U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39725694

Date: SEP. 18, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a financial technologist, seeks classification as an individual of extraordinary ability in business. *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, 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,
>
> (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 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 financial technologist from the Dominican Republic. He indicates that he continues to pursue employment in this field in the United States. At the time of filing the Petitioner was living in the United States and serving as chief executive officer of [redacted], his self-owned financial technology firm.

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 initially claimed to have met five criteria relating to membership in associations requiring outstanding achievements, published materials, authorship of scholarly articles, performing a leading or critical role, and commanding a high salary under 8 C.F.R. § 204.5(h)(3)(ii), (iii), (vi), (viii), and (ix), respectively.

SCOPS denied the petition, concluding that the Petitioner had not demonstrated that he satisfied at least three of the regulatory evidentiary criterion. The Petitioner argues on appeal that SCOPS erroneously denied the petition because in a request for evidence (RFE) SCOPS found the Petitioner satisfied the criteria related to membership in associations requiring outstanding achievements under 8 C.F.R. § 204.5(h)(3)(ii) and to commanding a high salary under 8 C.F.R. § 204.5(h)(3)(ix), and in its denial decision it concluded that the Petitioner met a third criterion related to performing in a

leading or critical role for organizations or establishments that have a distinguished reputation under 8 C.F.R. § 204.5(h)(3)(vii).[1]

Here, the record shows that SCOPS determined that the Petitioner met the criteria related to membership in associations requiring outstanding achievements under 8 C.F.R. § 204.5(h)(3)(ii) and to commanding a high salary under 8 C.F.R. § 204.5(h)(3)(ix) in its RFE. It further reflects that SCOPS determined that the Petitioner met a third evidentiary criterion related to performing in a leading or critical role for organizations or establishments that have a distinguished reputation under 8 C.F.R. § 204.5(h)(3)(vii). Nevertheless, as the Petitioner asserts on appeal, SCOPS then denied the underlying petition, erroneously concluding that the Petitioner had not shown that he satisfied three initial evidentiary criteria, as required. However, upon de novo review, the Petitioner has not established that he meets the criteria related to membership in an association requiring outstanding achievements of its members and to high salary at 8 C.F.R. § 204.5(h)(3)(ii) and (ix), respectively. We will therefore withdraw SCOPS' conclusions to the contrary. Thus, while SCOPS' based its denial upon a conclusion not supported by the record, it remains that the Petitioner has not shown that he satisfies three of the initial ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i-x), as required.[2]

1. "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).

To establish that he meets this criterion, the Petitioner must show his membership in associations in the field for which classification is sought. *Id.* In addition, if membership is established, the Petitioner must show that the association requires outstanding achievements of its members, as judged by recognized national or international experts in their field. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.policy.gov/policy-manual.

Here, the Petitioner claims to meet this criterion based upon his company's membership in the Y Combinator startup accelerator, his membership in and service on the board of directors for the Dominican Financial Technology Industry Association ("Adofintech"), his membership on the Forbes Technology Council, and his invitation to participate in a roundtable entitled "New trends in the Dominican financial industry" as a member of the Dominican Republic delegation to Dominican Week 2023 in the United Kingdom.

Regarding the Petitioner's claimed membership on the Forbes Technology Council, the Petitioner provided a printout from *Forbes*' webpage listing himself as a council member since 2022. However, this printout does not identify the council of which the Petitioner is a member and the record lacks

[1] In denying the underlying petition SCOPS also found that the Petitioner had not satisfied the evidentiary criterion related to published material and to authorship of scholarly articles under 8 C.F.R. § 204.5(h)(3)(iii) and (vi), respectively. The Petitioner does not contest this finding on appeal. We therefore deem these matters waived and will not address them in our analysis. *See Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

[2] The Petitioner did not establish eligibility for two of the three claimed criteria and therefore cannot fulfill the initial evidentiary requirement of at least three under 8 C.F.R. § 204.5(h)(3). Accordingly, we need not decide on SCOPS' favorable conclusion for the leading or critical role criterion. *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).

other evidence corroborating the Petitioner's claimed membership. Further, the Petitioner does not offer evidence to show the membership requirements for the Forbes Technology Council or otherwise show that membership on this council requires outstanding achievements of its members as judged by recognized national or international experts.

