U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42193453

Date: MAY 18, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a tattoo artist, 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 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 dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. A petitioner must establish that these aliens seek to enter the United States to continue work in the area of extraordinary ability, and that their entry into the United States will substantially benefit the United States. The term "extraordinary ability" refers only to those aliens 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. Or the 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), including items such as awards, published material in certain media, and scholarly articles. If those

standards do not readily apply to the alien's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we assess whether the record shows sustained national or international acclaim and demonstrates that the alien 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 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's specialty is realistic black-and-gray images. He began showing his work at exhibitions in Russia and later entered the United States as an O-1B nonimmigrant alien with extraordinary ability in the arts. Since his O-1B entry, the Petitioner has spent most of his time in the United States, working at tattoo studios in the [redacted] area, but he has also traveled abroad to international tattoo conventions. When he filed the present petition in July 2025, the Petitioner worked at [redacted]. Shortly afterward, he moved to [redacted]

Initially, the Petitioner did not claim to have received a major, internationally recognized award. Instead, he claimed to have satisfied five of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x), summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (vii), Display at artistic exhibitions or showcases; and
- (ix), High remuneration for services.

The Petitioner also claimed that his guest appearances at prestigious studios and a corporate sponsorship from an ink manufacturer are comparable to commercial success in the performing arts, under 8 C.F.R. § 204.5(h)(3)(x) and (4).

Later, in response to a request for evidence, the Petitioner contended that some of his convention prizes also qualify as major, internationally recognized awards under 8 C.F.R. § 204.5(h)(3).

SCOPS concluded that the Petitioner met four of the criteria, pertaining to published material; judging; display; and remuneration. SCOPS declined to consider the Petitioner's "comparable evidence" claim because several of the initial criteria readily apply to the Petitioner's occupation. Because SCOPS concluded that the Petitioner's awards do not meet the lower threshold set forth in 8 C.F.R. § 204.5(h)(3)(i), SCOPS did not directly address the Petitioner's claim of a major, internationally recognized award.

In the ensuing final merits determination, SCOPS concluded that the Petitioner had not met his burden of proof to establish sustained national or international acclaim.

Because SCOPS granted at least three initial criteria and proceeded to a final merits determination, the Petitioner's claims regarding a one-time achievement and comparable evidence are arguably moot. We have considered the evidence underlying those claims in the context of the final merits determination.

In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[1] In this matter, we determine that the Petitioner has not established eligibility.[2]

The Petitioner asserts on appeal that SCOPS improperly used the final merits determination "to disregard probative evidence [and] reimpose new thresholds on criteria already credited. . . . *Kazarian* does not permit USCIS to deny a petition by re-weighing evidence that has already been found to satisfy the regulatory criteria or by imposing qualitative thresholds beyond the text of the regulation."

But the final merits determination considers the totality of the evidence in the broader context of sustained national or international acclaim as required by the statute. Issues that "are not relevant to the antecedent procedural question of whether the petitioner has provided at least three types of evidence" "might be relevant to the final merits determination of whether a petitioner is at the very top of his or her field of endeavor." *Kazarian v. USCIS*, 596 F.3d at 1121. Considerations that might impermissibly amount to "a novel evidentiary requirement" within the narrow confines of an initial criterion nevertheless "might be relevant to a final merits determination." *Id.*

The Petitioner documented his attendance at a number of tattoo festivals and conventions, both as an exhibitor and as a judge. The Petitioner's service as a judge on these occasions, particularly at exclusive invitational events, is a favorable factor. But it cannot suffice for the Petitioner to list his accomplishments. He must also provide context to show that he has reached the very top of his field and has remained there. For example, with respect to his judging work, the Petitioner has not provided objective evidence to show that he has consistently acted as a judge at a level consistent with sustained national or international acclaim at the very top of the field.

Even as the Petitioner judged the work of other tattoo artists, his own work won awards at several of these events. SCOPS acknowledged the awards, but concluded that "the petitioner did not establish that being a recipient of these awards is indicative of a 'career of acclaimed work in the field.'" On appeal, the Petitioner maintains that festival awards are the highest honors in his field.

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[1] *See generally* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policy-manual (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

[2] While we may not discuss each piece of evidence in the record in our decision, we have reviewed and considered each one. When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the petitioner makes, nor is it necessary for it to address every piece of evidence the petitioner presents. *Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (citing *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir.1992); *see also Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993).

