U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 39358807

Date: SEP. 03, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a software engineer, seeks classification as an individual 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 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.*

SCOPS denied the petition, concluding that the record did not establish, as required, that the Petitioner met three of the initial ten evidentiary criteria for this classification listed at 8 C.F.R. § 204.5(h)(3). 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,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (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 two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate 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 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). 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.

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 (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 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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. at 376.

## II. ANALYSIS

The Petitioner is a software engineer in [redacted] Canada. At the time of filing he was employed by Twilio in this capacity. He indicates that he intends to continue to work in this role in the United States.

### A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have met four criteria relating to lesser nationally or internationally recognized awards, participation as a judge of the work of others in the field, performing a leading or critical role, and commanding a high salary, under 8 C.F.R. § 204.5(h)(3)(i), (ii), (viii), and (ix), respectively.

SCOPS determined, and we agree, that the Petitioner satisfied two of the four claimed initial evidentiary requirements relating to judging the work of others in the field and to performing a leading or critical role. However, SCOPS concluded that the Petitioner had not shown that he met the remaining two claimed criteria relating to lesser nationally or internationally recognized awards and to commanding a high salary, and therefore that the Petitioner did not satisfy at least three of the ten evidentiary criteria for extraordinary ability, as required.

On appeal, the Petitioner contends that he meets the remaining two claimed criteria relating to lesser nationally or internationally recognized awards and commanding a high salary. For the following reasons, we disagree.

1. "Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." 8 C.F.R. § 204.5(h)(3)(i).

To determine whether the alien satisfies this criterion, we first determine whether he is the recipient of prizes or awards, and then whether the award is nationally or internationally recognized and was granted based upon excellence in the alien's field of endeavor. Next, we determine whether the award is a lesser nationally or internationally recognized prize or award which the person received for excellence in the field of endeavor. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual.

The Petitioner claims eligibility for this criterion based upon his receipt of the [redacted] Award, [redacted] Awards, [redacted] Awards, the [redacted] Award, the [redacted] Award, and the [redacted] Award. Here, the record contains sufficient evidence, such as copies of each award certificate naming the Petitioner as the recipient, showing that he received them.

However, the Petitioner has not offered sufficient evidence to show that these awards are nationally or internationally recognized. *See Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 182 (D.N.J. 2021) (finding the regulation requires that the petitioner provide evidence of national or international recognition); *see also Visinscaia v. Beers*, 4 F. Supp. 3d at 136; *Guida v. Miller*, No. 20-CV-01471-LB, 2021 WL 568850, at *8-9 (N.D. Cal. Feb. 16, 2021); *Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885, at *8 (E.D.N.Y. Sept. 30, 2011). For example, recommendation letters in the record indicate that the Petitioner's awards are available only to employees of the granting organizations. In their letter P-A- indicates that the [redacted] are granted to employees of [redacted] while A-P-, a project manager that worked at [redacted] with the Petitioner, indicates that the [redacted] and [redacted] awards are granted to [redacted] software division employees. An award available only to persons within a single locality, employer, or school may have little national or international recognition. *See generally* 6 *USCIS Policy Manual*, *supra,* at F.2(B)(1).

The recommendation letters further indicate that the names of the award winners are published in internal company communications. For example, A-P- states that the names of the recipients of the [redacted] and [redacted] awards are published in [redacted] internal newsletter for India, while P-A- notes that winners are published in [redacted] international internal newsletter. However, neither this nor the remaining evidence indicate that these awards are recognized beyond the awarding companies' internal newsletters. *See Visinscaia v. Beers,* 4 F.Supp. 3d at 136 (requiring evidence of "how a larger audience viewed [the] awards").

The Petitioner also argues that the news articles in the record below establish the reputation of the institutions granting the awards and that the national and international recognition of these awards derives from their reputations. However, this documentation does not discuss the claimed awards and the recognition they receive. Accordingly, they are insufficient to show that the awards are nationally or internationally recognized for excellence in the field. *Krasniqi v. Dibbins*, 558 F. Supp. 3d at 183

(finding that evidence about the organization itself does not speak to the award's recognition); *see also Visinscaia v. Beers*, 4 F. Supp. 3d at 136 (finding that without evidence reflecting how a larger audience viewed the plaintiff's awards, there was no way to evaluate whether those awards were recognized widely enough to satisfy the awards criterion).

