U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37238773

Date: MAY 05, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a video game developer, seeks to classify the Beneficiary, a senior animator, as an individual of extraordinary ability in the arts. 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 aliens 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 Petitioner did not satisfy the initial evidentiary requirements for this classification by showing the Beneficiary's receipt of a major, internationally recognized award or providing evidence that she meets at least three of the alternate evidentiary criteria set forth in the regulations. 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

An alien is eligible for the extraordinary ability classification if: they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry will substantially benefit the country. Section 203(b)(1)(A) 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-part analysis. First, a petitioner can demonstrate a beneficiary's one-time achievement (that is, receipt of a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide documentation that the

beneficiary meets at least three of the ten evidentiary 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 material if they can demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the beneficiary's occupation.

Where a petitioner demonstrates that the beneficiary 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 1119-20 (9th Cir. 2010); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The record reflects that the Beneficiary, who has a bachelor's degree in fine arts, has accrued credits for her work as an animator in both the video game and motion picture industries. The Petitioner currently employs her as a senior animator for video game projects and has offered her continuing employment in this capacity.

A. Evidentiary Criteria

Because the Petitioner has not claimed or established the Beneficiary's receipt of a major internationally recognized award, it must provide evidence satisfying at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed that the Beneficiary could meet five of the ten criteria and requested consideration of comparable evidence under 8 C.F.R. § 204.5(h)(4). SCOPS concluded that the Beneficiary met one criterion, based on evidence that she has participated as a judge of the work of others in her field, as required under 8 C.F.R. § 204.5(h)(3)(iv).[1]

On appeal, the Petitioner asserts that the SCOPS applied an incorrect evidentiary standard and overlooked evidence establishing that the Beneficiary has received lesser nationally or internationally recognized awards, that she has made contributions of major significance to her field, and that she has performed in a leading or critical role for organizations with distinguished reputations. 8 C.F.R. § 204.5(h)(3)(i), (v), and (viii), respectively.[2] The Petitioner further asserts that SCOPS did not correctly evaluate the comparable evidence it provided under 8 C.F.R. § 204.5(h)(4).

For the reasons discussed below, we conclude that the Petitioner has not demonstrated that the Beneficiary meets at least three of the claimed criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x). Accordingly, it has not demonstrated her eligibility for the requested immigrant classification.

---

[1] The record supports SCOPS' conclusion that the Beneficiary meets this criterion.

[2] The Petitioner's appeal does not address SCOPS' determination that the Beneficiary does not meet the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii). 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)).

1. Receipt of Lesser Nationally or Internationally Recognized Prizes or Awards for Excellence in the Field of Endeavor. 8 C.F.R. § 204.5(h)(3)(i).

To determine whether a beneficiary qualifies under this criterion, we first examine whether the evidence demonstrates they were the recipient of prizes or awards. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual. The Petitioner submitted an extensive list of awards and nominations earned by video games and films that employed the Beneficiary's services as an animator. SCOPS concluded that because the Beneficiary was not a named winner or nominee for any of these awards, the record was insufficient to establish that she had received any of them. On appeal, the Petitioner asserts that professionals in the Beneficiary's field of cinematic and video game animation are not generally recognized as individuals, but as members of teams. The Petitioner therefore contends the awards bestowed on games the Beneficiary worked on should be considered in the same fashion as individual awards. We disagree.

First, as noted by SCOPS, the evidence does not indicate that the Beneficiary has gone unnamed because the relevant awards are only granted to teams, video games, or companies. Instead, many of the awards highlighted in the petition were granted to specifically named individuals other than the Beneficiary. For example, the [redacted] trophy for outstanding character animation in [redacted] states that it was granted to four named individuals who served as the lead animators on that project. Similarly, the [redacted] award for outstanding achievement in animation in [redacted] was credited to the individual who served as the game's animation director.[3] The award nominations from the [redacted] also credit named individuals rather than teams.[4] The Petitioner has not established that USCIS should consider the Beneficiary to be the recipient of awards that specifically name other individuals as their winners.

The record indicates that the 2022 [redacted] for video game character animation was granted to the [redacted] animation team as a whole, and that the Beneficiary was part of this animation team. A team award may qualify a person under 8 C.F.R. § 204.5(h)(3)(i) so long as the person actually received the award in question from the awarding organization. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1) and F.2 fn.19 (explaining that "the focus should be on the person's receipt of the awards or prizes, as opposed to the employer's receipt of the awards or prizes," and that "[m]ere acknowledgement from the award recipient does not constitute receiving the award from the awarding authority"). A person's receipt of a team award may be demonstrated if, for example, they appear on stage to accept the award, if they personally receive a trophy, medal, or certificate, or if the awarding organization specifically names them as a winner in their announcement of the award selection. *Id.* The Petitioner has not provided any such evidence here.

