U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37599477

Date: MAY 07, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an educational entrepreneur, seeks classification as an individual of extraordinary ability. Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference (EB-1) 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.

Service Center Operations (SCOPS) denied the petition, concluding that the record did not establish that the Petitioner meets the classification's initial evidentiary requirements. 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 into the United States will substantially benefit prospectively the United States. 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 one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then they must provide documentation that meets at least three of the ten categories 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 individual's occupation.

Where a petitioner 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 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); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is the founder and director-general of an early childhood education center and special education school in Venezuela. She intends to establish and develop a similar business in the United States and claims eligibility for this classification based on extraordinary ability in education, specifically in the field of special education entrepreneurship. The Petitioner has a bachelor's degree in accounting and completed post-graduate studies in pedagogy and human resources.

Because the Petitioner does not claim to have a one-time achievement, she must provide evidence meeting at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). SCOPS concluded that the provided evidence did not meet any of the criteria the Petitioner claimed. On appeal, the Petitioner asserts that SCOPS overlooked relevant evidence and that she has met four evidentiary criteria, as well as meeting a fifth criterion through comparable evidence under 8 C.F.R. § 204.5(h)(4).

The Petitioner further asserts on appeal that, pursuant to the U.S. Supreme Court decision in *Loper Bright Enterprises v. Raimondo*, 144 S.Ct. 2244 (2024), "the AAO needs to re-analyze how it adjudicates all EB-1 criteria" and "put an end to the extra-statutory 'Final Merits Determination" in extraordinary ability cases. Notably, the Petitioner has not provided any support for this assertion and appears to misinterpret *Loper*'s reach. *Loper* overturned *Chevron USA v. Natural Resources Defense Council*, 467 U.S. 837 (1984), in holding that federal courts need not defer to agencies' reasonable interpretations of ambiguous federal laws. Therefore, *Loper* provides the judiciary with the sole prerogative to "say what the law is," stating that "[c]ourts must exercise their independent judgement in deciding whether an agency has acted within its statutory authority." *Loper*, 144 S. Ct. at 2257, 2273. While *Loper* guides federal courts that review our interpretation of ambiguous statutes, it does not modify our own adjudication of immigrant petitions. Accordingly, we are not persuaded by the Petitioner's assertion and will conduct a de novo review of the record considering the two-part analysis described in *Kazarian* and in the USCIS Policy Manual.

The Petitioner's assertion that the two-part analysis set forth in *Kazarian* is "extra-statutory" is also based on her interpretation of the regulation at 8 C.F.R. § 204.5(h)(3), which states that the evidence submitted to establish eligibility "shall" include evidence of a one-time achievement or at least three of the initial criteria. The Petitioner asserts that this "shall" requires USCIS to approve any petition that meets the initial eligibility requirements. A plain language reading of the regulation, however,

indicates that this "shall" is not binding on USCIS, but on petitioners, since it pertains to what evidence petitioners are required to submit. *See, e.g.*, *Amin v. Mayorkas*, 24 F.4th at 391 ("The regulation does not say that meeting the regulatory criteria presumptively qualifies an applicant for a visa. It addresses what evidence must 'accompany' a petition.") (cleaned up).

Finally, regarding the individual criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x), the Petitioner asserts that the standards for meeting certain criteria, such as those at 8 C.F.R. § 204.5(h)(3)(iv) and (vi) are "remarkabl[y] low," and that USCIS must apply a similar standard with respect to all ten evidentiary criteria. We disagree. In evaluating evidence submitted under 8 C.F.R. § 204.5(h)(3), USCIS' first step of evidentiary review is limited to determining whether the evidence submitted with a petition meets the plain language of the regulatory criteria. In doing so, we consider the quality and caliber of the evidence to determine whether a particular criterion has been met, to the extent the criterion has qualitative elements. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual. While some criteria do not have such qualitative elements, we are nevertheless bound by the plain language of the regulations in evaluating whether the evidence before us satisfies all requirements. We will address each claimed criterion below.

