U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37912635

Date: MAY 21, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner is a chief executive officer and entrepreneur 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

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 one of the criteria relating to published material but that he had not satisfied the remaining claims. On appeal, the Petitioner maintains that he meets the same evidentiary criteria. After reviewing all the evidence in the record, we conclude the Petitioner has not demonstrated he is eligible for this highly restrictive immigrant classification.

1. "Published 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. Such evidence shall include the title, date, and author of the material, and any necessary translation." 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner provided two articles from the Brazilian newspaper [redacted] SCOPS determined that the Petitioner met the requirements of this criterion, but we do not agree based on the supporting evidence and we will withdraw SCOPS' favorable determination under this requirement.

The submitted material includes the title date, author, and the required translation. But the Petitioner did not submit adequate evidence to demonstrate the publication was one of the required publication types as of the date the articles were published in 2010 and 2012. Instead, he provided documentation from the publication itself. USCIS is not required to rely on the self-promotional material of the publisher and "we may require more than the publication's own say-so that it is 'major.'" *Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 185 (D.N.J. 2021) (citing *Braga v. Poulos*, No. CV 06-5105 SJO FMOX, 2007 WL 9229758, at *7 (C.D. Cal. July 6, 2007) *aff'd*, 317 F. App'x 680 (9th Cir. 2009) (concluding that we did not have to rely on a company's self-serving assertions on the cover of a magazine as to the magazine's status as major media)).

Beyond that shortcoming, he offered current statistical information for the publication's website relating to its standing in August of 2024. But that does not speak to whether it was a qualifying publication type more than a decade ago, when the evidence he presented was published. First, the Petitioner offered the physical newspaper articles and did not present evidence they were published

on the entity's website. Even if that was not an issue, to qualify under this requirement, the Petitioner should submit circulation and website traffic data relative to the time when a publication occurred.

Supporting evidence for a publication or a website should reflect its readership proximate to the publication of the article to demonstrate the stature of the medium at the time of publication. When a petitioner relies on 12 to 14-year-old articles, they bear the burden to demonstrate that evidence adheres to the regulation's standards when the material was published. The failure to do so affects the quality of the evidence. The greater the difference between the circulation data and an article's published date, the greater the effect on the evidence's relevance and probative value. *See Chawathe*, 25 I&N Dec. at 376 (discussing the necessity that evidence be relevant, probative, and credible).

The Petitioner has not established that each publication qualified as a form of major media when each of the relevant articles were published. Nor has he adequately explained how a publication's stature attained well after his articles' publication should qualify him under this criterion. In a similar situation but a different context, we rely on *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998) to conclude that filing parties cannot demonstrate eligibility at some future date after they become eligible under a new set of facts.[1]

To summarize, we withdraw SCOPS's affirmative determination here.

2. "Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." 8 C.F.R. § 204.5(h)(3)(i).

This criterion contains several evidentiary elements, all of which must be met to satisfy the regulation. According to the plain language of the regulation the evidence must establish: (1) the alien is the recipient of the prizes or the awards; (2) those accolades are nationally or internationally recognized; and (3) each prize or award is one for excellence in the field of endeavor.

As supporting evidence, the Petitioner provided recognition that his company was one of several listed as [redacted] fastest growing PMEs in Brazil. The Petitioner's response to SCOPS' request for evidence characterized the initialism PME to represent "small and medium-sized enterprises." SCOPS determined that the Petitioner did not meet the requirements of this criterion for multiple reasons. First, the award appeared to be local or regional in nature and the Petitioner did not offer evidence to demonstrate it was nationally or internationally recognized. Second, there was an absence of evidence relating to the criteria and significance of the award, the requirements necessary to compete for the award, the selection process, and the ranking of any recipients. And finally, the Petitioner did not show it was for excellence in the field.

According to the translation, [redacted] posted a questionnaire on its website and sent an invitation to participate in the survey. [redacted] identified the following criteria for this award:

- Net revenues between $3 million and $300 million Brazilian reals in 2012 (last of the three appraised years);
- Be no part of a business group with more than 50% of its capital controlled by foreigners;

[1] While this precedent does not directly apply here, the concept is sufficiently similar.

- Have no bonds (this meant being neither associated with nor controlled by) a business group with annual net revenues equal to or above $ 2 billion Brazilian reals, regardless of capital origin; and
- Be operating in Brazil for more than five years.

The material also reflects out of the 464 companies that replied to participate in the competition, 333 met the above criteria and of those, 250 companies were ranked as the fastest growing. The Petitioner's company was ranked 100 out of those 250.

In the appeal the Petitioner argues this award is a well-established recognition and the rankings were stringent, but the criteria listed above don't bear that out and he does not provide a more detailed explanation. Nor does the Petitioner adequately explain how the listed criteria or his company's ranking of 100 among 250 companies amounts to recognition for excellence. Even though he presents assertions attempting to attach the recognition of his company's award to the broader reputation of [redacted] in general, excellence should not be presumed simply based on the company that issued the recognition. Instead, he should offer probative evidence demonstrating the issuing authority was recognizing excellence in the Petitioner's field of endeavor, rather than participation or an achievement that falls short of being excellent.

Even within the appeal, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

3. "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 claimed the following two memberships: [redacted] SCOPS determined that the Petitioner did not meet the requirements of this criterion as the evidence did "not show that the basis for granting memberships in the submitted associations was the [Petitioner's] outstanding achievements in the field of endeavor as judged by recognized national or international experts in the field." The Petitioner's appeal must address these two issues and identify the material in the record that supports his claims.

On appeal, the Petitioner seems to misunderstand SCOPS' determination because he claims the denial was based on the fact that the bylaws and other documentation do not explicitly use the exact terms "outstanding achievements" or "recognized national or international experts." Such a requirement was not expressed in SCOPS' decision.

The Petitioner's material submitted before SCOPS did not address the membership requirements for any of the associations he claimed. Instead, the material reflected the role each association plays in the Petitioner's home country. But we will not presume exclusive membership requirements from the general reputation of any associations, as an association's reputation may derive from various unrelated factors. As the record does not contain the bylaws or other official documentation of either association's membership criteria, we cannot evaluate whether the Petitioner's membership claims are qualifying. As a result, the Petitioner has not established that he meets the requirements of this criterion. The Petitioner also did not offer evidence that admittance to either association was determined by nationally or internationally recognized experts in the field.

And within the appeal, the Petitioner still does not explain how SCOPS erred when they decided his offered evidence was inadequate. Rather, he claims [redacted] generally require company membership based on active participation and recognized contributions to the machinery and equipment industry without an explanation of how this amounts to outstanding achievements. He summarizes his claims noting his active membership in these distinguished organizations "underscores that his memberships are based on his outstanding achievements in the field." It is insufficient to allege eligibility through conclusory assertions that are not supported by sufficient evidence, which proves the allegation. *Matter of Ho*, 22 I&N Dec. 206, 213 (BIA 1998). *See also Matter of Valencia*, 19 I&N Dec. 354, 355–56 (BIA 1986); *Matter of Patel*, 16 I&N Dec. 600, 601 (BIA 1978); *Matter of Martinez-Romero*, 18 I&N Dec. 75, 79–80 (BIA 1981). Here, the Petitioner did not offer material to corroborate his assertions of eligibility under this criterion.

4. We Reserve the Petitioner's Remaining Appellate Arguments

We conclude that although the Petitioner claims he meets five criteria, because his arguments fail on the requirements 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. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). 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.