U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42547839

Date: MAY 07, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a business development executive and entrepreneur, 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 record did not establish that the Petitioner had either received a major, internationally recognized award or satisfied at least three of ten initial evidentiary criteria for this classification, as required. 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 the 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:

- They have 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-part analysis. First, a petitioner can demonstrate international recognition of an alien's achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Alternatively, a petitioner can submit evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x). 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, 1121 (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, 394 (5th Cir. 2022) (upholding USCIS' two-step review process as "consistent with the governing statute and regulation").

II. ANALYSIS

The Petitioner is an entrepreneur and business development executive with expertise in the launch of technology-driven fitness and wellness enterprises, including the Russia-based fitness club brands [redacted] and [redacted].

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 claimed to have satisfied five of these criteria, summarized below:

- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (vi), Authorship of scholarly articles;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

SCOPS concluded that the Petitioner met two of the five claimed criteria based on evidence that he had participated as a judge for business competitions and commanded a high salary or other significantly high remuneration for his services relative to others. *See* 8 C.F.R. § 204.5(h)(3)(iv) and (ix).

Upon review of the record, we conclude that the Petitioner has also submitted evidence that satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(iii), which 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 submitted articles about him and his work as an entrepreneur and executive in the fitness industry from online publications that included [redacted].

[redacted], and [redacted]. Although the Petitioner submitted readership and viewership data and publication rankings from several third-party sources, SCOPS found that this evidence lacked relevance and reliability and appeared to question the credibility of "material on the internet" in general.

We disagree with SCOPS' assessment of the evidence and conclude that some articles qualify for the criterion. For instance, the article from [redacted] includes the title, date, and author and is about the Petitioner and his work in his field. Supporting evidence from multiple sources, when considered in its totality, is sufficient to demonstrate, by a preponderance of the evidence, that this online news outlet qualifies as major media in Russia. We will therefore withdraw SCOPS' determination that the Petitioner did not meet this criterion.

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).[1] 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.

B. Derogatory information not disclosed to Petitioner

SCOPS' determination that the Petitioner did not establish his eligibility under the criterion at 8 C.F.R. 204.5(h)(3)(viii) was based, in part, on information relating to his employment history that was obtained from nonimmigrant visa applications he had submitted to the U.S. Department of State. However, SCOPS did not inform the Petitioner that it would rely on this information from outside the record of proceeding in the adjudication of his petition.

If a decision is unfavorable to a petitioner and is based on derogatory information considered by USCIS and of which the petitioner is unaware, the petitioner must be advised of this fact and offered an opportunity to rebut the information and present information in his or her own behalf before the decision is rendered. *See* 8 C.F.R. § 103.2(b)(16)(i). A determination of eligibility shall be based only on information contained in the record of proceeding which is disclosed to the petitioner. *See* 8 C.F.R. § 103.2(b)(16)(ii).

We are remanding this matter to SCOPS for entry of a new decision for the reasons discussed below. If the new decision will be based, in part, on any information from outside the record, SCOPS must issue a new request for evidence or notice of intent to deny in compliance with 8 C.F.R. § 103.2(b)(16)(i) prior to its issuance.

C. Basis for Remand

Although we have determined that the Petitioner meets at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3), meeting three criteria 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

[1] 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.

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 the Petitioner's appellate brief and evidence submitted on appeal and any potentially relevant evidence of record, even if 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.*

III. CONCLUSION

The Petitioner demonstrated that he has satisfied the initial evidence requirements for this classification. Accordingly, we will remand the matter to SCOPS for a final merits determination.

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