U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39694517

Date: SEPT. 12, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a physical therapist and entrepreneur, 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 petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements of this classification through evidence of either a major, internationally recognized award or by meeting at least three of the evidentiary criteria under 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,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (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 , 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 physical therapist and also seeks to work as an entrepreneur by organizing a mobile therapy clinic. She has substantial professional background in many areas of physical therapy, particularly hydrotherapy and Pilates. She specializes in treating sports injuries, orthopedic, rheumatologic, and neurological conditions in both the young and elderly populations.

Because the Petitioner has not indicated or established that she 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). SCOPS found that the Petitioner did not meet any of the three evidentiary criteria set forth in her petition. On appeal, the Petitioner renews her claim that she meets the eligibility criteria for memberships in associations in the field that demand outstanding achievement, performing a leading or critical role in distinguished organizations, and high salary in relation to others under 8 C.F.R. § 204.5(h)(3)(ii), (viii), (ix). After reviewing the entirety of the evidence in the record, we conclude that she has not established that she meets the initial evidentiary requirements for classification as an individual of extraordinary ability.

Asserting that SCOPS imposed a stricter standard of proof than required in the regulations, the Petitioner contends the analysis in the decision was flawed. However, she does not point to specific examples of this within the denial. Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests.

See Matter of Chawathe, 25 I&N Dec. at 375 (AAO 2010). Accordingly, "preponderance of the evidence" is the standard of proof governing the petition for aliens of extraordinary ability. *See generally* 1 USCIS Policy Manual, E.4(B), https://www.uscis.gov/policy-manual. While the Petitioner claims that SCOPS erred in its analysis of the petition, she does not further explain or identify a specific instance in which SCOPS applied a standard of proof other than the preponderance of evidence in denying the petition.

Analyzing the leading or critical role in distinguished organizations criterion set forth at 8 C.F.R. § 204.5(h)(3)(viii), we determine that the Petitioner has not demonstrated eligibility. To satisfy this criterion, the evidence must objectively meet 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." *Kazarian v. USCIS*, 596 F.3d 1115, 1121 (9th Cir. 2010).

Regarding the leading or critical role eligibility, USCIS first determines whether a petitioner has performed in a leading or critical role for an organization, establishment, or a division or department of an organization or establishment. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), Criterion 8. A leading role means that a petitioner is (or was) a leader within the organization, establishment, division, or department. *Id.* In contrast, a critical role means that a petitioner "has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities or those of a division or department of the organization or establishment." *Id.*

USCIS next determines whether the organization, establishment, department, or division for which a petitioner holds or held a leading or critical role has a distinguished reputation. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), Criterion 8. The word "distinguished" means "marked by eminence, distinction, or excellence" or "befitting an eminent person." *Merriam-Webster Online Dictionary*, www.merriam-webster.com. Relevant factors include not only the relative size or longevity of an organization but also other information such as the scale of its customer base or relevant media coverage. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), Criterion 8.

The Petitioner submitted recommendation letters from hospital physicians, clients, a professor, an assistant, and colleagues. The record contains more than 10 letters of recommendation as well as an article and letter from [redacted] that was submitted in response to a request for evidence (RFE). The Director found insufficient evidence of both the Petitioner's performance in a leading or critical role and the distinguished reputation of an organization.

On appeal, the Petitioner contends that evidence of her outstanding work as a physical therapist demonstrates eligibility for this criterion. She points to the letters from physicians stating that her plan to create a mobile clinic would further overall improvement in healthcare in the United States and that she has positively contributed to the rehabilitation of many patients because of her expertise in physical therapy. The letter from the physical therapist assistant and the therapist at [redacted] in Brazil also detail the Petitioner's qualifications and skills as a physical therapist. In addition, the record contains letters from the Petitioner's patients explaining how her knowledge, abilities and dedication to her work as a therapist helped them recover. Further, the Petitioner submitted a recommendation letter from one of her former professors stating that she "was a distinguished student in all the subjects that I tutored."

"A title, with appropriate matching duties, can help to establish that a role is (or was), in fact, leading." 6 *USCIS Policy Manual* F.2(B)(1), Criterion 8. The letters of support indicate that the Petitioner is a physical therapist trained in a diverse array of therapeutical methodologies and has stayed abreast of cutting-edge methodologies in the field. However, these letters do not indicate how the Petitioner has played a leading or critical role in these organizations. For example, the letter from [redacted] explains that the Petitioner has "played a key role in enhancing the quality and growth of the organization, consistently demonstrating commitment, excellence, and determination." However, the letter lacks details explaining how the organization grew as a result of the Petitioner's leading role. The writer does not discuss leadership duties or specific contributions that were significant to the outcome of the organization. Therefore, the Petitioner has not met this portion of the leading or critical role of an organization with a distinguished reputation.

Similarly, the record does not indicate that the organizations with which the Petitioner is associated are distinguished. Although the letter writers speak highly of the Petitioner's skills and abilities as a therapist, they do not explain that the organization in which she was working has an outstanding or distinguished reputation. The article submitted about [redacted] indicates that it offers specialized physiotherapy to prominent sports clubs and has widespread recognition. Quality and specialized care for elite athletes does not equate to a distinguished organization. *See Branski v. Seng*, No. 24-CV-360, 2024 WL 4678939, at *8 (E.D. Wis. Nov. 4, 2024) ("Successful businesses can be expected to have satisfied customers and the positive esteem of peers. But it takes more to have a 'distinguished reputation.'").

Although the Petitioner claims eligibility for two additional criteria on appeal, relating to membership in associations in the field which demand outstanding achievement of their members at 8 C.F.R. § 204.5(h)(3)(ii) and evidence of a high salary at 8 C.F.R. § 204.5(h)(3)(ix), we need not analyze these additional grounds. Because her argument fails on the leading or critical role criterion, it is unnecessary for us to make a decision on the additional grounds because she cannot numerically meet the required number of criteria. We therefore reserve the Petitioner's appellate arguments regarding these additional evidentiary criteria. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). Accordingly, we need not 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 that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

III. CONCLUSION

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 they are 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 any 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).

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.