U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43278649

Date: MAY 29, 2026

Appeal of USCIS Decision

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

The Petitioner seeks to classify the Beneficiary 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.

USCIS denied the Form I-140, Immigrant Petition for Alien Workers (petition) concluding the record did not establish that the Beneficiary had received a major, internationally recognized award, nor did the Petitioner demonstrate that it demonstrated eligibility in a final merits determination. 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). *See also* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739 (stating: "In short, admission under this category is to be reserved for that small percentage of individuals who have risen to the very top of their field of endeavor.").

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

The Beneficiary cofounded and serves as the chief technical officer of a company that uses autonomous artificial intelligence (AI) agents to detect real-time buyer intent signals online.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it 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 it met eight of the regulatory criteria and SCOPS decided that the Petitioner satisfied six of those eight. On appeal, the Petitioner continues to maintain that it meets the evidentiary criteria relating to performing in a leading or critical role, and we agree that he has satisfied that additional criterion. But as it had already met a least three criteria, satisfying an additional criterion in step one of this adjudication does not effectively impact the case; we still move on to whether the Petitioner will prevail in a final merits determination. We also note the Petitioner claimed eligibility under comparable evidence under the regulation at 8 C.F.R. § 204.5(h)(4) before SCOPS but it does not advance that same claim on appeal. It has therefore waived it. *Matter of A-H-D-*, 29 I&N Dec. 642, 643 n.1 (BIA 2026) (citing *Matter of P-B-B-*, 28 I&N Dec. 43, 44 n.1 (BIA 2020)).

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence we will evaluate whether it has demonstrated, by a preponderance of the evidence, the Beneficiary's sustained national or international acclaim and that he 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. In a final merits determination, we analyze the Beneficiary's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has 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); *also see generally* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policymanual (stating that in a final merits determination 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

of the immigrant classification). In this matter, we determine that the Petitioner has not documented the Beneficiary's eligibility.

The two-step adjudication process is an interpretive rule that does not violate the Administrative Procedure Act, nor is it a legislative rule. *Nagaiah v. Allen*, 784 F. Supp. 3d 798, 810 (E.D. Pa. 2025); *Agrawal v. Miller*, No. 4:24CV3143, 2025 WL 2879217, at *12 (D. Neb. Sept. 12, 2025); *Etsy, Inc. v. Jaddou*, No. 4:22CV3022, 2023 WL 3689555, at *23 (D. Neb. May 25, 2023) (citing *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 96 (2015). This approach is rooted in an exhaustive historical review of the congressional record, the governing statutory language, and the comprehensive regulatory scheme intended to ensure only those at the very top of their field receive this classification. To date, no other federal court has offered an alternative framework that is similarly grounded in such a thorough analysis of the legislative and agency history. *See generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(2). *Contra Mukherji v. Miller*, No. 4:24CV3170, 2026 WL 895708, at *6 (D. Neb. Jan. 28, 2026) (concluding the two-step framework was adopted without required notice-and-comment rulemaking). But that appears to misconstrue a conference report—which serves solely to explain how the House and Senate resolved differences between their two versions of the bill—as being more authoritative on this issue than a Judiciary Committee Report, the purpose of which includes guiding the executive branch in implementing the law and assisting the judicial branch in its interpretation.

SCOPS discussed each topical area relating to the criteria and a common thread running through their analysis was the Petitioner's failure to demonstrate the Beneficiary's sustained national or international acclaim as nearly all his achievements were from 2024 and 2025. But the Petitioner only mentions the concept of sustained acclaim in passing in the appeal brief and it does not explain how SCOPS made an incorrect determination on that issue. It merely states: "USCIS correctly observes that this technology startup's funding was obtained in 2024–2025, an uncontested fact that the Denial wrongfully raises to allege the beneficiary does not have 'sustained national or international acclaim.'"

That shortcoming waives the sustained acclaim issue on appeal. *Matter of Garcia*, 28 I&N Dec. 693, 693 n.1 (BIA 2023) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) and finding issues that are not meaningfully challenged in the appeal are waived); *Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (finding when a filing party mentions an issue without developing an argument, the issue is deemed waived). An issue within a brief that provides conclusory assertions but lacks adequate factual details or legal arguments is deemed forfeited. *Olea-Serefina v. Garland*, 34 F.4th 856, 867 (9th Cir. 2022) (citing *John-Charles v. California*, 646 F.3d 1243, 1247 n.4 (9th Cir. 2011)).

