U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37855954

Date: MAY 19, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner is a financial analyst 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).

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

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 meta at least three of the regulatory criteria. SCOPS decided that the Petitioner satisfied two of the criteria, but that he had not satisfied his remaining eligibility claims. On appeal, the Petitioner maintains that he meets three evidentiary criteria. After reviewing all the evidence in the record, we conclude the evidence does not support the Petitioner's eligibility claims under this highly restrictive immigrant classification.

A. "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 served in a financial analyst position and offered salary statistic data relating to 2021. SCOPS determined that the Petitioner met the requirements of this criterion. But for the below reasons, we withdraw SCOPS' favorable determination under this requirement.

We rely on multiple bases in our decision to withdraw SCOPS' determination here. First, the translation of the material the Petitioner provided noted the survey he relies on did not collect sufficient data for the position he held, and the survey instead presented data on what the letter's author characterized as similar. But as we explain below, that is not sufficient to warrant a favorable outcome here. The letter from the head of the department of labor statistics in the Petitioner's home country stated:

> There are some occupations and positions for which information will not be generated as part of this survey because the data for these occupations and positions are not representative.
>
> Due to the fact that the information on the type of economic activity "Financial and insurance activities" (Section K of [redacted] is not collected and analyzed within the framework of this survey, [redacted] does not have statistical information on organizations engaged in financial activities.
>
> We present the available statistical information on the average accrued salaries of employees of organizations of the surveyed types of economic activity (of all forms of ownership) in the occupational group "Heads of services and departments in the field of financial activity and insurance" (similar in duties and functionality to positions "Director of private banking, director of customer relations") for the Russian Federation, which in October 2021 amounted to 141,532 rubles.

Lacking from the record is a description of the duties performed by those in the position referenced in the letter, "Heads of services and departments in the field of financial activity and insurance." Even though the letter's author indicated the duties were similar, the record should contain probative material confirming that assertion.

Additionally, salary information for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison. Rather, the Petitioner must submit documentary evidence of the earnings of those in their occupation performing similar work at the top level of the field. *See Price*, 20 I&N Dec. at 954 (considering professional golfer's earnings versus other PGA Tour golfers); *see also Skokos*, 420 F. App'x at 713–14; *Grimson*, 934 F. Supp. at 968; *Muni*, 891 F. Supp. at 444–45. We note in *Matter of Racine*, 1995 WL 153319 at *1, *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 at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and 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.

Here, the Petitioner has not shown that the salaries of heads of services and departments in the field of financial activity and insurance are a proper basis of comparison to determine whether his salary is high compared to that of others in his field.

Beyond that shortcoming, the letter provides average salary statistics. Average and median salaries are insufficient to establish the Petitioner commanded a high salary in relation to others in the field. *Kinuthia*, 702 F. Supp. 3d at 11; *Mussarova v. Garland*, 562 F. Supp. 3d 837, 853 (C.D. Cal. 2022). Proving a salary is "above average" typically doesn't suffice to establish a "high salary" or "significantly high remuneration." More comprehensive wage data is needed to effectively demonstrate high earnings relative to peers.

Based on these deficiencies in the evidence, the Petitioner has not submitted documentation that meets the plain language requirements of this criterion, and we withdraw SCOPS' favorable determination here.

B. We Reserve the Remaining Eligibility Claims

We conclude that although the Petitioner claims he meets three criteria, because his arguments fail on any single criterion discussed above, that means he cannot numerically meet the required number of criteria and it is unnecessary for us to make a decision on these additional grounds because he cannot numerically meet the required number of criteria. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve these issues. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also Matter of M-S-I-*, 29 I&N Dec. 61, 65 (BIA 2025) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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.