The record does not show that the awards received significant media coverage or attention outside of the award ceremonies at the conventions themselves. In terms of relative acclaim, the Petitioner did not establish that he has received, and continues to receive, a sufficiently high number of convention awards to place him in the small percentage at the very top of the field.

This is significant because the Petitioner correctly argues on appeal that we cannot consider each piece of evidence in isolation; we must consider the overall pattern they form. But by the same logic, we cannot simply look at the Petitioner's career in isolation. The burden is on the Petitioner to establish not only that he has achieved a level of success or prominence in his field, but that he has achieved a level of recognition commensurate with the very top of that field. The Petitioner cannot meet this burden only by describing his own evidence and then asserting that this evidence demonstrates the required acclaim. The record lacks sufficient context to show whether, and how, his achievements place him at the very top of his field.

The Petitioner submitted published materials from various publications for tattoo artists and enthusiasts. SCOPS concluded that these articles satisfy 8 C.F.R. § 204.5(h)(3)(iii) as published materials about the Petitioner in professional or major trade publications or other major media. But SCOPS also concluded: "The petitioner has not shown that his overall press coverage is indicative of a level of success consistent with being among 'that small percentage who have risen to the very top of the field of endeavor.'" SCOPS further stated that "the petitioner did not establish that the limited media reporting reflects a career of acclaimed work in the field or a very high standard of presenting more extensive documentation than that required."

The articles are generally highly complimentary toward the Petitioner. A [redacted] 2022 article in *iNKPPL* states that the Petitioner "[redacted]." But most of the articles fall within a short period of time, published in the first half of 2022, rather than indicating a sustained pattern of media coverage over the course of a number of years. The most recent article submitted with the petition was published nearly two years before the petition's filing date in July 2025. The Petitioner did not provide a contextual baseline to show that he has received a high level of coverage for his occupation, consistent with sustained national or international acclaim at the very top of his field.

The Petitioner submitted salary survey data to show that he charges significantly more than the average hourly wage for tattoo artists. SCOPS concluded that, while the price for the Petitioner's services is higher than average, and satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(ix), the Petitioner had not provided a basis for comparison with those at the very top of his field. SCOPS also concluded that the two years of tax returns in the record do not suffice to show a consistent history of earnings commensurate with sustained national or international acclaim. *See Jafarov v. USCIS*, No. 23 CIV. 3372 (PAE), 2024 WL 69056, at *9 (S.D.N.Y. Jan. 5, 2024) (finding the failure to show consistent high wage earnings did not reflect sustained national or international acclaim and a single year's, or even a few years', worth of salary data unlikely to satisfy this requirement).

The Petitioner has a sponsorship agreement with [redacted] as a member of that brand's [redacted]. The Petitioner submitted copies of sponsorship applications for other brands, intended to show that such sponsorship "is an occupational achievement given selectively." The Petitioner did not submit such documentation for [redacted]. Furthermore, an "achievement given selectively" does not

necessarily connote the very top of the field. The Petitioner did not submit additional supporting evidence sufficient to establish the significance of his inclusion on [redacted]

We also note the Petitioner's submission of letters from prominent tattoo artists. These individuals clearly hold the Petitioner's skills in high regard. At the same time, in the course of establishing their own credentials, a number of these individuals cite levels of achievement that the Petitioner himself has not reached. Some of them, for instance, indicate that they have hundreds of thousands of followers on social media, figures substantially higher than what the Petitioner has documented for himself. And some of the writers have been prominently featured on television programs about tattoo artists, a claim that the Petitioner has not made for himself. The record, therefore, establishes that there are levels of recognition and acclaim possible within the realm of tattoo art that the Petitioner has not yet attained. Earning the admiration of such artists is an enviable accomplishment, but it is not commensurate with reaching the very top of the field.

The Petitioner has established that his considerable abilities as a tattoo artist have attracted some attention within his field, including the admiration of prominent artists. But the Petitioner has not submitted the "extensive documentation" that section 203(b)(1)(A) of the Act demands to place him in the small percentage at the very top of the field. *See* 8 C.F.R. § 204.5(h)(2).[3]

III. CONCLUSION

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. Here, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). (concluding that even major league level 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,"); *Hamal v. DHS* (Hamal II), No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. DHS* (Hamal I), No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian*, 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of

[3] We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved an O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the offices adjudicating the nonimmigrant visa petitions, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an alien, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *3 (E.D. La. 2000).

the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). In this case, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. *See* H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); see also section 203(b)(1)(A) of the Act. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, the record is insufficient to demonstrate that he is among the small percentage at the top of his field. *See* 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.