U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42112520

Date: MAY 26, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner seeks classification as an alien of extraordinary ability. *See* section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those aliens who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. *Id.*

Service Center Operations (SCOPS) denied the petition, finding the Petitioner met the initial evidentiary requirements of the classification but his evidence did not show 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 immigrant visas available to aliens with extraordinary ability if: they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry will substantially benefit the United States prospectively. 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 of the evidence to determine whether a petitioner has sustained national or international acclaim and whether their achievements have been recognized in the field. First, a petitioner can provide evidence of either "a

major, international recognized award," or satisfaction of at least three of ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3).[1]

Where a petitioner meets these initial evidence requirements, U.S. Citizenship and Immigration Services (USCIS) then considers the totality of the material provided in a final merits determination and assesses 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 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); *see generally* 6 *USCIS Policy Manual* F.2(B), www.uscis.gov/policy-manual (providing, as guidance, USCIS' two-step extraordinary ability analysis).

II. ANALYSIS

The Petitioner is a national of Brazil and is the beneficiary of an O-1 nonimmigrant visa. Pursuant to his Form I-140, Immigrant Petition for Alien Workers, his occupation is that of a finance controller and he is the chief executive officer (CEO) of [redacted] a financial startup. According to his personal statement dated November 2025, he is a person of extraordinary ability in business, specializing in strategic financial leadership, multinational controllership, and innovative financial process transformation. He submitted documents indicating he has a three-year degree in accounting and a professional certificate in administration.

The Petitioner has not indicated or established that he has received a major, internationally recognized award under 8 C.F.R. § 204.5(h)(3). He must therefore satisfy at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Based on our de novo review, the Petitioner has not met this showing.

A. Evidentiary Criteria Waived

The Petitioner did not assert in the record below or on appeal that he meets the criteria at 8 C.F.R. § 204.5(h)(3)(i), (iv), (v), (vi), (vii), or (x) regarding receipt of lesser nationally or internationally recognized prizes or awards, participation as a judge of the work of others, original contributions of major significance, authorship of articles, display of his work, and commercial successes in the performing arts. We therefore deem the Petitioner's eligibility under these six criteria waived. *See 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))(An eligibility ground that is not raised on appeal is waived.)

[1] 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. The Petitioner here does not submit comparable material.

B. Evidentiary Criteria Not Met

1. Membership in Associations

The Petitioner asserted in the record below that he met the criterion at 8 C.F.R. § 204.5(h)(3)(ii), which requires he demonstrate he holds membership in associations in the field which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. According to the Petitioner, his membership in the Brazilian National Association of Finance, Administration and Accounting Executives (ANEFAC); [redacted]; and the [redacted] meet the requirements of the criterion. However, SCOPS found the Petitioner had not demonstrated he meets the requirements of the criterion and on appeal, the Petitioner does not contest this determination. We agree with SCOPS' determination.

The Petitioner included documents about ANEFAC, [redacted], and [redacted] and evidence of his membership within each. However, the Petitioner did not provide membership requirements for [redacted] and [redacted] and therefore has not met his burden in demonstrating that they require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The Petitioner's documents show that he is an associate member of ANEFAC and according to the "General Regulations for ANEFAC Membership Admission," the associate member category is:

> "intended for professionals with a record of extraordinary achievements and prominent performance in the corporate environment, who cumulatively demonstrate: a minimum of ten (10) years of relevant professional experience. . . ; experience in multinational companies . . . ; concrete contribution to a significant revenue increase in the organizations where they have worked . . . ."

First, we acknowledge the associate member category "is intended for" those "with a record of extraordinary achievements," beyond the three subsequent requirements for membership. However, the ANEFAC membership regulations provide no further description of what constitutes a "record of extraordinary achievements" such that the Petitioner has sufficiently demonstrated that ANEFAC requires outstanding achievements of its members.[2]

Second, the associate member category is "granted upon unanimous approval by all members of the Admission and Categories Council." The Council is comprised of six associate members, one contributing member[3] and two distinguished members who are appointed by the Executive Board and all Council members "must have proven experience in institutional selection processes, association management, and corporate ethics." However, this information does not demonstrate that the members of the Council are recognized national or international experts in their disciplines or fields.

[2] We also note that membership based, for example, solely or in the aggregate, on years of experience in a particular field may lead to a conclusion that the person's membership in the association was not based on outstanding achievements in the field. *See generally* 6 *USCIS Policy Manual, supra,* at F.2(B)(1).

