U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43903055

Date: SEPT. 3, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

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

The Petitioner works in communications and 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.

Through its Service Center Operations (SCOPS), USCIS denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner had received a major, internationally recognized award, nor did he demonstrate that he 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 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 Petitioner is a communications specialist, broadcaster, and producer with approximately two decades of experience working in audiovisual media and public communications.

A. Step One (One-time Achievement and Regulatory Criteria)

The Petitioner claims he received a one-time achievement, but SCOPS informed him the award was not at a level needed to show that his achievement was a major, internationally recognized award. Because the Petitioner did not establish 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). Before SCOPS, the Petitioner claimed he met seven of the regulatory criteria. SCOPS decided that the Petitioner failed to satisfy any of the claimed criteria relating to: prizes or awards, membership, published material, judging, original contributions, performing in a leading or critical role, or commercial success. On appeal, the Petitioner maintains that he meets the same seven evidentiary criteria. After reviewing all the evidence in the record, we conclude the Petitioner has not demonstrated his eligibility for this highly restrictive immigrant classification.

1. Field of Endeavor

The Petitioner initially claimed over two decades in audiovisual and public communications listing prior work with mainstream broadcast companies. But he also put forth that he has advanced the communications field for [redacted] communications media.

We clarify that for the purposes of this extraordinary ability petition, we consider the Petitioner's field of endeavor to be broadcasting and audiovisual media communications and not a more narrowly tailored area of [redacted] communications media. While his specialty in [redacted] communications media may be distinct from other communications specialists, we will not confine his field to others with his type of training and experience.

It is not the Petitioner's particularized narrow specialty within his field that is the determining factor as to whether he is an alien with extraordinary ability under the Act. Rather, it is whether his evidence demonstrates that he "is 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) and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). *See Kazarian*, 596 F.3d at 1119–20. Nothing in the statute, the regulation, nor USCIS policy appears to support the position that an alien may restrict his field to a small subset of limited peers as the Petitioner appears to have attempted here. Concluding otherwise would render the requirement meaningless that the Petitioner establish he is among the small percentage at the very top of his field by allowing him to narrow his field until he ranks among the top of a small group in that so-called field.

"The statute speaks in general terms" and it is not proper to narrow one's area of extraordinary ability to a very specific zone in the much broader field. *Buletini v. INS*, 860 F. Supp. 1222, 1229 (E.D. Mich. 1994) (concluding it was improper to narrow the area of extraordinary ability to the specific study of nephrology rather than the general field of medical science, because placing the alien in medical science already sufficiently narrowed the broader statutory category of "the sciences"); *see also Integrity Gymnastics & Pure Power Cheerleading, LLC v. USCIS*, 131 F. Supp. 3d 721, 733 n.3 (S.D. Ohio 2015) (citing to *Buletini* for the same prospect).

The Petitioner may rely on accomplishments in a specialized area if he demonstrates that his acclaim and recognition extend to the broader field at the required level. Such evidence may include prizes or awards that are nationally or internationally recognized *in the broader field*, contributions of major significance *to the field as a whole*, or a showing that he is among the small percentage who have risen to the very top of *the wider field of endeavor*, as described in 8 C.F.R. § 204.5(h)(2)–(3). Also, illustrating sustained national or international acclaim through extensive documentation indicating that his achievements have been recognized *in the larger field*, consistent with section 203(b)(1)(A)(i) of the Act.

2. One-time Achievement

The regulation establishes a multi-step analysis in demonstrating extraordinary ability. In the first step, an alien may submit evidence of a one-time achievement. *See* 8 C.F.R. § 204.5(h)(3); *see also* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual. Although the regulation provides that a one-time achievement represents a major, internationally recognized award, it does not specifically indicate any qualifying one-time achievements. *Id.* We therefore look to legislative history and congressional intent in further defining a one-time achievement.

The House Report specifically cited the Nobel Prize as an example of a one-time achievement. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. Also, Congress intended that "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." *Id.* So, consistent with legislative history, a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards.

The selection of Nobel Laureates, the example Congress provided, is reported in the top international media regardless of the nationality of the awardees, reflects a familiar name to the public at large, and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from Congress' example that

the award must be global in scope and internationally recognized. Other acknowledged one-time achievements include, as a non-exhaustive list of examples, an Academy Award, an Emmy, a Grammy, a Pulitzer Prize, and an Olympic Medal.