On appeal, counsel asserts that an award given to a team, a publisher, or a game in the Beneficiary's industry is considered an individual award for the participating animators. Counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any

---

[3] [redacted] https://www [redacted]

[4] *See, e.g.*, [redacted] https://www [redacted] (naming four of the Petitioner's coworkers as nominees for outstanding visual effects in a real-time project for their work on [redacted]).

evidentiary weight"). The record does not include documentation establishing that every animator who works on an award-winning game is considered a winner of that award in their own right.[5] Instead, it indicates that animation departments work like other cinematic crafts teams, where many people contribute to the work seen on screen, but only a few principal contributors are eligible for recognition such as Academy Awards.[6]

Because there is no documentation in the record showing that the Beneficiary received the award from the awarding authority, the Petitioner has not established that she was a recipient of the 2022 Award. *See generally* 6 *USCIS Policy Manual*, *supra* at F.2(B)(1) and F.2 fn. 19.

For the reasons discussed, the evidence does not establish that the Beneficiary has received a lesser nationally or internationally recognized award or prize for excellence in her field. 8 C.F.R. § 204.5(h)(3)(i).

2. Original Contributions of Major Significance in the Field. 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner contends that the Beneficiary's work as an animator for various prestigious studios and games qualifies under this criterion. In support of its claim, it provides evidence of her work credits and support letters from her coworkers. SCOPS concluded that the record did not establish the significance of the Beneficiary's contributions, since it did not show their recognition beyond her professional circle. On appeal, the Petitioner asserts that SCOPS disregarded the nature of the video game industry and overlooked evidence which establishes the Beneficiary's eligibility.

One way in which a contribution's significance to a field may be established is by showing that it has received widespread attention or use in that field. *See generally* 6 *USCIS Policy Manual*, *supra* at F.2(B)(1). The Petitioner asserts that contributions in video game animation "are not replicated by other video game animators in the way that original contributions in business or science can be replicated," and that "[t]here will not be solo awards, published material or solo credits available as evidence." The Petitioner claims that significance in this field is instead established through the commercial success and positive critical reception of the video games an animator worked on. As noted above, however, the record indicates that many animation awards are granted to individual winners. Furthermore, the record reflects that in some of her most prominent projects, the Beneficiary was one of dozens of animators working under various lead animators and animation managers.[7]

---

[5] Notably, the rules of the state that even where an award is credited to a "Development Team," representative individuals from that team will receive trophies and certificates. at https://www (stating that entrants "must provide the names of up to three individuals" for nomination or risk having their entry invalidated, and outlining the award procedures for winners credited as a

[6] *E.g.* (stating that no more than four "primary individuals . . . directly involved with, and principally responsible for" a film's visual effects may receive an Academy Award for visual effects).

[7] We note that the provided credits evidence consists of screen captures of game and film credits sequences and entries which are incomplete and inconsistent. For example, the Beneficiary is the only listed animator in the entry for but the provided screen capture from the game's credits lists her as one of six facial animators, along with three player animators, eight enemy animators, and eight

While all of these artists undoubtedly perform highly-skilled work, we cannot conclude on the basis of counsel's unsupported claims that every animator employed on a successful video game project has made an original contribution of major significance to the field of animation. *Matter of S-M-*, 22 I&N Dec. at 51.

Even if a beneficiary works in a field for which evidence of individual awards is unavailable, it is generally expected that if an individual made an original contribution that is sufficiently significant to qualify for this criterion, that individual and their contribution would be recognized beyond his or her immediate professional and personal circle. *See generally* 6 *USCIS Policy Manual*, *supra* at F.2(B)(1) and (3). Here, the Petitioner relies almost entirely on support letters to establish eligibility for this criterion, and nearly all these letters are from the Beneficiary's coworkers. The only exception is a letter from Professor J-B- of the [redacted] who is authorized to assess professional credentials in the context of assigning academic credit but does not claim any background or expertise in video game or cinematic computer animation. Given that Professor J-B-'s expertise is instead in graphic design, web design, and typography, his conclusions regarding the scope of the Beneficiary's achievements do not establish eligibility. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (noting that when an expert opinion letter is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence).