[3] A contributing member is "[a] professional admitted upon payment of a membership and annual fee, committed to the values and institutional goals of ANEFAC."

As a result, the Petitioner did not meet his burden to establish that his membership in ANEFAC requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines.

2. High Salary

SCOPS determined the Petitioner established he meets the criteria at 8 C.F.R. § 204.5(h)(3)(ix), requiring him to establish he commanded a high salary or other significantly high remuneration for services, in relation to others in the field. A credible employment contract or job offer may establish that an alien "has commanded" such salary or remuneration, as may evidence of past earnings such as tax returns and pay statements. *See generally* 6 *USCIS Policy Manual, supra,* at F.2(B)(1). Comparative wage or remuneration data that is appropriate for the alien's occupation and location should be submitted to establish that their compensation is high relative to others working in the field. *Id.*

The Petitioner submitted his paystubs from [redacted] for his position as "Controllership Director" for months in 2024 and 2025, indicating his monthly base salary was approximately 42,000 Brazilian reals (R$). The Petitioner also provided data from Glassdoor.com, which appears to provide user-reported salary data and may not be as credible or reliable as an objective report of what employers actually pay workers. *Id.* Further, the wage data is for "controllership manager" salaries for all experience levels for the entirety of Brazil. However, the wage data from Glassdoor.com does not provide a description of the "controllership manager" occupation, nor does it specify what industries were included in the survey. Broad descriptions that include multiple occupations or multiple industries may not provide an accurate comparison to others in the field. *Id.* The Petitioner has therefore not demonstrated that the wage information for a "controllership manager" averaging salary data from all industries and all experience levels is an appropriate basis of comparison.[4] As a result, the Petitioner has not met his burden to demonstrate this criterion and we withdraw SCOPS determination to the contrary.

C. Issues Reserved

SCOPS further determined the Petitioner met 8 C.F.R. § 204.5(h)(3)(iii) and (viii), requiring evidence of published material about the Petitioner in professional or major trade publications or other major media, relating to the Petitioner's work in the field for which classification is sought; and that he performed in a leading or critical role for organizations or establishments that have a distinguished reputation. As the Petitioner would be unable to establish that he meets at least three of the ten threshold "initial evidence" requirements at 8 C.F.R. § 204.5(h)(3), we reserve our analysis of these remaining criteria. *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).

Congress set a very high benchmark for aliens of extraordinary ability by requiring the petitioner demonstrate "sustained national or international acclaim" and present "extensive documentation" to

[4] While we acknowledge that the Petitioner's remuneration also included profit sharing, he did not provide any comparative data which included profit sharing such that he has established that his remuneration is high in relation to others in the field.

show his or her achievements have been recognized in the field. Section 203(b)(1)(A)(i) of the Act. Because the Petitioner has not satisfied the threshold "initial evidence" requirements at 8 C.F.R. § 204.5(h)(3), we cannot conclude that he is an alien of extraordinary ability and need not further analyze the merits under the statute. *See Kazarian*, 596 F.3d at 1119-20 (discussing a two-step review, where if the required number of criteria are met by the documentation, then it is considered in the context of a final merits determination)*; see also Nagaiah v. Allen*, 784 F. Supp. 3d 798, 814 (E.D. Pa. 2025) (finding the regulation "establishes a necessary, not sufficient, evidentiary requirement for a petitioner who seeks an extraordinary ability visa"). Therefore, we also decline to reach and hereby reserve any final merits determination in this matter. *See INS v. Bagamasbad*, 429 U.S. at 25.

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 the 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). We are not bound by service center or district director's decisions. *See, e.g., La. Philharmonic Orchestra v. INS*, 248 F.3d 1139 (5th Cir. 2001) (per curiam). Further, under USCIS policy, the Petitioner's receipt of O-1 nonimmigrant classification is relevant and can be considered an indicator that he is eligible for EB-1 classification, but it is not determinative. *See generally* 6 *USCIS Policy Manual*, supra, at F.2(B)(3). However, as discussed above, the evidentiary deficiencies in the record do not support a grant of this petition. As such, we have considered the Petitioner's grant of O-1 nonimmigrant visa classification, but the evidence remains insufficient to meet his burden to establish his eligibility for EB-1 classification.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.