Furthermore, the claim that a major, internationally recognized award may not exist in a particular field does not mean that we should diminish the nature of the one-time achievement and accept the highest award a person can achieve in their particular field as a major, internationally recognized award. In cases where a person cannot obtain a one-time achievement, including instances where it is not available in a field, "[a]n alien can also qualify on the basis of a career of acclaimed work in the field" by satisfying three of the ten categories of evidence. *See* H.R. Rep. at 59 and 8 C.F.R. § 204.5(h)(3). Moreover, awards that may be nationally or internationally recognized in the field do not necessarily demonstrate that they are also major or consistent with one-time achievements. In those instances, the regulation at 8 C.F.R. § 204.5(h)(3)(i) allows a person to submit lesser nationally or internationally recognized awards for excellence in the field.

Under this requirement, the Petitioner claimed the [redacted] award he received in 2010. According to the award's founder this accolade is an international award with the purpose of celebrating and honoring [redacted] SCOPS noted "the evidence in the record does not show the petitioner is a recipient of a major, internationally recognized award or prize. There is no objective evidence to show whether the [redacted] Award is widely reported by international media, is recognized by the general public, or garnered attention comparable to other major, globally recognized awards such as the Nobel Prize winners." SCOPS acknowledged the letter from the issuing entity but concluded it did not describe adequate coverage of this award that a one-time achievement demands.

On appeal, the Petitioner notes that SCOPS did not discuss the recognition the award received from a city in Florida and media recognition of the award that is essential for the promotion of the [redacted] media professionals and artists. Even though this award might have been important for the Petitioner's career, that does not transform it into an award on par with a Nobel Prize, an Academy Award, an Emmy, a Grammy, a Pulitzer Prize, or an Olympic Medal. The Petitioner has not offered evidence to support his claims that the [redacted] award is a qualifying one-time achievement akin to an Academy Award, an Emmy, a Grammy, a Pulitzer Prize, and an Olympic Medal.

3. "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).

This criterion contains several evidentiary elements, all of which must be met to satisfy the regulation. According to the plain language of the regulation the evidence must establish: (1) the alien is the recipient of the prizes or the awards; (2) those accolades are nationally or internationally recognized; and (3) each prize or award is one for excellence in the field of endeavor.

The Petitioner claimed the [redacted] award under this criterion as well. SCOPS determined that the Petitioner did not meet the requirements of this criterion, noting the record lacked evidence of the award's national or international recognition in his field of endeavor. We note—as the Petitioner claimed in the initial filing—his field of endeavor is audiovisual media and public communications. On appeal, the Petitioner claims SCOPS failed to consider this award is focused on the [redacted]

community and although it may lack mainstream media attention, "it is mainstreamed in Chistian channels" and social media with millions of followers demonstrates the award's importance and scope. The Petitioner relies on USCIS policy relating to scholastic awards, and again the recognition from a city in Florida.

But we do not find those arguments adequate to satisfy this criterion's national or international recognition requirements. We conclude the record lacks the award's requisite recognition, he attempts to narrow the field adversely impacting whether it was issued for excellence, and through that attempt to thin out the field the Petitioner has not presented an award in his field of endeavor.

First, it is unclear why the Petitioner referred to USCIS policy on scholastic awards. Second, USCIS determines whether a prize or award is a lesser nationally or internationally recognized prize or award for excellence in the person's field of endeavor. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual. In making this determination, USCIS focuses on the recognition of the particular prize or award, rather than merely on the reputation of the issuing organization, the prominence of the individual who signed the award, or the reputation of the competition or institution associated with it.

National or international recognition does not automatically transfer from a well-known competition, institution, organization, or individual to every prize, certificate, or honor issued under its name. *See Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 183 (D.N.J. 2021) (explaining that "the focus is on the award, not the awarding organization" and finding that evidence concerning a festival did not establish the recognition of the particular award); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 136 (D.D.C. 2013). Instead, the relevant inquiry is whether the particular accolade is recognized nationally or internationally as an award for excellence in the field. So, an entity or event may be nationally or internationally known while particular accolades it issues are not themselves nationally or internationally recognized prizes or awards for excellence.