Furthermore, the limited documentation provided beyond the support letters does not support Professor J-B-'s claims about the significance of the Beneficiary's contributions. For example, a letter from M-O-C-, an animation manager working for the Petitioner, highlights the Beneficiary's work on animating the villain [redacted] and the [redacted] scene for [redacted] and states that the Beneficiary's "creation of [redacted] was of major significance for the video game, which lead [sic] to positive reviews." However, none of the provided game reviews mention the [redacted] character. Similarly, multiple letters from the Beneficiary's coworkers mention her work on a helicopter takedown cinematic scene for [redacted] with M-O-C- asserting that "[a] scene like this never appeared in a video game, motion picture or animated film before." But none of the reviews provided for this game mention this specific scene. Support letters and claims by counsel that are uncorroborated by the record cannot establish that the Beneficiary's contributions to these games provoked widespread commentary on their importance from others in the field or that they were otherwise recognized for the major significance to the field of animation. *See generally* 6 *USCIS Policy Manual*, *supra* at F.2(B)(1) and (3).

The Petitioner has not provided documentation demonstrating that the Beneficiary made original and majorly significant contributions to her field. 8 C.F.R. § 204.5(h)(3)(v).

---

cinematic animators. Since the screen captures show the actual project credits, we consider them to be the more reliable source of information. However, the captures provided by the Petitioner only show the part of the credits where the Beneficiary's name appears, which omits the names and job titles of many, if not most, of her coworkers. This evidence therefore has limited probative value in establishing the significance of the Beneficiary's work. *See Matter of Chawathe*, 25 I&N Dec. at 375-76 (noting that under the preponderance of the evidence standard, we examine each piece of evidence for relevance, probative value, and credibility, both individually and in the context of the totality of the evidence).

3. Comparable Evidence. 8 C.F.R. § 204.5(h)(4).

If any of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to a person's occupation, a petitioner may instead provide comparable evidence to establish eligibility. 8 C.F.R. § 204.5(h)(4). For such evidence to be considered, however, petitioners must establish two factors. First, they must establish why a specific criterion is not readily applicable to a beneficiary's occupation. Second, they must demonstrate that the evidence provided is truly comparable to the evidence required by that criterion. A general unsupported assertion that a listed evidentiary criterion does not readily apply to the beneficiary's occupation is not probative. *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

In its initial filing, the Petitioner stated that various provided support letters should be considered as comparable evidence because they show "significant recognition for achievements from organizations and other recognized experts in the field." In its response to the SCOPS' request for evidence (RFE), the Petitioner elaborated that the criterion at 8 C.F.R. § 204.5(h)(3)(vii) is not readily applicable to the Beneficiary's occupation because it "is reserved for traditional artists showcasing their work in exhibitions," and the criterion at 8 C.F.R. § 204.5(h)(3)(x) is also not readily applicable since it concerns commercial success in the performing arts. SCOPS concluded that the Petitioner did not provide sufficient evidence to show that the criteria are not readily applicable to the Beneficiary's occupation. SCOPS also appeared to conclude that the provided evidence did not qualify under the plain language of these criteria, but did not specify what evidence was analyzed to come to this conclusion.

On appeal, the Petitioner reasserts that the artistic exhibition and commercial success criteria do not readily apply to the Beneficiary's occupation. The plain language of 8 C.F.R. § 204.5(h)(3)(x) requires evidence of commercial success in the performing arts. Because animators are not performing artists, we agree that this criterion is not readily applicable to the Petitioner's occupation and withdraw SCOPS' conclusion to the contrary. However, while the Petitioner asserts that only "traditional artists" qualify for the artistic exhibition criterion, nothing in the plain language of 8 C.F.R. § 204.5(h)(3)(vii) restricts its application to artists working in a particular medium. An animator's work could, for example, be displayed at an artistic exhibition such as a film festival or a gallery display about video game art. Counsel's unsupported assertions about the inapplicability of this criterion therefore do not suffice to establish that we should consider comparable evidence instead. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1) (stating that "[a] general unsupported assertion that the listed evidentiary criterion does not readily apply to the petitioner's occupation is not probative," and that "general claims that USCIS should accept witness letters as comparable evidence are not persuasive.")

The Petitioner further claims that it does not need to establish that its evidence is comparable to that required by any particular criterion, quoting an agency draft memorandum regarding the O-1 nonimmigrant classification which states that "[t]he comparable evidence provision was intended as a 'catch-all' to allow additional evidence to be considered when the other enumerated criteria do not readily apply, in whole or in part . . .". *See generally* Draft USCIS Policy Memorandum PM-602-0123, *Comparable Evidence for O Nonimmigrant Visa Classification* 2-3 (Jan. 21, 2016), https://www.uscis.gov/sites/default/files/document/outreach-engagements/PED_DRAFT_PM_602-0123_-_O_Comparable_Evidence_PM_APPROVED_2.pdf.

