U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37716788

Date: MAY 23, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a business consultant and mentor for immigrant entrepreneurs, 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 Petitioner satisfied at least three of the ten initial evidentiary criteria, he did not establish his sustained national or international acclaim and that he is among the small percentage at the very top of the field of endeavor. The matter is now before us on appeal pursuant to 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 visas available to immigrants with extraordinary ability if:

> (i) the alien has 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,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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 sustained acclaim and the 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 categories 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 an evidentiary standard under 8 C.F.R. § 204.5(h)(3)(i)-(x) does not "readily apply" to a petitioner's occupation, the petitioner may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

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 claims eligibility for this classification as an individual of extraordinary ability in business consulting, specifically focused on mentoring and consulting for immigrant entrepreneurs.

The Petitioner has not indicated or established that he has received a major, internationally recognized award. He initially claimed to have met six criteria: memberships in associations; judge of others' work; original contributions of major significance; authorship of scholarly articles; leading or critical roles; and high salary in relation to others. SCOPS determined that the Petitioner fulfilled three of the claimed criteria, but concluded in a final merits determination that he did not demonstrate his sustained national or international acclaim in the field or show that he is one of that small percentage at the very top of that field and denied the petition accordingly. On appeal, the Petitioner claims that the totality of the evidence supports him being one of the few professionals who have reached the top of his field.

Upon de novo review, the Petitioner has not demonstrated meeting at least three of the initial evidentiary criteria, as discussed below. In addition, the record does not establish sustained national or international acclaim and that the Petitioner is among the small percentage at the very top of his field.[1]

A. Evidentiary Criteria

We agree with SCOPS' determination and reasoning that the Petitioner did not meet the criteria for memberships in associations; original contributions of major significance; and authorship of scholarly articles. Because the Petitioner does not raise issues with SCOPS' determination that he does not meet

[1] While we may not discuss every document submitted, we have reviewed and considered each one.

these criteria, we deem these issues to be waived and will not address them in our discussion of the Petitioner meeting the initial evidentiary criteria. Issues and prior eligibility claims not raised on appeal are waived. See, e.g., Matter of O-R-E-, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing Matter of R-A-M-, 25 I&N Dec. 657, 658 n.2 (BIA 2012). We will address the evidence submitted for these criteria in our final merits determination discussion below.

1. "Evidence of the alien's participation, either individually or on panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." 8 C.F.R. § 204.5(h)(3)(iv).

SCOPS determined that the Petitioner meets this criterion because he participated as a reader for a master's degree thesis and as a member of the graduation tribunal for a university in Ecuador. The plain language of the criterion requires that the work judged be in the same or an allied field of specification for which classification is sought. The Petitioner indicated that his field of extraordinary ability is business management with a focus on mentoring and consulting immigrant entrepreneurs. The evidence, however, indicates that the Petitioner was a reader and a member of the gradation tribunal for academic work in a different field, information technology with a specialization in network security and communication. The Petitioner has not explained or submitted evidence to show that his participation as a reader or as a member of the graduation tribunal for the master's degree program in information technology is in or related to his field of management consulting with a focus on mentoring and consulting immigrant entrepreneurs.

The Petitioner has not demonstrated by a preponderance of the evidence that he participated as a judge of the work of others in his field or an allied field, as required under the regulation. We withdraw SCOPS' findings to the contrary.

2. Reserved Issues

The Director found that the Petitioner also met eligibility for the criteria relating to leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii) and high salary in relation to others at 8 C.F.R. § 204.5(h)(3)(ix). Because the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we need not determine whether he meets the requirements of these additional two criteria, and we will reserve these issues. 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).

B. Final Merits Determination

In a final merits determination, we examine and weigh the totality of the evidence to determine whether the Petitioner has sustained national or international acclaim and 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. While we have concluded that the Petitioner has not fulfilled the initial evidentiary requirement of three criteria, and thus need not provide the type of final merits determination referenced in Kazarian v. USCIS, 596 F.3d at 1119-20, we will nonetheless consider the issue of the Petitioner's qualification under that standard, as it is the focus of both SCOPS'

decision and the appeal. We have reviewed the record in the aggregate and agree with SCOPS that the Petitioner has not established eligibility as a person of extraordinary ability.

