U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42643603

Date: MAY 04, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a film and television director, 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 that the Petitioner did not satisfy at least three of the ten initial evidentiary 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 withdraw SCOPS' decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

To qualify under this immigrant classification, a petitioner must demonstrate:

- The alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- Their entry will offer substantial prospective benefits to the United States.

Section 203(b)(1)(A)(i)-(iii) of the Act. 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-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 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).

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) (upholding USCIS' two-step review process as "consistent with the governing statute and regulation").

II. ANALYSIS

The Petitioner is a film and television director with approximately 30 years of documented industry experience. During his career, he has directed episodes of more than a dozen French television series, including the internationally distributed crime drama [redacted] (also known as [redacted]) and the long-running soap opera [redacted]). He is also the writer and director of [redacted] (also known as [redacted], a feature-length animated film.

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 alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner initially claimed he could satisfy five of the ten criteria. SCOPS determined that the Petitioner satisfied one criterion by providing evidence of the display of his work at artistic exhibitions or showcases. *See* 8 C.F.R. § 204.5(h)(3)(vii). The record includes evidence that the Petitioner's animated film was screened at the [redacted], while episodes of television he directed were featured at the [redacted] and [redacted]. Accordingly, we agree with SCOPS' determination that he provided evidence satisfying the artistic display criterion.

On appeal, the Petitioner asserts that SCOPS overlooked relevant evidence demonstrating that he satisfies three additional criteria, including evidence of published material about him and his work in major media; his performance in a critical role for an organization with a distinguished reputation, and evidence of his commercial success in the performing arts. *See* 8 C.F.R. § 204.5(h)(3)(iii), (viii) and (x).[1]

As discussed below, we conclude the Petitioner has satisfied the requirements of at least three criteria.[2]

[1] The Petitioner initially claimed that he has commanded a high salary, or other significantly high remuneration, in relation to others in his field, under 8 C.F.R. § 204.5(h)(3)(ix). However, in his appellate brief he does not contest SCOPS' determination that he did not satisfy this criterion. Any ground of ineligibility that is not raised on appeal is waived. *See Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).
[2] While we may not discuss every document submitted, we have reviewed and considered each one.

1. Published Materials

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished 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." These materials must include "the title, date, and author of the material, and any necessary translation." *Id.* Professional or major trade publications may be identified by their intended audience, while other major media and major trade publications should have elevated circulation or readership relative to other media 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 based on his submission of published material about him and his work from nine French print and online publications. SCOPS determined that none of the materials satisfied the plain language of the regulation. We disagree with SCOPS' assessment of the evidence and conclude that some articles meet the requirements of this criterion. For instance, the Petitioner submitted articles about him and his work in the field that were published in the French newspaper [redacted] and the online news publication [redacted] ([redacted]). These articles include the title, date and author of the articles. In addition, the Petitioner submitted relevant, probative documentation about the publications and their relative readership and circulation. The evidence indicates that these published articles are about the Petitioner and his work in his field, and that they were published in major media in France.

The Petitioner has demonstrated by a preponderance of the evidence that he meets this criterion. We will therefore withdraw SCOPS' findings to the contrary.

2. Commercial Success

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 claims eligibility based on the commercial success of his animated feature film [redacted] for which he served as both screenwriter and director. The record shows that [redacted] was initially released internationally in 2016 and released in the U.S. market in 2017. SCOPS concluded that the Petitioner did not satisfy this criterion because he did not provide evidence to "verify the volume of sales and box office receipts of others" involved in similar pursuits.

The Petitioner provided evidence of box office receipts from credible industry sources, showing that his film, which had a $30 million budget, achieved gross receipts of approximately $109 million and was shown in over 2500 theaters worldwide. Contrary to SCOPS' determination, these industry sources also reported rankings sufficient to show [redacted]'s relative domestic and international box office performance across several categories, including among animated films and among films of all genres. This evidence also showed the film's performance relative to other movies released the same year and

all-time. Overall, the documentation provided is sufficient to demonstrate, by a preponderance of the evidence, that [redacted] achieved commercial success relative to others and that the Petitioner, as the film's writer and director, significantly contributed to that success. Therefore, we withdraw SCOPS' determination that the Petitioner did not satisfy this criterion.

B. Basis for Remand

Based on the foregoing discussion, the Petitioner has satisfied at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).[3] We will therefore withdraw SCOPS' decision, because that decision was based on a determination that the Petitioner did not satisfy the initial evidence requirements for this classification.

However, granting the third initial criterion does not suffice to establish eligibility for classification as an alien of extraordinary ability. The next step is to undertake a final merits determination to analyze whether the Petitioner has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim; that he is one of the small percentage at the very top of the field of endeavor; and that his achievements have been recognized in the field through extensive documentation. *See* section 203(b)(l)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian v. USCIS*, 596 F.3d at 1119-20; *see generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(2). A final merits determination involves analyzing an individual's accomplishments and weighing the totality of the evidence to determine if their achievements are sufficient to demonstrate extraordinary ability in the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d at 1119-20; *see generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(2).

Rather than make such a determination in the first instance, we will remand the matter. SCOPS should consider any potentially relevant evidence of record, even it does not fit one of the regulatory criteria or is not comparable evidence as contemplated under 8 C.F.R. § 204.5(h)(4). *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(2). The Petitioner bears the burden of explaining the evidence's significance, and how it demonstrates his possession of sustained national or international acclaim and recognition in his field. *Id.* The petition's approval or denial should depend on the evidence's type and quality. *Id.*

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

[3] We need not consider the Petitioner's arguments that he meets an additional evidentiary criterion under 8 C.F.R. § 204.5(h)(3)(i)-(x), beyond the three already granted. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision). As the matter will be remanded, SCOPS may consider those arguments prior to addressing the final merits.