And the Petitioner cannot revive it by filing a motion on this decision as a filing party cannot cure their failure to preserve an argument in a previous stage of the same proceedings through a post-adjudicative motion. *Philipp v. Stiftung Preussischer Kulturbesitz*, 77 F.4th 707, 709–10 (D.C. Cir. 2023); *United States v. Campbell*, 26 F.4th 860, 875–76 (11th Cir.), *cert. denied,* 143 S. Ct. 95, 214 L. Ed. 2d 19 (2022) (finding that unless it would result in a miscarriage of justice, in most cases an issue abandoned on appeal should still be dismissed in any subsequent motion without addressing the merits).

Although that shortcoming is fatal to this analysis, we summarize the remaining factors. A review of the record reveals that the Beneficiary has documented venture funding of approximately $1.3 million for his startup, participation in [redacted] memberships such as Forbes Councils, coverage in several media and trade outlets, instances of peer-review and judging activity, authorship of scholarly and professional

publications, a leading role as an executive in the startup, and a substantial equity stake in that company. This material shows recognition that is largely confined to a single venture-backed enterprise and related startup ecosystems and the totality of the evidence does not establish that the Beneficiary has achieved the level of sustained national or international acclaim contemplated by the statute and regulations, nor does it illustrate he has risen to the very top of the field of endeavor.

The awards and memberships presented were tied primarily to startup funding and accelerator participation, the media references are limited in number and scope, and the judging and publication history, while indicative of professional competence, do not demonstrate that his influence or reputation extends broadly across the field beyond this one company. Accordingly, the record, as a whole, falls short of showing that the Beneficiary is among the small percentage at the top of his field as required for classification as an individual of extraordinary ability.

And finally, the Petitioner argues that SCOPS summarily disregarded the Beneficiary's O-1 nonimmigrant visa approval. We disagree as they devoted a paragraph to the topic and informed the Petitioner that the agency is not legally bound to approve an EB-1 immigrant petition based on the Beneficiary's prior O-1 status, as each classification has distinct statutory requirements and is adjudicated independently.

An approved O-1 petition is relevant to but not determinative of the outcome of an extraordinary ability immigrant petition. *Aravamuthan v. Jaddou*, No. 3:23-CV-01412-N, 2025 WL 1708126, at *9 (N.D. Tex. June 17, 2025) (citing *Cuckic v. Jaddou*, No. 21-CV-8395 (JPO), 2023 WL 2586031, at *2 (S.D.N.Y. Mar. 21, 2023) and *Lapteva v. USCIS*, No. 8:24CV83, 2025 WL 815087, at *1, *6 (D. Neb. Mar. 10, 2025). *Also 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 Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989) (generally finding that many immigrant petitions are denied after USCIS approves prior nonimmigrant petitions).

In line with USCIS policy, because the Beneficiary has previously held O-1 status we elect to explain why he is not qualified for this immigrant classification that has different eligibility requirements. *See generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(3). First, the records of proceeding for the approved O-1 petitions are not before us and we cannot compare the records to determine whether the approved petitions involved different facts or were approved in error. The regulation repeatedly reflects that an eligibility determination on a benefit request will be based on information contained in the record of proceeding. 8 C.F.R. § 103.2(b)(10), (11), (14), (16)(i)–(ii). Further, each case must be decided on its own facts with regard to the sufficiency of the evidence presented. *See, e.g.*, *Matter of H-C-R-C-*, 28 I&N Dec. 809, 812 (BIA 2024).

Under USCIS policy, the Beneficiary'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*, F.2(B)(3). However, as discussed above and in SCOPS' denial decision, the evidentiary shortcomings in the record do not support a grant of this petition. It is also unclear how the approval of a "roughly analogous" but much less stringent nonimmigrant visa should lead to the conclusion that the lesser approval should significantly impact this much more austere immigrant visa. As such, we have considered the Beneficiary'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.

In summary, 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, 954–55 (Assoc. Comm'r 1994). Considering the full measure of the Petitioner's ability and achievements, the level of his national or international acclaim and the extent to which his achievements have been recognized in the field are not indicative of a record of sustained acclaim. Also, he has not submitted extensive documentation exhibiting he has attained a level of expertise placing him among that small percentage that has risen to the very top of the field of endeavor.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated the Beneficiary's 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. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden here.

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 who are 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.