U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38045588

Date: MAY 30, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner is a pharmacist 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 she demonstrate that she 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 she has received a major, internationally recognized award, she 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 she met all ten of the regulatory criteria. SCOPS decided that the Petitioner failed to satisfy any of the regulatory criteria in her initial submission and they issued a request for evidence (RFE). When she responded to the RFE, the Petitioner only claimed she met four of the criteria relating to prizes or awards, judging, original contributions, and performing in a leading or critical role. SCOPS again decided her claims and evidence failed to adequately meet any of the regulatory requirements. On appeal, the Petitioner maintains that she meets the evidentiary criteria relating to prizes or awards, membership, published material, judging, original contributions, authorship of scholarly articles, and a leading or critical role.

We adopt and affirm SCOPS' ultimate determination. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below "is not only common practice, but universally accepted").

Under three regulatory criteria (membership at 8 C.F.R. § 204.5(h)(3)(ii); published material at 8 C.F.R. § 204.5(h)(3)(iii); and authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi)) the Petitioner initially claimed eligibility, but did not respond to SCOPS' RFE as it related to those regulatory requirements. The Petitioner, however, is reclaiming eligibility under those criteria on appeal. As SCOPS put the Petitioner on notice that the submitted evidence was insufficient, her failure to submit requested evidence that precludes a material line of inquiry was sufficient grounds by itself to issue an adverse determination for these regulatory requirements. 8 C.F.R. § 103.2(b)(14).

As the regulation at 8 C.F.R. § 103.2(b)(13)(i) indicates, if a filing party fails to respond to a specific element of an RFE, they have operationally abandoned their eligibility claims relating to that element. Federal courts have acknowledged such USCIS action when the agency determines a filing party's failure to respond to a specific eligibility requirement in an RFE means they have abandoned or waived that issue. *See Bharathm Ram Nagaiah, v. United States Citizenship & Immigr. Servs.*, No. CV 23-2077-KSM, 2025 WL 1508028, at *5 (E.D. Pa. May 27, 2025).

And we generally will not consider abandoned or waived issues on appeal, especially when the filing party did not properly develop the issue before SCOPS, as a claim that was not adequately developed before them is not an argument we must addressed on appeal. *Santos Garcia v. Garland*, 67 F.4th 455, 460 (1st Cir. 2023); *Ali v. Garland*, 33 F.4th 47, 55 (1st Cir. 2022). Unadorned, conclusory statements in a previous proceeding do not satisfy the requirement that petitioners must have previously argued the "core issue now on appeal" before the previous body in a substantive manner. *Indrawati v. U.S. Att'y Gen.*, 779 F.3d 1284, 1297 (11th Cir. 2015); *Jeune v. U.S. Atty. Gen.*, 810 F.3d 792, 800 (11th Cir. 2016).

Even if that was not the case, we reviewed the Petitioner's claims and evidence under the three relevant criteria and we agree with SCOPS that she did not satisfy the plain language requirements of those regulatory provisions.

And the Petitioner's other appellate claims don't fare much better. She essentially disagrees with SCOPS' determination and reiterates the claims she made before them without indicating how they might have committed any errors. But the reason for filing an appeal is to provide an affected party with the means to remedy what they perceive as an erroneous conclusion of law or statement of fact within a decision in a previous proceeding. *See* 8 C.F.R. § 103.3(a)(1)(v). It is insufficient to merely assert that SCOPS made an improper determination. Where a question of law is presented, supporting authority should be included, and where the dispute is on the facts, there should be a discussion of the particular details contested. *Matter of Valencia*, 19 I&N Dec. 354, 355 (BIA 1986). The Petitioner therefore has not satisfied her burden of proof. A petitioner's burden of proof comprises both the burden of production, as well as the burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998). Ultimately, the Petitioner's appeal did not demonstrate that SCOPS erred in denying the petition.

For instance, under the prizes or awards criterion, SCOPS concluded the reason her evidence fell short of meeting the requirements was twofold. First, the record did not contain evidence supporting her claim that the awards were recognizing excellence in her field. Second, the letters she offered in the RFE response from her company were inadequate to demonstrate the awards were nationally or internationally recognized. In the appeal, she merely offers a list of the awards, states they recognized excellence, contributions, leadership, or developments, then asserts "[t]he awards were granted for outstanding performance in my field, validating my extraordinary ability." She does not address how the awards were recognized at the national or international level leaving a major aspect of that criterion unresolved.

And relating to the contributions of major significance criterion, SCOPS noted the material she offered was complimentary of her work for her employer, but she did not illustrate how that benefit was impactful within the field as a whole. According to agency policy, "USCIS determines whether the original contributions are of major significance to the field." *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual. But in the appeal, instead of describing how SCOPS was incorrect about the impact of her original contributions, she only restates four of her claims under this requirement and asserts they have been widely adopted and cited, improved treatment options, influenced public health policies, or that endorsements from experts validate the lasting impact of her contributions.

First, the Petitioner's unsupported statements have little evidentiary value and will not make a prima facie eligibility showing, much less satisfy her burden of proof. *See Matter of Mariscal-Hernandez*, 28 I&N

Dec. 666, 673 (BIA 2022); *see also Matter of Azrag*, 28 I&N Dec. 784, 787 (BIA 2024). Second, she does not identify what evidence we should review to determine whether her assertions bear out.

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 her 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.