, the Petitioner has not provided sufficient evidence to corroborate the claimed major significance of his original contributions.

Turning first to the testimonial evidence referenced on appeal, we have considered the letter from Mr. [redacted] a guitarist, composer, and music journalist who indicates that he is the Petitioner's former teacher and long-time acquaintance. He describes the Petitioner as a "professional of great impact, having created and originally developed guitar and electric guitar courses which . . . have trained more than 10,000 students." Mr. [redacted] states that "many" of those students have become prominent musicians on the national scene and identifies one of those students as a contestant on [redacted] Finally, he states that he considers the Petitioner to be "one of the most competent and influential music educators in Brazil," stating that "his contribution to the training of new musicians and the improvement of guitar and acoustic guitar teaching is invaluable."

The Petitioner's appellate brief also refers to the previously submitted letter from [redacted], a singer and music professional who states he is a father of one of the Petitioner's guitar students. He describes the Petitioner as "an innovative reference in the field of guitar, especially in the gospel market and music education." Referring to the Petitioner's teaching system, he states that the Petitioner is "a driving force in music education," noting "he actively contributes to the online course market with impressive sales," and offers a "creative approach and original style" to "inspire a new generation of musicians." Mr. [redacted] credits the Petitioner with influencing "the popularization of groove in Brazil," and "shaping the style of contemporary guitarists."

Objective sales data in the record shows that the Petitioner has sold over 2,500 online video courses on the [redacted] platform and over 6,500 on the [redacted] platform. While it is likely that thousands of distinct customers have purchased at least one course, this evidence alone does not provide sufficient support for assertions that the Petitioner can be credited for the training and artistic development of over 10,000 Brazilian guitarists[4] or that these courses have had a "transformative impact on guitar instruction and performance" in Brazil. Nor does the evidence in the record provide sufficient context to support a conclusion that this level of sales signifies his influence as "a driving force in music education," a determination that he is widely recognized for "shaping the style of contemporary

[4] An excerpt from the Petitioner's [redacted] sales page, printed on November 1, 2023, shows his ten most recent sales transactions. Within this small sample, one customer had purchased two courses, and another had purchased three.

guitarists," or that it otherwise shows that his courses have attracted significant attention or commercialization indicative of major significance. While the evidence objectively establishes that he has contributed to the "online course market," the size of that market and the claimed significant impact and influence of his contribution within the music education field are not sufficiently established through other evidence in the record.

Claims that the Petitioner has trained "many" prominent, nationally recognized musicians are similarly unsupported in the record. Mr. [redacted] identifies one such student in his letter. The record also includes a published article about the Brazilian group [redacted] which states that the band's guitarist studied with the Petitioner among several other teachers. Similarly, a published article about Brazilian guitarist [redacted] states that he studied with "guitarists like [redacted] [the Petitioner] and [redacted] Names that carry a lot of knowledge and some even fame." While this evidence corroborates the Petitioner's work with a few guitarists who have received some level of publicity, he has not shown his "measurable influence on a generation of professional musicians" through his online courses.

Detailed letters from experts in the field explaining the nature and significance of the person's contribution may provide valuable context for evaluating the claimed original contributions of major significance, particularly when the record includes documentation corroborating the claimed significance. Here, the letters from experts in the music field do not provide sufficient context for their general claims regarding the influence and impact of the Petitioner's influence as a musician and music educator, nor are they accompanied by sufficient documentation to corroborate that influence.

The two remaining reference letters submitted in support of this criterion and highlighted by the Petitioner on appeal are not from individuals claiming to have particular expertise in his field, and do not directly address the significance of his claimed significant original contributions to music performance or education. The letter from [redacted] a pastor at a Brazilian church, describes the Petitioner as "a fundamental member of our music ministry" whose has contribution "to transform the quality for our worship into impactful spiritual experiences." He credits the Petitioner with diversifying the church's musical repertoire and helping to attract a younger audience. He states that the Petitioner's contribution to his church has resulted in greater participation in its services and highlights "the direct impact of his work in our community." While Mr. [redacted] indicates that the Petitioner has made valuable contributions to his church that have an impact in the community, his letter does not identify the major significance of the Petitioner's contributions in the field of music or music education.

The letter from [redacted] the founder of an [redacted]-based church, describes the Petitioner as "an exceptional guitarist who has left an indelible mark on the musical and cultural landscape of our country." He praises the Petitioner's ability to inspire "a new generation of musicians" and his fostering of "a collaborative environment that enriches the local music scene." Mr. [redacted] states that the Petitioner's "passion for elevating music as a form of cultural expression has a positive impact" and will "shape the future of music in our country." However, he does not explain in detail how the Petitioner has already made contributions of major significance within the fields of music or music education, nor does he claim to be an expert in these fields.

The opinions of the Petitioner's references are not without weight and have been considered above. Although the reference letters and other evidence in the record show that the Petitioner's abilities as a performing musician and educator have been recognized, he has not sufficiently demonstrated that his specific contributions to music performance or music education constitute "contributions of major significance in the field," as required under 8 C.F.R. § 204.5(h)(3)(v).

5. Commercial Success in the Performing Arts

The regulation at 8 C.F.R. § 204.5(h)(3)(x) calls for "evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales." The evidence must show that the volume of sales or box office receipts reflects the alien's commercial success in the performing arts relative to others involved in similar pursuits. Recording and releasing musical compilations or performing in theatrical, motion picture, or television productions would be insufficient, in and of itself, to satisfy this criterion. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

The Petitioner claimed eligibility under this criterion based on evidence of sales of his video-based guitar training courses on the digital platforms [redacted] and [redacted], as well as his licensing agreements with the [redacted] brands. SCOPS concluded, however, that the type of evidence submitted did not satisfy the plain language of the regulation. SCOPS also questioned whether earnings from sales of his online courses could be considered evidence of success "in the performing arts."