The record below also includes recommendation letters from M-S-, the managing director of [redacted] confirming that the Petitioner and his company, [redacted] were accepted into [redacted] "2022 cycle of investments." and from M-A-, president of [redacted] confirming the Petitioner's membership in [redacted] and on [redacted] board. However, these letters do not specify whether, or what kind of, outstanding achievements in the field are required for membership or selection into these entities. For example, while M-S- describes the selection process for companies who are members of the [redacted] incubator itself, he does not explain or show how the selection of the Petitioner and his company into this incubator required the Petitioner's outstanding achievements in the field. In his letter, M-A- states that the Petitioner was selected as an [redacted] board member "as a result of his outstanding achievements in the financial technology field as judged by national and international experts" but only indicates generally that these achievements relate to the Petitioner's service as a founding member of that association.

The Petitioner also provided his invitations to participate in Dominican Week as a member of the in the United Kingdom 2023. Here, while this correspondence shows that the Petitioner was invited to serve as a member of the Dominican Republic delegation, the record does not indicate whether the Petitioner did so. Further, this correspondence does not specify the outstanding achievements in the field that are required to receive such an invitation. Absent information that specifies the kind of outstanding achievements in the field required for membership, these letters and invitations are not sufficient to establish eligibility for the criterion. *See Nelson v. U.S. Citizenship & Immigr. Servs.*, No. CV 21-10334-LTS, 2022 WL 20583561, at *5 (D. Mass. June 15, 2022) (finding letters that state membership is based on professional qualifications and enthusiasm but nowhere specify what kind of outstanding achievement in the field is required, do not meet this criterion).

The remainder of the evidence provided by the Petitioner in the record below is also insufficient to demonstrate that he meets this criterion. For example, the Petitioner offered a [redacted] website printout providing biographies for the president and chief executive officer, partners, and founders of that entity, an undated webpage listing [redacted] board of directors, and the linkedin.com profiles of these [redacted] board members. However, the Petitioner did not sufficiently explain or otherwise show how these materials establish that membership in these entities requires outstanding achievements in the field as judged by these individuals. Further the Petitioner has not established that these individuals are recognized as national or international experts in the field of financial technology. *See Kumar v. Dir. of U.S. Citizenship & Immigr. Servs.*, No. CV RDB-23-2251, 2024 WL 1374794, at *5 (D. Md. Apr. 1, 2024) (upholding plaintiff's documentation did not reflect recognized national or international experts determine qualifications for membership).

For the reasons provided above, the Petitioner has not demonstrated that he meets the criterion related to membership of an association requiring outstanding achievements in the field under 8 C.F.R. § 204.5(h)(3)(ii), and we will withdraw SCOPS' contrary determination.

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).

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

To establish that the Petitioner satisfies this criterion, he submitted, in relevant part: tax returns for the years 2017 – 2020, the latest of which reflects that that he earned a base salary of Dominican Peso (DOP) 5,400,000; two SalaryExplorer reports — one providing an average monthly salary for those working in the banking industry in the Dominican Republic, and one providing an average monthly salary for those working in the information technology industry in the Dominican Republic; and two Paylab salary reports for employees in both of these industries in the Dominican Republic.

Regarding the SalaryExplorer reports, average and median salaries are insufficient to establish the Petitioner 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 does not suffice to establish a "high salary" or "significantly high remuneration." More comprehensive wage data is needed to effectively demonstrate high earnings relative to peers. With respect to the Paylab reports, the Petitioner does not show or otherwise explain how salary reports providing a gross salary range for employees in the banking industry or for employees in the information technology industry reflect an "apples to apples" comparison of the salary of a financial technologist in the field of business. These additional salary reports are therefore insufficient to demonstrate that he commands a high salary in relation to others in the field of financial technology. *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).

For these reasons, the Petitioner has not shown that he meets the criterion at 8 C.F.R. § 204.5(h)(3)(ix) relating to high salary. We will withdraw SCOPS' conclusion to the contrary.

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."). Nevertheless, we have reviewed the totality of the evidence in the record and determined that he has not established the requisite level of sustained acclaim and standing within his field to show eligibility for the requested benefit.

In a final merits determination, we analyze an alien's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. Here, the Petitioner asserts that he has extraordinary ability in the field of business as a financial technologist. The record shows that he has submitted evidence relating to his membership in associations requiring outstanding achievements of their members, published materials about him, scholarly articles, his service in a leading or critical role, and his salary.

As discussed above, the Petitioner submitted evidence pertaining to membership, including letters of recommendation from organizations in which he claims membership. However, these recommendation letters do not explain how or show that the Petitioner has been recognized nationally or internationally for his service in a manner reflective of a career of sustained national or international acclaim. Similarly, the invitation does not show that the Petitioner has been so recognized for his participation as a member of this international delegation.