A. Membership in associations which require outstanding achievements of their members, as judged by nationally or internationally recognized experts. 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner states that she meets this criterion through her membership in the following organizations:

- Council for Exceptional Children (CEC)
- Texas Council for Exceptional Children (TCEC), a chapter of CEC; and
- National Association of Special Education Teachers (NASET).

Upon review of the membership documentation, bylaws, and organizational information provided, the record indicates that CEC, TCEC, and NASET memberships only require registration and a fee. As such, the record indicates that none of these organizations require their members to have outstanding achievements in the field of education. The Petitioner has not established eligibility under this criterion. *Id.*

B. Participation as a judge of the work of others. 8 C.F.R. § 204.5(h)(3)(iv).

The Petitioner asserts that she meets this criterion because she judged the work of her employees at the [redacted], of which she is the founder and director-general. SCOPS concluded that the evidence was insufficient to establish eligibility because the Petitioner did not support her claims with corroborating documentation showing that she had participated as a judge of the work of others.

On appeal, the Petitioner correctly notes that this criterion may be fulfilled through the performance of regular work duties, rather than only through formal judging panels. However, while she contends that the record "contains extensive evidence of her service judging the work of others in her field," she does not specify any document SCOPS overlooked. Upon review, the record includes corporate documents showing that the Petitioner founded [redacted] and an organizational chart depicting

her as its leader, but no documentation such as performance reviews or other correspondence showing her participation as a judge of the work other educational entrepreneurs or persons in an allied field. Given this lack of supporting evidence, the Petitioner's general claims that she judged the work of her employees do not suffice to establish eligibility. Therefore, the Petitioner has not demonstrated she meets this criterion.

C. Original contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner asserts that she meets this criterion though her founding and leadership of [redacted] which has 40 employees, almost 200 students, and annual revenue of almost 1 million bolivars (VND), in a time of political and economic turmoil in Venezuela. To support this claim, she provided recommendation letters, corporate documentation regarding [redacted] and evidence of the school's social media following.

The record is insufficient to establish how the Petitioner's work at [redacted] qualifies as an original contribution of major significance in the field of education in Venezuela or internationally. For example, the Petitioner points out that [redacted] has over 70,000 followers on [redacted] while the [redacted] where Presidents [redacted] sent their children, has 6,500 followers. She asserts that this social media following is a measure of influence in the same way that academic citations are a measure of influence in scientific fields. But she has provided no explanation or documentation of the validity of this comparison. Academic citations are included in research papers to note that other papers are being discussed in their text, and are therefore a marker of one's research being noted by fellow researchers. Here, there is no indication in the record that [redacted] followers are educators or that each [redacted] subscription is equivalent to a professional discussion of the school's work. The Petitioner has not established that the size of a school's [redacted] following is a measure of its influence on the field of education, or that [redacted] following in particular has this kind of significance.[1]

The Petitioner provided support letters whose authors praise the Petitioner's financial skill in operating [redacted] but none of them provide specific examples of its impact or significance beyond its students, their families, and the local community. We further note that where an 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. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). Here, it is not apparent how university chancellors with backgrounds in history and law, like A-L- and Dr. J-E-, would have the expertise to assess the Petitioner's work in early childhood special education. In addition, it is notable that none of the authors who provided support letters state how they came to know of the Petitioner or her work and therefore do not set forth the basis of their knowledge and expertise. Their letters therefore have limited evidentiary weight. *Id.* Even where a petitioner provides detailed letters from experts in their field explaining the nature and significance of the person's contribution, such letters have more probative value when the record includes documentation corroborating the claimed significance. Here, the record lacks such supporting documentation.