USCIS policy reinforces the requirement that the focus is on the award and not the issuer (explaining that the agency considers the "national or international significance of the awards or prizes in the field") and it addresses the requisite level of recognition noting that "national or international recognition is most often associated with awards given to individuals at the highest level in a given field." *See generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(1). A petitioner, however, must submit evidence establishing the significance and recognition of that specific award, rather than relying solely on the existence or reputation of the competition, institution, or issuing organization. Relevant evidence may include national or international media coverage of the particular award, material demonstrating that the award is widely known or regarded as prestigious within the field, or other independent evidence demonstrating that the accolade carries national or international recognition for excellence in the field. The weight of such evidence depends on its specificity and probative value.

Within the appeal, although the Petitioner states that his field of endeavor is communications, the arguments he makes relating to his award under this criterion attempt to narrow that field to "the [redacted] communications field." While an accolade such as the [redacted] award may be an honor for an individual operating in [redacted] communications, it is one in too narrow a field to constitute a recognition of the Petitioner's excellence. *Jafarov v. USCIS*, No. 23 CIV. 3372 (PAE), 2024 WL 69056, at *5 (S.D.N.Y. Jan. 5, 2024) (finding an alien's medal in a student competition too

narrow a field to constitute a recognition for excellence). Other federal courts have come to similar conclusions. *See, e.g.*, *Sarin v. USCIS*, No. 22 Civ. 7498 (SVW), 2023 WL 5667531, at *10 (C.D. Cal. July 27, 2023) (rejecting the applicability of an award limited to a "subset of actors" who worked for Sony Entertainment); *Gu v. Mayorkas*, No. 19 Civ. 2496 (TSC), 2022 WL 4464904, at *7 (D.D.C. Sept. 26, 2022) (same for an award limited to models recruited from "university campuses throughout China"); *Hristov v. Roark*, No. 09 Civ. 2731 (SLT), 2011 WL 4711885, at * 8 (E.D.N.Y. Sept. 30, 2011) (same for an award limited to subset of acting students).

Additionally, USCIS is not required to rely on evidence from the awarding organization itself as that may be insufficient. *Krasniqi*, 558 F. Supp. 3d at 182 (citing *Visinscaia*, 4 F. Supp. 3d at 136). Relying on material from the issuing entity, the Petitioner did not establish that this award enjoys status as a nationally or internationally recognized award for excellence in the field. And even when an issuing entity explicitly uses language of excellence or merit, that characterization is insufficient if it is not tied specifically to excellence in the Petitioner's field of endeavor. *Oguntominiyi v. Garland*, No. 4:24-CV-04252, 2026 WL 679247, at *5 (S.D. Tex. Mar. 4, 2026). So despite the website associated with this award, and the informational page indicated it is for excellence, those sources limited that to the [redacted] and [redacted] respectively. But those sub-fields are not the areas we will recognize as the Petitioner's field of endeavor in this petition.

Ultimately, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

4. "Documentation 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).

This criterion contains several evidentiary elements the Petitioner must satisfy. First, the Petitioner must demonstrate that he is a member of an association in his field. Second, the Petitioner must demonstrate both of the following: (1) the associations utilize nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements are outstanding, and (2) the associations use this outstanding determination as a condition of eligibility for prospective membership. The Petitioner must satisfy all of these elements to meet the plain language requirements of this criterion. *Tapia v. Jaddou*, No. 8:23-CV-813-CEH-AAS, 2025 WL 2780815, at *3–4 (M.D. Fla. Sept. 30, 2025).

On appeal the Petitioner continues to claim his credentials as a broadcaster, a band producer, and a minister as qualifying memberships. When SCOPS determined that the Petitioner did not meet the requirements of this criterion, although it acknowledged he was a member of associations, it specifically noted the record was deficient of claims and evidence demonstrating whether the associations require outstanding achievement of their members, that outstanding achievements are judged by recognized national or international experts, and that the associations were in the same field for which the Petitioner sought this immigrant classification.

On appeal the Petitioner has changed his claims tailored to each of the shortcomings SCOPS listed, but those are different eligibility claims than he advanced prior to the appeal. New assertions advanced

for the first time to an administrative appellate body are not properly before us, especially if the filing party was represented by counsel in the lower proceedings. *Matter of M-F-O-*, 28 I&N Dec. 408, 410 n.4 (BIA 2021).

Furthermore, the Petitioner does not identify any error SCOPS committed under this criterion and it appears he simply disagrees with the outcome. 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). We note even setting the procedural issues aside, we agree with SCOPS' determination that the Petitioner's claims under this criterion do not meet the regulatory requirements.

The Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

5. "Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation." 8 C.F.R. § 204.5(h)(3)(iii).

