U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37760140

Date: MAY 12, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner is a civil engineer who 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 Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner had a major, internationally recognized award, nor did he demonstrate that he met at least three of the ten regulatory criteria. 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 to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The alien enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The alien's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. The term "extraordinary ability" refers only to those 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 that 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to 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 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).

II. ANALYSIS

The Petitioner is a civil engineer who intends to work as a project manager and construction superintendent, and he plans to help the state in which he resides in the United States curb what he describes as a crisis in the construction industry.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has 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). Before SCOPS, the Petitioner claimed he met five of the regulatory criteria. SCOPS decided that the Petitioner satisfied two of the criteria relating to the authorship of scholarly articles and performing in a leading or critical role but that he had not satisfied the criteria associated with membership, original contributions, or commanding a high salary or remuneration. On appeal, the Petitioner maintains that he meets those same evidentiary criteria. After reviewing all the evidence in the record, we conclude that he has only satisfied those criteria SCOPS granted and he has not shown he is eligible for this restrictive immigrant classification.

1. "Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." 8 C.F.R. § 204.5(h)(3)(ii).

This criterion contains several evidentiary elements the Petitioner must satisfy. First, the Petitioner must demonstrate that he is a member of an association in his field. Second, the Petitioner must demonstrate both of the following: (1) the associations utilize nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements are outstanding, and (2) the associations use this outstanding determination as a condition of eligibility for prospective membership.

The Petitioner provided his membership in the [redacted] SCOPS issued a request for evidence (RFE) and the Petitioner responded asserting comparable evidence claims under this criterion. *See* 8 C.F.R. § 204.5(h)(4). SCOPS determined that the Petitioner did not meet the requirements of this criterion as his evidence did not satisfy items 1 or

2 in the above paragraph, nor did he demonstrate that he was eligible to claim comparable evidence under this regulatory provision.

On appeal, the Petitioner abandons any comparable evidence claims relating to this criterion and he returns to arguing that each of the regulatory elements directly applies to his occupation. He claims [redacted] uses "international experts" to judge prospective members' achievements through the specialized chamber, and it is this chamber that evaluates whether his achievements are outstanding. Within the initial filing the Petitioner described his involvement with [redacted] as being a licensed member since 2010, and he characterized the entity as a governing body of all engineering professionals in his home country.

As it relates to the specialized chamber, the Petitioner advances arguments on appeal that he did not present to SCOPS either in the initial filing or in the RFE response. Specifically, his appeal discusses the specialized chamber in detail referring to Brazilian law and he did not make those arguments under the membership criterion in the proceedings before SCOPS. Because both the regulation and SCOPS' RFE put the Petitioner on notice and gave him a reasonable opportunity to provide these eligibility claims, we will not consider them for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Furtado*, 28 I&N Dec. 794, 801–02 (BIA 2024) (declining to consider new material on appeal when the filing party was put on notice of the requirements and given a reasonable opportunity to provide it for the record before the denial); *see also Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). The result is the Petitioner has not demonstrated that CREA uses nationally or internationally recognized experts to judge the achievements of prospective members.

Even setting that aside, the Petitioner's appeal relies on a document titled, "Presidency of the Republic Civil House Deputy Head of Legal Affairs" that contains a Brazilian "Law No 5, 194, of December 24, 1966." This derives from a Brazilian government website which presents the website in Portuguese, https://www.planalto.gov.br/ccivil_03/leis/L5194.htm. This evidence is not accompanied by a certified English translation nor does the material reflect the Brazilian government produced the websites in an English version. Instead, it appears the Petitioner utilized an internet browser's translating capabilities to translate the original Portuguese into English and he did not provide a translator's certification for that material.

This is not in compliance with the regulation. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of the document, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims. *See also Matter of Nevarez*, 15 I&N Dec. 550, 551 (BIA 1976) (finding petitioners for immigration benefits must provide certified English translations of any foreign language documents they submit as required by the regulation).

The Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

2. "Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." 8 C.F.R. § 204.5(h)(3)(ix).

The plain language of this criterion requires a comparison against "others in the field." Salary information for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison. Additionally, average salary levels are not comparable when evaluating whether a salary was high "in relation to others in the field." *E.g.*, *Kinuthia v. Biden*, 702 F. Supp. 3d 5, 11 (D. Mass. 2023) (finding USCIS reasonably concluded a filing party's evidence comparing average and median salaries was insufficient to establish he commanded a high salary in relation to others in the field).

The Petitioner must submit documentation of the earnings of those in their occupation performing similar work. While we acknowledge that a district court's decision is not binding precedent, we note that in *Racine v. INS*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated, "[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with . . . the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898–99."

The Petitioner must present evidence of objective earnings data showing that they have commanded a "high salary" or "significantly high remuneration" in comparison with those performing similar work during the same time period. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713–14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444–45 (N.D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

The Petitioner provided his wage and tax information from 2023, and the U.S. Department of Labor's Occupational Information Network (O*NET) OnLine details report for the occupational category "Construction Managers." SCOPS determined that the Petitioner did not meet the requirements of this criterion. In the RFE, SCOPS listed multiple deficiencies in the Petitioner's claims and evidence, partly focused on the O*NET material reflecting the 2023 median salary for all of the United States. SCOPS maintained that line of reasoning in the denial decision noting the data the Petitioner provided did not represent an appropriate comparison.

