U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39983186

Date: SEP. 12, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an animation director, 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 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 the Petitioner met the requirements for classification as an individual of extraordinary ability. 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 immigrant visas available to individuals with 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, provided that the individual seeks to enter the United States to continue work in the area of extraordinary ability, and the individual'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 a multi-part analysis. First, petitioners can demonstrate international recognition of their accomplishments in the field through a one-time achievement (that is, a major, internationally recognized award). If petitioners do not submit this evidence, then they 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). 8 C.F.R. § 204.5(h)(4) allows petitioners to submit comparable

evidence if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)–(x) do not readily apply to their 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).

II. ANALYSIS

The Petitioner indicates that he is an animation director and intends to contribute to the growth and innovation of the animation industry in the United States. Because the Petitioner has not asserted or established that he has received a major, internationally recognized award at 8 C.F.R. § 204.5(h)(3), he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

SCOPS denied the petition, concluding that the evidence submitted with the initial petition and in response to a request for evidence, did not establish eligibility for the benefit sought. SCOPS determined the Petitioner did not satisfy any of the five claimed evidentiary criteria, membership, published materials, display, leading or critical role, and salary at 8 C.F.R. § 204.5(h)(3)(ii), (iii), (vi), (viii), and (ix), respectively. The Petitioner asserts on appeal that he meets these five criteria and that the record establishes his eligibility for classification as an individual of extraordinary ability. He contends that SCOPS erred in the analysis of the evidence, disregarded counsel's legal explanations, and failed to accept the use of comparable evidence. Upon review, we determine SCOPS properly concluded the Petitioner did not show his eligibility for at least three of the claimed criteria and did not meet the requirements for classification as an individual of extraordinary ability.

A. Membership

The regulation at 8 C.F.R. § 204.5(h)(3)(ii) calls for "documentation of the alien's membership in associations in the field for which classification is sought." In addition, the association must require "outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." Once membership in a qualifying association has been established, we determine whether the association requires those at the alien's level of membership to have attained outstanding achievements in the field. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual.

The Petitioner claimed eligibility for this criterion based on membership in the [redacted], and [redacted] He indicated each association requires outstanding achievements of its members and those achievements are judged by recognized experts in film, television, and animation industries. The Petitioner submitted evidence of his membership, information about the organizations and their bylaws, membership guidelines, and support letters from individuals within the organizations. In

denying the petition, SCOPS found that the evidence did not show any of the organizations require outstanding achievements of their members or that recognized experts judge their members. On appeal, the Petitioner generally asserts the record contains the required evidence to demonstrate his eligibility for this criterion.

We recognize the evidence indicates the Petitioner is a member of three organizations in his field and these groups may require professional achievements of their members. However, the record lacks evidence demonstrating that membership in [redacted] requires outstanding achievement as judged by experts. *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"). Here, though the Petitioner has provided organizational documents, such as bylaws and membership guidelines, the submitted evidence does not establish outstanding achievement as judged by experts is required for membership. As such, the Petitioner does not establish that he satisfies this criterion.

B. Leading or Critical Roles

The regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." For a leading role, a petitioner must establish that the person is (or was) a leader within the organization or establishment or a division or department thereof. For a critical role, a petitioner must establish that the person 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.[1]

The Petitioner requested eligibility for this criterion through comparable evidence. He argued that this criterion does not readily apply to his occupation as an animation director "due to the unique nature of his profession and the structure of his work within the animation industry." As part of his claim, the Petitioner contended that his "work as an animation director is inherently project-based. Like many other directors, while he has a registered company he primarily operates as a self-employed professional, collaborating on individual productions rather than being employed by a singular organization or establishment." The Petitioner indicated that the animation industry often relies on highly skilled directors who contribute to specific projects independently and as a result, "the criterion of serving a leading role for organizations or establishments is not easily applicable to his line of work." Instead, "his contributions should be assessed based on the prominence and success of the projects he has directed, which more accurately reflect his achievements and influence in his field" and the comparable evidence "should focus on his leadership and critical contributions to specific projects or productions with distinguished reputations." The Petitioner also asserted that the regulations and policy relating to the O-1 nonimmigrant classification "offer a more fitting framework for evaluating [his] achievements."