[1] We further note that even if a school's social media following were comparable to academic citations in other fields, the Petitioner has only provided one point of comparison to her special education school in Venezuela: a private day school in the United States. The record does not include statistics for comparable Venezuelan schools or any other documentation establishing the significance of [redacted] following in the context of the Petitioner's field.

The record shows that the Petitioner has founded and directed a specialized school and early childhood education center that meets the needs of its local community and is financially successful. However, the evidence, considered individually and in the aggregate, does not demonstrate that the school represents a contribution of major significance in her field. Accordingly, she has not demonstrated that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(v).

D. Performed in a leading or critical role for organizations with distinguished reputations. 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner claims to meet this criterion as the founder and director-general of [redacted]. SCOPS concluded that the record did not establish that her role for the organization is leading or critical, or that it has a distinguished reputation.

Upon review, we will withdraw SCOPS' conclusion regarding the Petitioner's role for [redacted]. The corporate documents and other supporting evidence in the record establish that the Petitioner founded the school and has performed in a leading role for it. However, this evidence does not establish eligibility under 8 C.F.R. § 204.5(h)(3)(viii) because it does not show that [redacted] is an organization or establishment with a distinguished reputation.

On appeal, the Petitioner does not make any specific arguments regarding [redacted] reputation, but requests that we review the evidence provided. Having done so, we conclude that the record does not establish [redacted] distinguished reputation. As explained above, there is no documentation in the record demonstrating that the size of a school's social media following is somehow indicative of its prestige or reputation. The printouts of the school's Instagram page are therefore of limited value in establishing eligibility. Furthermore, while some of the provided support letters allude to the reputation of the Petitioner's work in her field, none of them state how the authors came to know of that reputation. The record also does not contain evidence such as academic rankings, the receipt of competitive grant funding, relevant media coverage, or other documentation distinguishing [redacted] reputation from that of other schools. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). The record is therefore insufficient to establish that Construyendo is a qualifying organization or establishment under this criterion. 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner has not established that she performed in a leading or critical role for organizations or establishments with distinguished reputations. *Id.*

E. 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, why a particular evidentiary criterion is not readily applicable to a person's occupation, and second, why the provided evidence is of comparable significance to the evidence required by that criterion. *See generally* 6 *USCIS Policy Manual*, *supra* at F.2(B)(1).

In her response to SCOPS' request for evidence, the Petitioner asserted that she qualifies under the comparable evidence provision, but did not specify which of the ten criteria at 8 C.F.R.

§ 204.5(h)(3)(i)-(x) are not readily applicable to her occupation or why her evidence was of comparable significance. SCOPS therefore did not grant any additional criteria under 8 C.F.R. § 204.5(h)(4).

On appeal, the Petitioner provides an attorney letter asserting for the first time that the criterion at 8 C.F.R. § 204.5(h)(3)(x) does not readily apply to her occupation, since it pertains to commercial success in the performing arts. The letter further claims that the Petitioner's "innovative educational models or programs," her "management and leadership," and her "community outreach and partnerships" are all comparable to the evidence provided to establish eligibility under this criterion. The only reasoning provided for this conclusion is an unsupported assertion that "[t]he traditional EB1 criteria do not take these accomplishments into account."

First, 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 evidentiary weight"). Second, the appellate statement does not explain how the proffered evidence has comparable significance in the field of education as box office receipts and other evidence of commercial success do in the performing arts. The Petitioner therefore has not established eligibility under 8 C.F.R. § 204.5(h)(3)(x) through the submission of comparable evidence. 8 C.F.R. § 204.5(h)(4).

III. CONCLUSION

The Petitioner has not provided the required initial evidence of either a one-time achievement or documentation that meets at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) and so has not demonstrated her eligibility as an individual of extraordinary ability. Accordingly, the circumstances in this matter do not require the type of final merits determination referenced in *Kazarian,* 596 F.3d at 1119-20; *see also, 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).

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields. 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 Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); see also section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that she is among the small percentage who have 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).

ORDER: The appeal is dismissed.