And we agree that the arguments and evidence the Petitioner presented before SCOPS did not demonstrate eligibility under this criterion. First, median wage data is not necessarily the proper basis to compare with the Petitioner's information. *Kinuthia*, 702 F. Supp. at 11; *see also Mussarova v. Garland*, 562 F. Supp. 3d 837, 853 (C.D. Cal. 2022). Second, the data he offered before SCOPS related to the median wage for all of the United States when the Petitioner earned those wages in the [redacted] area, and he did not offer evidence relating to that part of the country. As wages can widely vary depending on location, more relative evidence would relate to his geographical location rather than the entire country. *See generally* 6 *USCIS Policy Manual* F.2(B)(1),

https://www.uscis.gov/policymanual (discussing comparative wage data and noting the value of geographic compensation surveys). We note this geographical data is available through O*NET, but the Petitioner did not submit that type of arguments or evidence before SCOPS.

On appeal, the Petitioner now offers more detailed material from O*NET covering the state in which he performed the work. But as we stated above, when the filing party was put on notice of a requirement before SCOPS and given an opportunity to provide claims and evidence, we generally will not consider new evidence on appeal. *Furtado*, 28 I&N Dec. at 801–02.

As the Petitioner has not demonstrated SCOPS erred in their determination under this requirement, he has not submitted evidence that meets the plain language requirements of this criterion.

3. "Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." 8 C.F.R. § 204.5(h)(3)(v).

The primary requirements here are that the Petitioner's contributions in their field were original and they rise to the level of major significance in the field, rather than to a project or to an organization. *See Amin*, 24 F.4th at 394 (citing *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134 (D.D.C. 2013)). The regulatory phrase "major significance" is not superfluous and, thus, it has some meaning. *Nielsen v. Preap*, 586 U.S. 392, 415 (2019) (finding that every word and every provision in a statute is to be given effect and none should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence). Further, the Petitioner's contributions must have already been realized rather than being potential, future improvements. Contributions of major significance connotes that the Petitioner's work has significantly impacted the field. The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The Petitioner primarily provided support letters as evidence under this requirement. SCOPS determined that the Petitioner did not meet the requirements of this criterion. On appeal, the Petitioner claims SCOPS disregarded evidence, but he does not specify what evidence was ignored or how material SCOPS may have failed to consider demonstrates eligibility under this requirement. Instead, he provides a list of the material and the assertions he made before SCOPS.

The issue here is the Petitioner's claim that he pioneered the use of industrial crushing machines the demolition site to reduce demolition waste companies send to landfills. A successful claim under this criterion would require that this particular method and use was original in the construction field, and that it was of major significance in the field. As he did not demonstrate that he created these industrial crushing machines, he was the first to use it to recycle construction materials, or he was the first to recycle the materials at the demolition site, he has not shown that he can satisfy this criterion's requirements. While the letters in the record reflect he may have been the first known person in Brazil to use this method, the record lacks corroborating material to demonstrate the method didn't already exist outside of his home country. In other words, if the Petitioner simply adopted this methodology from a person or company outside of Brazil, then it was not an original contribution in his field of construction.

This lack of corroborating material hinders his ability to preponderantly demonstrate the originality of his claim. As with most administrative proceedings, the standard of proof here is the preponderance

of the evidence. The preponderance standard of proof is the degree, or level, of proof demanded in a specific case. We are ultimately deciding whether the Petitioner's claims are sufficiently supported by relevant, probative, and credible evidence. The decision in *Chawathe*, 25 I&N Dec. at 375 reiterated the longstanding principle for the preponderance standard of proof.

We consider evidence by evaluating its quality, reviewing its contents, and finally coming to a conclusion of whether that material supports a petitioner's claims. Ultimately, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 79–80 (Comm'r 1989)). The *Chawathe* decision informs us that the filing party must submit relevant, probative, and credible evidence that leads the trier of fact to believe that the claim is "more likely than not" or "probably" true. If a petitioner's evidence, or lack of evidence, was the cause for the doubt, unless the remainder of the evidence considered in totality is sufficiently persuasive, then the petitioner has not met their burden as described in *Chawathe*.

We reiterated this concept in a subsequent decision, *Matter of Dhanasar*, 26 I&N Dec. 884, 889 n.8 (AAO 2016). Under the preponderance of the evidence standard, a petitioner must establish that the arguments and the evidence presented make it more likely than not that they have satisfied the regulatory requirements. *Id.* (citing to *Chawathe* 25 I&N Dec. at 376). So even though SCOPS did not question the originality of the Petitioner's claims, we have determined the evidence does not support his assertions.

Because the Petitioner has not demonstrated the originality of his claim, it is unnecessary that we analyze whether it was of major significance in the field. In closing, the Petitioner has not submitted evidence that satisfies the plain language requirements of this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we do not need to 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, concluding it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those progressing toward that goal. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Price*, 20 I&N Dec. at 954. Here, the Petitioner has not shown the significance of their 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). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an alien of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.