U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38158216

Date: MAY 30, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a conceptual artist, requests classification under the employment-based, first preference (EB-1) immigrant visa category as an alien with "extraordinary ability." *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Successful petitioners for U.S. permanent residence in this category must demonstrate "sustained national or international acclaim" and extensively document recognition of their achievements in their fields. Section 203(b)(1)(A)(i) of the Act.

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner met two of ten initial evidentiary requirements – one less than needed for a final merits determination. On appeal, the Petitioner contends that he also satisfied the following four evidentiary criteria:

- Membership in associations in the field requiring outstanding achievements of their members;
- Published material about him and his work in the field;
- Original contributions of major significance in his field; and
- Authorship of scholarly articles in his field.

8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (v), (vi).

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that he met a third evidentiary requirement by submitting evidence of published material about himself and his work in his field. We will therefore withdraw SCOPS' decision and remand the matter for a final merits determination and entry of a new decision consistent with the following analysis.

I. LAW

To qualify for this immigrant visa category, a petitioner must demonstrate that they:

- Have "extraordinary ability in the sciences, arts, education, business, or athletics;"

- Seek to continue work in their field of expertise in the United States; and
- Would substantially benefit the country as an immigrant.

Section 203(b)(1)(A)(i)-(iii) of the Act.

The term "extraordinary ability" means expertise commensurate with "one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Unless a petitioner received "a major, international recognized award," they must satisfy at least three of ten lesser evidentiary criteria. 8 C.F.R. § 204.5(h)(3).[1]

If a petitioner meets either evidentiary standard and the requirements at section 203(b)(1)(A)(ii), (iii) of the Act, U.S. Citizenship and Immigration Services (USCIS) must then make a final merits determination. To merit approval, the record – as a whole – must establish a petitioner's "sustained national or international acclaim" and recognized achievements placing them among the small percentage at their field's very top. *See Amin v. Mayorkas*, 24 F.4th 383, 391 (5th Cir. 2022) (finding USCIS' two-step extraordinary ability analysis "consistent with the governing statute and regulation"); *see generally* 6 *USCIS Policy Manual* F.2(B), www.uscis.gov/policy-manual.

II. ANALYSIS

A. The Petitioner and His Field

The Petitioner states his specialization in multidisciplinary art, "focused on rejecting traditional notions of aesthetic perfection and instead prioritizing meaning and critical engagement." He stated that – through installation, painting, printmaking, photography, video, and illustration – he "often combines seemingly contradictory concepts to provoke thought" and "historical depth with modern critique" to create "a new visual language that challenges audiences to think differently." He has exhibited his conceptual art in more than 30 countries, including his home country of Turkey, where he said he "encountered significant barriers to artistic freedom."

Turkish universities issued the Petitioner bachelor's degrees in tourism/hotel management, sociology, and philosophy. A U.S. school awarded him a master's degree in fine arts. In addition to his work as an artist, he has served as chief executive officer of a marketing company, president of nongovernmental organizations, and instructor at a [redacted] He has also written multiple books and articles. The Petitioner states that he seeks to continue creating conceptual art in the United States. He stated: "By showcasing work that is both globally relevant and distinctly rooted in the values of freedom and innovation, I can amplify the country's reputation as a hub for artistic excellence."

B. The Evidentiary Requirements

The record supports SCOPS' findings that the Petitioner submitted evidence of his participation as a judge of others' work in his field and display of his work at artistic exhibitions or showcases. *See*

[1] If an evidentiary criterion does not "readily apply" to a petitioner's occupation, they may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

8 C.F.R. § 204.5(h)(3)(iv), (vii). He argued before SCOPS that he also documented his receipt of lesser nationally or internationally recognized awards for excellence in this field. *See* 8 C.F.R. § 204.5(h)(3)(i). His appeal, however, omits that claim. He therefore has effectively waived the issue. *See Farah v. U.S. Att'y Gen.*, 12 F.4th 1312, 1324 (11th Cir. 2021) (finding that an alien "forfeited" an argument on appeal "by failing to raise it in his opening brief") (citation omitted); *see also Matter of O-R-E-,* 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citation omitted) (waiving ineligibility grounds not raised on appeal).

To meet additional criteria, the Petitioner's evidence must objectively satisfy the parameters of the applicable regulatory descriptions. *See generally* 6 *USCIS Policy Manual* F.2(B). "[N]either USCIS nor [the] AAO may unilaterally impose novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5." *Kazarian v. USCIS*, 596 F.3d 1115, 1121 (9th Cir. 2010) (citation omitted).