As noted by the Petitioner, the comparable evidence provision for O-1 nonimmigrants at 8 C.F.R. § 214.2(o)(3)(iii)(C) is similar to the one applicable to extraordinary ability immigrant visa petitions at 8 C.F.R. § 204.5(h)(4). However, the cited memorandum is a draft and clearly states that it "does not constitute agency policy in any way or for any purpose." *See generally* Draft USCIS Policy Memorandum PM-602-0123, *supra* at 1.[8] Furthermore, even if this document constituted binding policy guidance, which it does not, its text clearly supports SCOPS' interpretation of the comparable evidence provision, stating that "a petitioner must only show that a particular criterion does not readily apply to the beneficiary's occupation before a petitioner may offer comparable evidence *with regard to that criterion*" (emphasis added), and that petitioners must explain "why the submitted evidence is 'comparable' to the criterion listed in the regulations." *See generally* Draft USCIS Policy Memorandum PM-602-0123, *supra* at 3. This is consistent with the current USCIS policy guidance regarding comparable evidence for the extraordinary ability immigrant classification. *See generally* 6 *USCIS Policy Manual*, *supra* at F.2(B)(1) (providing examples of criteria that are inapplicable to particular occupations and comparable evidence that may be submitted to show eligibility under those specific criteria).

The Petitioner has not provided an adequate explanation as to why the artistic exhibition criterion is not readily applicable to the Beneficiary's occupation or how the recommendation letters are comparable to evidence showing commercial success in the performing arts. As such, the evidence does not establish the Beneficiary's qualifications under 8 C.F.R. § 204.5(h)(3)(vii) or (x).

B. Summary and Reserved Issue

The Petitioner must demonstrate that the Beneficiary meets at least three criteria at 8 C.F.R. § 204.5(h)(i)-(x) to satisfy the initial evidence requirement for this classification. The record establishes that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(iv), but the Petitioner has not demonstrated that the Beneficiary meets either of the two evidentiary criteria discussed above, nor has it submitted comparable evidence demonstrating her eligibility. Because the Petitioner cannot meet the initial evidentiary requirement, detailed discussion of the remaining claimed criterion at 8 C.F.R. § 204.5(h)(3)(viii), relating to leading or critical roles in organizations or establishments with a distinguished reputation, cannot change the outcome of the appeal. Therefore, we will reserve this criterion for future consideration if the need arises. *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).

C. O-1 Nonimmigrant Status

The record indicates that USCIS has approved a petition granting the Beneficiary O-1B nonimmigrant status as an alien with extraordinary ability in the arts. However, each petition is separate and independent and must be adjudicated on its own merits, under the corresponding statutory and regulatory provisions. The O-1 nonimmigrant classification has different standards and criteria for persons in the arts when compared to the definition and standard set forth for the first preference

[8] We further note that the draft memorandum's content was superseded by an update to the *USCIS Policy Manual* in 2020 which incorporated guidance on comparable evidence for O-1 visa adjudications. *See generally* Policy Alert PA 2020 14, *O Nonimmigrant Visa Classification* (Sep. 17, 2020), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20200917-ExtraordinaryAbility.pdf.

immigrant classification for aliens with extraordinary ability. As acknowledged in the Petitioner's brief, a higher standard applies to the immigrant classification. The beneficiary of an O-1B petition must demonstrate "distinction" in the field of arts, which is defined as "a high level of achievement in the field of arts as evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person describing as prominent is renowned, leading, or well-known in the field of arts." *See* 8 C.F.R. § 214.2(o)(3)(ii). For purposes of the extraordinary ability immigrant classification, 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).

III. CONCLUSION

The Petitioner has not provided the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3) and so has not demonstrated the Beneficiary's eligibility as an individual of extraordinary ability. As a result, the petition will remain denied 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 conclude that it does not support a conclusion that the Beneficiary has the acclaim and recognition required for the classification sought.

The Petitioner seeks to classify the Beneficiary under a highly restrictive visa classification that is intended for individuals already at the top of their respective fields, rather than those progressing towards the top. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (concluding that even major league athletes do not automatically meet the statutory standards for classification as an individual of extraordinary ability; *Visinscaia*, 4 F.Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design"). The record demonstrates that the Beneficiary's artistic talent and animation skills are highly regarded and valued by her employers and colleagues, and that she has applied those skills to some critically acclaimed and commercially successful video games and motion pictures. However, the Petitioner has not shown that the significance of the Beneficiary's work in the animation field 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, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Beneficiary has garnered sustained national or international acclaim in the field, and that she is one of the small percentage who has risen to the very top of her field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated the Beneficiary's eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above-mentioned reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.