On appeal, the Petitioner contends that SCOPS' conclusion reflects an unduly narrow interpretation that is "inconsistent with both the plain language of the regulation and the current realities of the performing arts industry." The Petitioner explains that the performing arts and music industries have undergone fundamental transformation through digitization and SCOPS should not have insisted on traditional forms of proof such as physical record or video sales. He argues that the regulation only requires "evidence of commercial success in the performing arts, as demonstrated through measurable earnings, sales or similar forms of commercial recognition."

While we acknowledge the Petitioner's assertions that the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(x) is outdated, the regulations, in their published form, are binding in this proceeding; the Petitioner cannot substitute a different standard more favorable to his interests. The Petitioner claims that "[t]he USCIS Policy Manual itself underscores that officers must interpret criteria in a manner consistent with contemporary industry practices and assess evidence in the context of the field" and "instructs adjudicators to evaluate evidence of commercial success in a flexible, field-specific manner." He does not provide a specific citation for these assertions, and we note that the claimed policy guidance he references is not included in Volume 6, Chapter 2 of the *USCIS Policy Manual*, which is the chapter relevant to this adjudication.

The Petitioner also addresses SCOPS' observation that any financial success he derives from sales of his online guitar courses cannot be considered evidence of success "in the performing arts." He emphasizes that he created the guitar courses and that they are "rooted in his original performance methods, artistic arrangements and live demonstrations." Therefore, he maintains that the submitted

sales information documents his "clear and verifiable success within his field of music performance and instruction."

However, even if we consider the sales results for the Petitioner's video-based guitar courses under this criterion as evidence of his success "in the performing arts," the record does not provide a sufficient basis for evaluating his commercial success "relative to others involved in similar pursuits." He provided a September 2023 declaration from a legal representative of [redacted], which is described as a "digital platform dedicated to education." The [redacted] representative states that the Petitioner's company "has sold 2,542 courses, totaling approximately BRL 136,936.35 in sales to date," and that his company received [redacted] recognition upon reaching BRL 100,000 in sales. He explains that on reaching this sales level "producers are awarded various benefits and recognition" and such results place the Petitioner's company "in substantial prominence among other producers in the field both in terms of audience and financial results."

Based on this evidence, the Petitioner asserts that he established that his "Red Belt" recognition is only awarded to top-tier sellers and is evidence of his commercial success relative to others. We disagree. The record does not include a complete overview of the [redacted] recognition program, but the limited evidence submitted shows that the [redacted] is the entry-level status within the program, with the next two levels granted upon reaching sales of BRL 250,000 [redacted] and BRL 500,000 [redacted]. Therefore, the record does not support the Petitioner's claim that he has achieved "top-tier" results or provide sufficient context for [redacted] assertion that the Petitioner's results set him apart as "prominent" among "other producers in the field," particularly as it is unclear what "field" was used as a reference point. Even if the record showed that his sales returns were "top tier" on this specific platform, which it does not, additional evidence and context would be needed to demonstrate his "commercial success relative to others involved in similar pursuits in the performing arts."

The Petitioner also provided a one-page sales printout from [redacted] summarizing his total transactions on its platform for the period January 2020 through November 2023. This evidence shows 6,556 transactions, amounting to a total of BRL 649,077.82 in sales, during this timeframe. The Petitioner asserts that these figures represent "tangible financial success derived directly from his activities as a performing artist and music educator" and show that he is "among the most commercially successful producers in the Brazilian music education market." However, the raw sales numbers alone are insufficient to support the Petitioner's claim that he achieved commercial success "relative to others involved in similar pursuits," and the record does not provide the context needed for us to make this comparison.

Finally, we acknowledge the Petitioner's claim that his "brand sponsorships and image licensing agreements with leading corporations in the music industry . . . substantiate his market value as a professional guitarist and educator" and evidence "the commercial demand and recognition for [his] work in the performing arts." We agree with SCOPS that this type of evidence is too far removed from the types of evidence referenced in the plain language of 8 C.F.R. § 204.5(h)(3)(x) to be considered as evidence of commercial success in the performing arts.[5] Any further discussion of the

[5] If the Petitioner received financial remuneration for his services to [redacted] as a sponsored musician, such evidence would more appropriately be considered under the criterion at 8 C.F.R. § 204.5(h)(3)(ix), which takes into consideration evidence that a petitioner has commanded significantly high remuneration in relation to others in a given field. The Petitioner did not claim that he could meet that separate criterion.

recognition associated with the Petitioner's brand sponsorships would be more appropriate in the context of a final merits determination.

For all the reasons stated above, the Petitioner has not established that he meets this criterion.

B. Final Merits Determination

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 lesser criteria. As a result, he has not established his eligibility for this classification, and 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 and determined that it does not demonstrate that the Petitioner has established the sustained 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 individuals 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 record indicates that the Petitioner has enjoyed some success as a musician and music educator, but it does not show that this success has translated into individual recognition at a level that rises to sustained national or international acclaim or demonstrates 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 is one of the small percentage who has 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).

III. CONCLUSION

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. Accordingly, the appeal will be dismissed for the above stated reasons.

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.