1. Membership in Associations

This criterion requires "[d]ocumentation 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).

The Petitioner submitted evidence of his membership in three art associations and documentation about them. The record, however, supports SCOPS' finding of insufficient evidence that the associations require outstanding achievements of their members.

On appeal, the Petitioner argues that membership requirements for one international association to which he belongs are "exceptionally rigorous, designed to include only artists who have demonstrated significant public engagement and recognition in the art world." But a copy of online information about the association does not support his argument. The online information states that artists qualify for association membership "not only if they earn a living by the practice of art but also if any one of the following or similar criteria can be applied." The criteria include: a diploma in fine or applied arts; teaching at a fine arts school; frequent exhibition of artwork or work that the public at large otherwise sees; or receipt of "important national or international prizes."

The online information does not demonstrate that the international association "*require[s]*" outstanding achievements of its members. *See* 8 C.F.R. § 204.5(h)(3)(ii) (emphasis added). For example, the information indicates that artists can gain association membership based on receipt of fine or applied arts diplomas. But the record does not establish that receipt of such diplomas constitutes an outstanding achievement. Bylaws of another international association to which the Petitioner belongs also identify receipt of a fine arts diploma as a basis for membership.

Online information about the third association to which the Petitioner belonged states: "Membership Eligibility Portfolios are needed to apply. According to the artworks' relevance, noticeable achievements in the art world and being exhibited in various exhibitions is essential." The online information does not clearly state the criteria for association membership. The record does not indicate whether membership requires, in addition to display of artwork in various exhibitions, "noticeable achievements in the art world." *See Marllantas, Inc. v. Rodriguez,* 806 F. App'x 864, 869 (11th Cir.

2020) (quoting *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988)) (finding that USCIS properly requires petitioners "to resolve any inconsistencies in the record by independent objective evidence").

Also, even if the third association requires noticeable achievements of its members, the record would not demonstrate that such achievements are "outstanding." *Compare Noticeable,* Merriam-Webster Online Dictionary, www.merriam-webster.com (meaning "worthy of notice" or "likely to be noticed") *with Outstanding*, Merriam-Webster Online Dictionary, *supra* (meaning, in this context, "marked by eminence or distinction"). The online information therefore does not demonstrate that the association requires outstanding achievements of its members. *See Kinuthia v. Rosenberg*, No. CV 17-10255-LTS, 2018 WL 1243955, at *5 (D. Mass. Mar. 8, 2018), *aff'd sub nom. Kinuthia v. Velarde*, No. 18-1244, 2019 WL 11671989 (1st Cir. July 3, 2019) (stating that this criterion "requires 'outstanding achievement' and not merely membership in an association in the field").

The Petitioner argues that "outstanding achievement in the arts is inherently subjective." He asserts: "Given the subjective nature of the arts, the review and acceptance of an artist's work by respected associations should be acknowledged as a legitimate marker of outstanding achievement."

But this criterion does not require evidence of the Petitioner's outstanding achievements. Rather, it requires evidence of his membership in "associations . . . which require outstanding achievements." *See* 8 C.F.R. § 204.5(h)(3)(ii). Thus, the Petitioner must have had outstanding achievements before obtaining membership in the associations. Contrary to his argument, association membership itself cannot constitute an outstanding achievement under the criterion's parameters. Also, to the extent he seeks to submit "comparable evidence" to meet this requirement, the record lacks proof that this criterion does not "readily apply" to his occupation. *See* 8 C.F.R. § 204.5(h)(4); *see also* 6 *USCIS Policy Manual* F.(2)(B)(1), Comparable Evidence ("A general unsupported assertion that the listed evidentiary criterion does not readily apply to the petitioner's occupation is not probative.")

The Petitioner also contends that SCOPS' consideration of his "extensively detailed" association memberships was "condensed into just one paragraph in the denial decision." He states: "This paragraph appears to have been directly copied from [SCOPS'] RFE [request for additional evidence] letter, without considering our explanations."