In denying the petition, SCOPS found, in part, that the Petitioner did not meet his burden of explaining why the regulatory requirements for any of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) are not readily applicable to his occupation and how the submitted evidence is comparable to the required objective

[1] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

evidence under the regulations. On appeal, the Petitioner asserts that the previously submitted evidence and explanations provided by counsel establish his eligibility for this criterion through comparable evidence.

We first note that though the regulations for several immigrant and nonimmigrant classifications, such as the O-1 nonimmigrant classification, allow for the consideration of comparable evidence, we will not consider how regulation or policy relates to another immigrant or nonimmigrant category. Rather, we will apply the comparable evidence requirements and policy as they relate to the immigrant classification for individuals of extraordinary ability under 8 C.F.R. § 204.5(h)(3).[2] According to the regulation at 8 C.F.R. § 204.5(h)(4), petitioners may submit comparable evidence if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)–(x) do not readily apply to their occupation. 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.[3]

Upon review, the Petitioner has not sufficiently demonstrated why he cannot offer evidence that meets this criterion, or otherwise show that the regulatory requirements for this criterion do not apply to his occupation as an animation director Here, the Petitioner contends that we should focus on his leadership and critical contributions to specific projects or productions with distinguished reputations, rather than whether he served a leading or critical role for organizations or establishments. However, the record lacks evidence to establish that other animation directors could not meet this criterion by showing they performed in a leading or critical role for organizations or establishments that have a distinguished reputation. As such, the Petitioner does not establish that he satisfies this criterion.

C. Salary

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.[4]

The Petitioner claimed eligibility for this criterion based on the income he received from 2020 to 2024 as the animation director on multiple projects. He indicated that rather than looking at the compensation amounts listed in each of the contracts, a more accurate representation of his salary is the average compensation he received in 2023 and 2024, a total of CNY ¥670,787 (Chinese Yuan). The Petitioner submitted evidence of seven contracts from 2020 to 2024, a bank statement, and comparative salary data for animation executive directors and senior level animation directors. In denying the petition, SCOPS found, in part, that the record did not contain detailed supporting documentation that reflected the Petitioner's actual earnings for any given period of time as an

[2] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).
[3] *Id.*
[4] *Id.*

animation director. On appeal, the Petitioner argues that the evidence is sufficient to establish he has commanded a high salary in relation to others in the field of animation directors.

The Petitioner indicated that he was "appointed as the animation director for the projects and earned the majority of the compensation outlined in the contracts. A portion of the contracted amounts may also include payments to the executive director and company operations" and "all the amounts specified in the contracts are pre-tax." The Petitioner further noted that to "accurately reflect his personal remuneration for services rendered, [he] has provided his bank statements as evidence of his net income." We note that the two-page bank statement lists numerous transactions, 7 in 2021, 13 in 2022, 12 in 2023, and 13 in 2024, between the Petitioner and various individuals and entities. The transactions are described as "travel expenses," "reimbursement," "transfer," "funds transfer," "electronic transfer in," and "electronic transfer out." While we recognize the bank statement reflects the Petitioner received some amount of funds from the companies listed on his submitted contracts, the documentation lacks adequate details to discern the accurate amount of earnings he received for his work as an animation director from 2020 to 2024. Because the record lacks sufficient evidence delineating the Petitioner's actual earnings received from the projects noted in the contracts, we are unable to properly compare his earnings data with others performing similar work during the same time period. The Petitioner must present evidence of objective earnings data showing that they have commanded a "high salary" or "significantly high remuneration" in comparison with those performing similar work during the same time period. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers). He has not done so here and thus does not establish that he satisfies this criterion.

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. Although the Petitioner claims he meets three criteria, because his arguments fail on any single criterion discussed above he cannot numerically meet the required number of 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 these issues 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.