Regarding published materials about the Petitioner, the record reflects that he has garnered some attention from the press, for example having been interviewed on two television shows about remittances from the United States of America to Latin America and having one news article published about him in which he discusses the same topic. However, the Petitioner has not shown that this limited press coverage is indicative of a level of success consistent with being at the top of his field. *See Hamal v. U.S. Dep't of Homeland Sec.*, No. CV 19-2534 (RC), 2021 WL 2338316, at *4 (D.D.C. June 8, 2021), *aff'd sub nom. Hamal v. United States Dep't of Homeland Sec.*, No. 21-5160, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (upholding plaintiff did not show his press coverage was indicative of a level of success consistent with being at the top of his field). An additional article in the record below focuses primarily on the Petitioner's employer. The remainder of the articles are authored by the Petitioner and published in magazines such as *Forbes Dominican Republic*. Here, the Petitioner has not shown that he has garnered recognition from others in his field for these articles, or how, for instance, the publication rate of the articles he authored compares with others at the very top of his field.

In addition, with respect to the Petitioner's claimed service in a leading or critical role for [redacted] and [redacted], his previous employers, the Petitioner submitted letters of recommendation from these employers praising his skills and describing the projects that he led for each of them. While these letters praise his work, they do not show that the Petitioner has been recognized by the field for his work at a level that is tantamount to a career of sustained national or international acclaim. For example, the recommendation letters do not offer specific examples of how his work for these companies has garnered him recognition in the field of business or is otherwise reflective of one among that small percentage who have risen to the very top of the field of endeavor. *See generally Mishra v. Richardson*, No. 120CV991LMBTCB, 2021 WL 1566071, at *5 (E.D. Va. Apr. 20, 2021) (finding

the plaintiff did not show he received the national or international acclaim for his work "that is required in order for such a unique visa to be awarded").

Finally, the Petitioner offered evidence establishing his own salary, along with two separate salary reports, one providing the average salaries of those in the field of banking and one providing average salaries for those in the field of information technology. While this salary may demonstrate recognition of his skillset, the Petitioner has not shown that his earnings were so high relative to others in the field of financial technology as to indicate that he is one of a small percentage at the top of his field, or that his salary is reflective of sustained national acclaim. *Nagaiah v. Allen*, No. CV 23-2077-KSM, 2025 WL 1508028, at *16 (E.D. Pa. May 27, 2025).

The Petitioner seeks a highly restrictive visa classification, intended for individuals at the top of their respective field. *See* 8 C.F.R. § 204.5(h)(2) (explaining "extraordinary ability" refers only to those in "that small percentage who have risen to the very top of the field of endeavor"). USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the record as a whole does not demonstrate a level of recognition that indicates the required sustained national or international acclaim or demonstrates a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor.

C. O-1 Classification

On appeal, the Petitioner also notes that he currently holds O-1 nonimmigrant status, and cites to 6 *USCIS Policy Manual*, *supra,* at F.2(B)(3) in support of his argument that this prior approval should be a relevant consideration in adjudicating his underlying petition for EB-1A immigrant status. We acknowledge that the record reflects that the Petitioner was approved for O-1 nonimmigrant status. However, this prior approval for a nonimmigrant classification does not preclude USCIS from denying an immigrant visa petition, which is adjudicated based on a different standard, statute, regulations, and case law. *See Aravamuthan v. Jaddou*, No. 3:23-CV-01412-N, 2025 WL 1708126, at *9 (N.D. Tex. June 17, 2025); *Cuckic v. Jaddou*, No. 21-CV-8395 (JPO), 2023 WL 2586031, at *2 (S.D.N.Y. Mar. 21, 2023); *Lapteva v. Schuurmans*, No. 8:24CV83, 2025 WL 815087, at *1 (D. Neb. Mar. 10, 2025). Many immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Sunlift Int'l, Inc. v. Mayorkas, No. 20-CV-08869-JCS, 2021 WL 3111627, at *11 (N.D. Cal. July 22, 2021); Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29-30 (D.D.C. 2003); *IKEA US, Inc. v. U.S. Dep't of Just. INS*, 48 F. Supp. 2d 22, 23 (D.D.C. 1999), *aff'd sub nom. IKEA US, Inc. v. Dep't of Just., INS*, No. 99-5159, 1999 WL 825420 (D.C. Cir. Sept. 27, 1999); *Fedin Bros. Co. v. Sava*, 724 F. Supp. 1103, 1104 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990). Furthermore, our authority over SCOPS, the office adjudicating nonimmigrant visa petitions, is comparable to the relationship between a court of appeals and a district court. Even if SCOPS has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigrant petition. *See Louisiana Philharmonic Orchestra v. INS*, No. CIV. A. 98-2855, 2000 WL 282785, at *2 (E.D. La. Mar. 15, 2000).

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.