SCOPS, however, was not required to "write an exegesis" on the Petitioner's evidence under this criterion. *See Farah*, 12 F.4th at 1329 (citation omitted). The Agency need only "explain in writing the specific reasons for denial." 8 C.F.R. § 103.3(a)(1)(i). SCOPS stated: "While th[ese] associations [to which the Petitioner belongs] require professional achievements of [their] members, association bylaws do not state [that] they require outstanding achievements as a condition of membership." This sufficiently specified SCOPS' reason for finding this criterion unmet. *See Farah*, 12 F.4th at 1328 (citation omitted) (stating that an agency need not specifically address each piece of evidence submitted).

Moreover, contrary to this criterion's plain language, the record lacks evidence that recognized experts judged members of the associations to which the Petitioner belongs. The international association bylaws state that a "membership acceptance committee" and the association's board of directors review membership applications. But the Petitioner's evidence does not establish committee or board members as recognized experts in their fields. Regarding the other associations to which he belongs,

the record does not demonstrate the recognized expertise or even the identity of those who determine the organizations' memberships. *See Nelson v. USCIS*, No. CV 21-10334-LTS, 2022 WL 20583561, at *5 (D. Mass. June 15, 2022) (finding that this criterion "demands membership in an organization that requires 'outstanding achievement' as judged by experts, and not merely membership in selective organizations in the field").

The Petitioner's evidence did not demonstrate that the associations to which he belongs require outstanding achievements of their members as judged by nationally or international recognized experts in their fields. We will therefore affirm SCOPS' finding regarding this evidentiary criterion.

2. Published Material About the Petitioner

To meet this evidentiary requirement, a petitioner must submit "[p]ublished material about the[mself] in professional or major trade publications or other major media, relating to the[ir] work in the field for which classification is sought." 8 C.F.R. § 204.5(h)(3)(iii). "Such evidence shall include the title, date, and author of the material, and any necessary translation." *Id.*

When adjudicating this criterion, USCIS first determines whether published material relates to a petitioner and their specific work in the field. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), Criterion 3. Material covering a broader topic meets the criterion if the material includes "a substantial discussion of the person's work in the field and mentions the person in connection to the work." *Id.*

USCIS then considers whether a publication qualifies as a professional publication, major trade publication, or major media publication. *Id.* Relevant factors include, for professional and major trade publications, their intended audiences and, for major trade publications and other major media, their relative circulations, readerships, or viewership. *Id.*

The Petitioner submitted copies of several published articles about himself and his artwork. SCOPS found that a 2021 online article about him in a major U.S. newspaper lacked "a substantive discussion" of him and his work. We acknowledge that the article briefly discusses the Petitioner as one of several Middle Eastern artists included in an exhibition. But the article specifically mentions him and discusses his work in the particular collection. Thus, the article discusses his work substantially enough to satisfy this evidentiary criterion. *See* 6 *USCIS Policy Manual* F.2(B)(1), Criterion 3 (stating that published material covering a broader topic meets the criterion if the material includes "a substantial discussion of the person's work in the field and mentions the person in connection to the work").

Also, the Petitioner submitted articles solely about himself and his artwork that appeared in Turkish newspapers. SCOPS found "insufficient evidence to establish the circulation statistics for the publications." But the Petitioner's RFE response included circulation information about Turkish newspapers from 2019 through 2024. He therefore established the publication of some of these newspaper articles in major Turkish media.

The Petitioner submitted published material in major media about himself and his work in his field. We will therefore withdraw SCOPS' contrary finding.

C. Final Merits Determination

The Petitioner has met the requisite minimum number of evidentiary requirements. *See* 8 C.F.R. § 204.5(h)(3). We therefore need not consider his arguments regarding the other claimed criteria. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions).

USCIS must now conduct a final merits determination. SCOPS did not make such a determination and, rather than issue one in the first instance, we will remand the matter.

On remand, SCOPS must determine whether the Petitioner has sustained national or international acclaim and recognition of his achievements sufficient to establish him as one of that small percentage who has risen to his field's very top. *See generally* 6 *USCIS Policy Manual* F.2(B)(2). SCOPS should consider any potentially relevant evidence of record, even if it does not fit one of the regulatory criteria or was not presented as comparable evidence. *Id.* The Petitioner's burden of proof includes explaining the significance of his evidence and how it demonstrates sustained national or international acclaim and recognition in his field. *Id.* The petition's approval or denial should depend on the evidence's type and quality. *Id.*

III. CONCLUSION

The Petitioner has met the requested immigrant visa category's requisite minimum number of evidentiary requirements. USCIS must now conduct a final merits determination.

ORDER: The decision is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.