U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42779326

Date: MAY 7, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a cloud technology expert, 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.

On two prior occasions, SCOPS denied the petition and then reopened it on its own motion. SCOPS has now denied the petition a third time, concluding that although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is an alien in the small percentage at the very top of the field. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility 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.

For clarity and context, below is a brief chronology of earlier stages of this proceeding.

- May 31, 2024: The Petitioner filed the Form I-140 petition
- June 21, 2024: SCOPS issued a request for evidence (RFE).
- September 25, 2024: SCOPS denied the petition.
- January 22, 2025: SCOPS reopened the petition *sua sponte* and issued a second RFE.
- May 15, 2025: SCOPS denied the petition for a second time.
- December 2, 2025: SCOPS moved to reopen the proceeding, stating: "USCIS [U.S. Citizenship and Immigration Services] will review and reevaluate the already submitted evidence and issue a new decision."
- February 2, 2026: SCOPS denied the petition for a third time, concluding that the evidence submitted with the petition and in response to the January 2025 RFE did not suffice to establish sustained national or international acclaim.

On appeal, the Petitioner cites the regulation at 8 C.F.R. § 103.5(a)(5)(ii), which reads, in part: "When a [USCIS] officer, on his or her own motion, reopens a [USCIS] proceeding . . . , and the new decision may be unfavorable to the affected party, the officer shall give the affected party 30 days after service of the motion to submit a brief." The Petitioner correctly observes that the December 2025 reopening notice did not afford the Petitioner 30 days to submit a brief.

The record does not indicate that SCOPS afforded the Petitioner an opportunity to submit a brief after the December 2025 reopening notice. SCOPS subsequently issued an unfavorable decision. We will therefore remand the matter to SCOPS.

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