This criterion contains multiple evidentiary requirements the Petitioner must satisfy. First, the published material must be about the Petitioner and the contents must relate to the Petitioner's work in the field under which they seek classification as an immigrant. The published material must also appear in professional or major trade publications or other major media. Professional or major trade publications are intended for experts in the field or in the industry. To qualify as major media, the Petitioner must establish the circulation statistics are high relative to other similar forms of media. The final requirement is that the Petitioner provide each published item's title, date, and author and if the published item is in a foreign language, they must provide a translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3). The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The Petitioner provided several articles under this criterion, but SCOPS determined they were inadequate. SCOPS noted that much of the evidence did not contain elements that the regulation mandates, such as the author or the date the article was published. For the material that contained all the required elements, SCOPS noted some of it was advertisements or promotional materials and that the record lacked circulation statistics to demonstrate the articles appeared in one of the required publication types.

On appeal, the Petitioner argues that the regulation's clear text—that "evidence shall include the title, date, and author of the material, and any necessary translation"—is actually optional and that "[i]mmigration adjudications are also governed by flexible evidentiary principles emphasizing probative value and fundamental fairness rather than technical compliance."

The regulations have the force and effect of law and are binding on all USCIS employees, and we cannot simply ignore those textual requirements. *Matter of Garcia*, 28 I&N Dec. 693, 701 (BIA 2023)

(finding government agencies are bound to uphold their regulations). While consideration of ameliorative measures is within an appellate body's discretion, "[d]iscretion is not whim." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 139 (2005). A motion to an appellate body's "discretion is a motion, not to its inclination, but to its judgment; and its judgment is to be guided by sound legal principles." *Id.* (internal quotation marks and alteration omitted). In the end, we will not ignore the regulation's clear requirements.

The Petitioner also seeks to augment the record with a supplement to his evidence in the request for evidence (RFE) response and to add new evidence under this criterion. But because the Petitioner was provided proper notice and a reasonable opportunity to respond to an RFE about this issue, we decline to consider new evidence submitted for the first time on appeal, as the appellate process is not a venue for initial filings. Under 8 C.F.R. § 103.2(b)(11), all requested evidence must be submitted together, and administrative bodies consistently refuse to review new evidence first introduced on appeal. *See Matter of Furtado*, 28 I&N Dec. 794, 801–02 (BIA 2024); *Matter of Izaguirre*, 27 I&N Dec. 67, 71 (BIA 2017); *Matter of Jin*, 29 I&N Dec. 441, 449 (BIA 2026). Additional precedent strongly reinforces this restriction. *See Matter of N-P-A-*, 29 I&N Dec. 347, 349 (BIA 2025); *Matter of D-J-L-*, 29 I&N Dec. 485, 489 (BIA 2026); *Matter of D-G-E-A- & N-G-G-E-*, 29 I&N Dec. 570, 577 n.5 (BIA 2026).

Beyond those claims, the Petitioner restates his claims as presented before SCOPS without explaining how they might have erred in the denial. The appellate regulations notified the Petitioner that he was required to set forth the reasons for the appeal and identify the legal conclusions or the factual findings he was contesting; but he failed to do so. 8 C.F.R. § 103.3(a)(1)(v). If SCOPS committed some error—either in applying the law or the facts—the burden is on the appellant to directly address those errors in sufficient detail to establish SCOPS' faults. Without an identified error, the Petitioner has not properly contested this portion of the denial decision. *Matter of Valencia*, 19 I&N Dec. at 355.

The Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

6. "Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." 8 C.F.R. § 204.5(h)(3)(iv).

This criterion requires not only that the Petitioner was selected to serve as a judge, but also that he is able to produce evidence that he actually participated as a judge. Additionally, these duties must have been directly judging the work of others in the same or an allied field in which the Petitioner seeks an immigrant classification within the present petition. The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The Petitioner initially claimed his service as a professor judging students and appearing as a speaker at conferences. SCOPS' RFE informed him those were not qualifying roles as a judge because his work did not involve "reviewing any work or otherwise acting as a judge of the work of others. Without further documentation, such as evidence that the petitioner awarded ratings or exercised judgment in evaluating individuals, the evidence regarding his role (Speaker, Presenter, Announcer, or Program Host) is insufficient." But in the RFE response the Petitioner maintained his position that his work as a professor and participation as a speaker, workshop leader, and mentor at professional

conferences, youth leadership summits, and communications training initiatives [were activities that] constitute recognized forms of professional evaluation and knowledge transfer within the specialized communications sector." SCOPS acknowledged the Petitioner's claims and determined that he did not meet this criterion's requirements.