Because extraordinary ability is an elite level of accomplishment whose recognition necessarily entails a judgement call, it cannot be established through meeting at least three of the evidentiary criteria alone. See Amin v. Mayorkas, 24 F.4th 383, 394-395 (2022). The final merits determination is the ultimate statutory inquiry of whether the applicant has extraordinary ability as demonstrated by sustained national or international acclaim. Id. In this case, even if the Petitioner had met at least three of the initial evidentiary criteria, he has not offered sufficient evidence that he meets that standard.

The Petitioner is an Ecuadorian business manager and consultant with most of his experience being unrelated to his indicated area of extraordinary ability, business management with a focus on mentoring and consulting immigrant entrepreneurs. He emphasizes his participation in a limited three-month educational project funded by the Office of Population, Refugees, and Migration of the U.S. Department of State, for which he trained refugees and vulnerable Venezuelan migrants. Whereas most of his business management and consulting experience is focused in other industries, including the distribution of motor vehicles, parts, and supplies; the distribution of construction materials and equipment; sustainable construction; warehouse management; and the wholesale of household appliances and electronic equipment. The Petitioner does not explain how the evidence of his business management and consulting experience in these other industries demonstrates acclaim within his indicated field of extraordinary ability or recognition within the field.

The record includes letters of recommendation from colleagues, friends, and community leaders who recognize the Petitioner's professional experience as a business manager and consultant, some briefly mentioning his participation in the training project for refugees and vulnerable migrants. The letters, however, follow a similar format, merely referencing each of the Petitioner's professional experiences and generally attesting to him contributing his business management and strategic consulting work to businesses and projects. Moreover, most of the letters use similar language, making general representations of the Petitioner's work being creative and innovative which resulted in effective business solutions and positive outcomes. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. See Matter of Chawathe, 25 I&N Dec. at 376. The individuals do not explain in detail the Petitioner's business management and consulting work and how his work makes him one of the small percentage at the very top of his field. See 8 C.F.R. § 204.5(h)(2).

Other evidence in the record is also unrelated to the Petitioner's indicated area of extraordinary ability. [redacted] attests to the Petitioner being a guest lecturer, as well as a reader and participant for the graduation tribunal for a master's degree thesis. As discussed above, his reader and graduation tribunal work, however, were related to the field of information technology and network and communications security, not his indicated area of extraordinary ability, business management with a focus on mentoring and consulting immigrant entrepreneurs. Likewise, evidence of his high salary relates to him having been a branch manager for a distributor of motor vehicles, parts, and supplies, instead of his indicated field of extraordinary ability. In addition, while the Petitioner has been a member of the [redacted] in Ecuador [redacted] since 2019, he has not demonstrated that his membership in [redacted] requires

outstanding achievements or that he has been recognized in his field because of his [redacted] membership. The Petitioner has not explained how the evidence supports him being among that small percentage at the top of his field. See 8 C.F.R. § 204.5(h)(2).

The Petitioner contends that his contributions to the fields of entrepreneurship and business management are of major significance, having been recognized by USCIS. He emphasizes USCIS' previous approval his petition for employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2). He points to evidence of published articles and video interviews of him describing his petition and its approval. The submitted articles and YouTube video interviews, however, were not supported by independent evidence establishing the publications' prestige, circulation, or other factors indicative of national or international acclaim. The record lacks evidence establishing that USCIS' approval of his prior immigrant petition demonstrates the requisite level of acclaim within the Petitioner's indicated field of extraordinary ability.

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. 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 v. Beers, , 4 F. Supp. 3d 126, 131 (D.D.C. 2013) (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design"); Hamal v. Dep*'t of Homeland Sec. (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. Dep't of* Homeland Sec. (Hamal I), No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing Kazarian v. USCIS, 596 F.3d 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. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach).

Here, 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. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); see also section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. See section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record does not contain sufficient evidence establishing the Petitioner among the upper echelon in his field.

III. CONCLUSION

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.