Finally, the Petitioner again argues that the standards of this criterion do not readily apply to his occupation and therefore that we should consider comparable evidence in the record below to establish his eligibility.[1] The regulation at 8 C.F.R. § 204.5(h)(4) states "[i]f the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." This regulation provides petitioners with the opportunity to submit comparable evidence to establish their eligibility, if it is determined that the evidentiary criteria described in the regulations do not readily apply to their occupation. *See generally* 6 *USCIS Policy Manual, supra,* at F.2(B)(1). When evaluating such comparable evidence, officers must consider whether the regulatory criteria are readily applicable to the person's occupation and, if not, whether the evidence provided is truly comparable to the criteria listed in that regulation. *Id.*

Here, the Petitioner contends that this criterion is not readily applicable to his occupation due to the nature of the work that he performs. In a statement submitted with his RFE response, the Petitioner asserted that "[t]he projects and software programs that I develop are owned by my employer" and that accordingly he is "not allowed to publish or present my work to external parties" thus "limit[ing] my ability to be considered for lesser nationally or internationally recognized prizes or awards." With this RFE response, the Petitioner provided a sample confidentiality clause for his current employer showing that employees are prohibited from disseminating intellectual property. However, the Petitioner does not show or explain how the circumstances of his current employment demonstrate that the awards criterion is not readily applicable to the occupation of software engineer.

Further, the Petitioner has not established that software engineers are unable to receive nationally or internationally recognized awards for excellence in the field of endeavor. The fact that the Petitioner did not receive such an award is not evidence that the criterion does not apply to his occupation. Accordingly, the Petitioner has not satisfied his burden to establish that the criterion does not readily apply to his occupation. *Zizi v. Cuccinelli*, No. 20-CV-07856-SVK, 2021 WL 2826713, at *8 (N.D. Cal. July 7, 2021) (holding that "it is Plaintiff's burden to demonstrate that the standards in [(h)(3)] did not readily apply to his occupation before [U.S. Citizenship and Immigration Services (USCIS)] is required to consider comparable evidence"). In addition, the Petitioner has not shown how the submitted confidentiality agreement is "comparable" to the "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor" required at 8 C.F.R. § 204.5(h)(3)(i).

For the reasons stated above, the Petitioner has not demonstrated that he satisfies this criterion.

2. "Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." 8 C.F.R. § 204.5(h)(3)(ix).

At the outset, we note that on appeal, the Petitioner submits new evidence to show that he satisfies this

[1] The Petitioner first made this argument in a statement submitted with his response to SCOPS' request for evidence (RFE).

criterion.[2] The record reflects that SCOPS issued an RFE requesting that the Petitioner provide additional evidence with respect to this criterion. Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider this new evidence for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial").

The Petitioner also argues that SCOPS violated 5 U.S.C. § 706.2(A)[3] in determining that he had not satisfied this criterion and therefore that we should sustain his appeal. Specifically, he contends that because in a prior decision,[4] a service center director concluded that he had met this criterion based upon similar evidence, SCOPS' conclusion to the contrary was arbitrary and capricious. However, 5 U.S.C. § 706.2(A) is applicable to courts and not to our administrative appellate review. Further, we are not required to approve applications or petitions where eligibility has not been demonstrated merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). Moreover, 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). We additionally note note that SCOPS reviewed the relevant evidence in the record below and explained why it did not satisfy this criterion.

The Petitioner next asserts that the evidence in the record establishes that he meets this criterion. The regulation at 8 C.F.R. § 204.5(h)(3)(ix) calls for "evidence that the alien has 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. 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.*

To establish that the Petitioner satisfies this criterion, he submitted, in relevant part, an offer letter from [redacted] his current employer, outlining his compensation package; 2023 earnings statements; and his 2023 tax returns. This documentation shows that [redacted] paid the Petitioner a base salary of

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[2] The Petitioner submits an updated salary report from levels.fyi that newly shows years of experience for each position listed on the report.

[3] 5 U.S.C. § 706.2(A) states that:

> To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—
> . . .
>
> (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
> (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

. . . .

[4] The record reflects that the Petitioner has filed numerous Forms I-140, all of which have been denied. In a Form I-140 filed in October 2024, the service center director determined, in relevant part, that the Petitioner satisfied the criterion related to high salary under 8 C.F.R. § 204.5(h)(3)(ix) but had not established eligibility as an alien of extraordinary ability.

$173,489 CAD, equity in the amount of $114,346 CAD, and a bonus of $21,688 CAD, for a total of $309,363 CAD. The Petitioner asserts that this is the equivalent wage of $160 CAD per hour. The Petitioner also provided salary reports from jobsbankcanada.ca, wellfound.com, Glassdoor.com, and levels.fyi.