On appeal, the Petitioner still refuses to accept SCOPS' determination here, but he does so without explaining how they might have erred. Instead, he again simply restates that his previous claims are qualifying. As we stated before, the Petitioner's failure to specifically explain how SCOPS erred in their determination relating to this criterion, he has not properly contested this portion of the decision. *Matter of Valencia*, 19 I&N Dec. at 355. An appeal is the Petitioner's opportunity to contest SCOPS' decision, not to restate his claims in which the agency clearly explained why they fell short of the regulatory standard.

The Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

7. "Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales." 8 C.F.R. § 204.5(h)(3)(x).

The regulation at 8 C.F.R. § 204.5(h)(3)(x) calls for "evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales." The evidence must show that the volume of sales or box office receipts reflects the alien's commercial success in the performing arts relative to others involved in similar pursuits. Recording and releasing musical compilations or performing in theatrical, motion picture, or television productions would be insufficient, in and of itself, to satisfy this criterion. *See generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(1).

The Petitioner provided several forms of material within the initial filing without informing SCOPS of what each document represented or how it helped him meet this criterion's requirements. For instance, he offered what appears to be a list of ticket prices relating to an event in which the Petitioner claimed he was the producer. SCOPS informed him in the RFE that the "evidence must show that the volume of sales and box office receipts reflect the petitioner's commercial success *relative to others involved in similar pursuits in the performing arts*" and that the record did not include such material. (Emphasis added). In his RFE response, he noted his evidence shows ticket sales reports, venue contracts, agendas and artist representation documentation confirming the commercial success of productions organized and directed by [the Petitioner]." But in that response, he ignored the requested information and did not submit any evidence in which to compare with his own. Based on the lack of adequate evidence, SCOPS determined the Petitioner didn't meet this criterion's requirements.

Now in the appeal, the Petitioner remains unresponsive to the shortcoming SCOPS identified in the RFE. "The evidence must show that the volume of sales and box office receipts reflect the person's commercial success relative to others involved in similar pursuits in the performing arts." *See generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(1). Not only has the Petitioner failed to submit evidence meeting all of this criterion's elements, but he has also forfeited his ability to satisfy the requirements here when he did not respond to SCOPS' specific information in the RFE. *Matter of Garcia*, 28 I&N Dec. at 693 n.1 (finding arguments that do not meaningfully challenge an aspect of the underlying decision are deemed waived on appeal).

As a result, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

B. We Reserve the Petitioner's Remaining Claims

We conclude that although the Petitioner claims he meets eight criteria, because his arguments fail on any of the six criteria discussed above, that means he cannot numerically meet the required number of at least three criteria and it is unnecessary for us to make a decision on these additional grounds. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve his additional claims or issues. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also Matter of W-F-D-*, 29 I&N Dec. 854, 858 n.5 (BIA 2026) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

Congress set a very high benchmark for aliens of extraordinary ability by requiring a 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. "In creating the 'extraordinary ability' visa, Congress hoped to 'draw the world's best and brightest to American shores' by giving 'preferential treatment to highly talented immigrants.'" *Branski v. USCIS*, No. 25-CV-1695, 2026 WL 2427439, at *11 (E.D. Wis. Aug. 19, 2026) (quoting *Amin*, 24 F.4th at 386). 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 it is unnecessary that we provide further analysis of the merits under the statute. *See Kazarian*, 596 F.3d at 1119–20; *see also Nagaiah v. Allen*, 784 F. Supp. 3d 798, 814 (E.D. Pa. 2025) (finding the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x) "establishes a necessary, not sufficient, evidentiary requirement for a petitioner who seeks an extraordinary ability visa.").

The two-step adjudication process is an interpretive rule that does not violate the Administrative Procedure Act, nor is it a legislative rule. *Taneja v. USCIS*, No. 24-CV-05657 (RER), 2026 WL 1734266, at *8 (E.D.N.Y. June 16, 2026); *Nagaiah*, 784 F. Supp. 3d at 810; *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. That view has been directly rejected by numerous federal courts before and since the *Mukherji* court made it. Therefore, we decline to reach and hereby reserve any final merits determination in this matter. *Patel*, 596 U.S. at 332.

For the reasons discussed above, the Petitioner has not demonstrated his 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.

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.