The salary reports from wellfound.com, Glassdoor.com, and levels.fyi provide an *average* salary range for senior software engineers in [redacted] Canada. Average and median salaries are insufficient to establish that he commanded a high salary in relation to others in the field. *See Strategati, LLC v. Sessions*, No. 3:18-CV-01200-H-AGS, 2019 WL 2330181, at *7 (S.D. Cal. May 31, 2019) (upholding evidence of average salary levels is an insufficient basis for comparison to show high salary in relation to others in the field); *see also Kinuthia*, 702 F. Supp. 3d at 11; *Mussarova v. Garland*, 562 F. Supp. 3d 837, 853 (C.D. Cal. 2022). Proving a salary is "above average" typically doesn't suffice to establish a "high salary" or "significantly high remuneration." More comprehensive wage data is needed to effectively demonstrate high earnings relative to peers.

The salary report from jobsbankcanada.ca submitted by the Petitioner similarly is insufficient to demonstrate that the Petitioner satisfies this criterion. According to this report, software engineers in the [redacted] earn between $33.65 CAD and $84.13 CAD. The Petitioner contends that his hourly wage of $160 CAD demonstrates that he has commanded a high salary relative to others in his field. Here, the Petitioner does not show that the wages reported by jobsbankcanada.ca include bonuses and restricted stock such that this wage report reflects an "apples to apples" comparison. These salary reports are therefore insufficient to demonstrate that the Petitioner commands a high salary in relation to others in the field. *See Xia v. Miller,* No. 3:20-CV-01468-JR, 2021 WL 5817324, at *6 (D. Or. Nov. 18, 2021), *report and recommendation adopted*, No. 3:20-CV-01468-JR, 2021 WL 5825999 (D. Or. Dec. 6, 2021) (finding plaintiff must show that salary reports reflect an apples to apples, rather than an apples to oranges, comparison).

Regarding the salary report from moneygenius.ca/blog/top-1-income-canada, which the Petitioner contends shows that he is in the top two percent of earners in Canada and therefore reflects that he satisfies this criterion, the Petitioner has not offered sufficient evidence to show how being in such a bracket reflects that he has commanded a high salary relative to others in his field.

Finally, the Petitioner contends on appeal that "USCIS' interpretation that local or national salary levels do not allow for an appropriate basis for comparison in determining a high salary" does not comply with the USCIS Policy Manual. Specifically, the Petitioner asserts that SCOPS' decision imposed a novel evidentiary requirement because 6 *USCIS Policy Manual*, *supra,* at F.2(B)(1), offers as an example of evidence relevant to high remuneration, "[c]omparative wage or remuneration data for the person's field, such as geographical or position-appropriate compensation surveys", and he provided geographically appropriate compensation surveys in the record below. This argument is not persuasive. SCOPS' decision indicated that it was the Petitioner's use of "*average* local or national salary levels" (emphasis added) that did not allow for an appropriate basis for comparison in determining whether the Petitioner commanded a high salary relative to others in the field. As we explained in the foregoing analysis, average local or national average salaries are insufficient to establish that the Petitioner commanded a high salary in relation to others in the field. *See Strategati, LLC*, No. 3:18-CV-01200-H-AGS, 2019 WL 2330181, at *7. Thus, while the record shows that the Petitioner offered geographical compensation surveys, these surveys provided average salary levels.

Accordingly, this evidence did not provide a sufficient basis for comparison to establish that the Petitioner commanded a high salary relative to others in the field.

For the reasons stated above, the Petitioner has not shown that he meets this criterion.

In summary, the Petitioner has not shown on appeal that he satisfies the evidentiary criteria related to lesser nationally or internationally recognized awards and to high salary at 8 C.F.R. § 204.5(h)(3)(i) and (ix), respectively. Accordingly, as the Petitioner has demonstrated only two of the four criteria he claims to satisfy, he has not established that he satisfies at least three of the ten evidentiary criteria for extraordinary ability as 8 C.F.R. § 204.5(h)(3) requires.

B. Final Merits Determination

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 show his or her achievements have been recognized in the field. Section 203(b)(1)(A)(i) of the Act. Here, 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; *see also Nagaiah v. Allen*, -- F.Supp.3d ---, 2025 WL 1508028, at *10 (E.D. Pa. May 27, 2025) (finding the regulation "establishes a necessary, not sufficient, evidentiary requirement for a petitioner who seeks an extraordinary ability visa."). Therefore, we decline to reach and hereby reserve arguments concerning a final merits determination in this matter. *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).

## III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual 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.

**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.