U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39719725

Date: SEP. 29, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a founder and CEO of [redacted] a barbecue equipment manufacturer in Brazil, 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.

Service Center Operations (SCOPS) denied the petition, concluding that the record did not establish that he met the initial evidence requirements for this classification through evidence of either a one-time achievement or because he meets three of the alternative 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 an immigrant 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 a multi-part analysis. First, 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 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 intends to use his "skills and experience" in "training professionals, developing new techniques, and strengthening the smoked barbecue market in the United States." The Petitioner plans to partner with interested American companies and investors and also start his own venture in this field.

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 claimed before SCOPS that he met all ten of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) and SCOPS determined he did not meet any of the claimed criteria. On appeal, the Petitioner maintain he meets seven of the evidentiary criteria at 8 C.F.R. §§ 204.5(h)(3)(ii)-(v), (vii)-(ix), which respectively, relate to membership in associations in the field, published material in a professional or major trade publication or other major media, participation as a judge of the work of others in the field, original contributions of major significance in the field, display of work, performance in leading or critical role for organizations or establishments with a distinguished reputation, and commanding a high salary or significantly high remuneration. After reviewing all the evidence of record and finding the Petitioner has not met five of the seven claimed evidentiary criteria, we conclude he has not satisfied at least three of the regulatory criteria as required and therefore does not qualify as an alien of extraordinary ability.

A. Evidentiary Criteria

> *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 discipline or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

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 determined whether the association requires those at the aliens' 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. SCOPS indicated the record contains evidence of the Petitioner's membership in the Kansas City Barbecue Society (KCBS) and Brazilian Bar Association. However, SCOPS found the Petitioner did not meet this criterion as he did not establish that membership in these associations requires outstanding achievements of their members, as judged by recognized national or international experts in the field.

On appeal, the Petitioner asserts that he is not only a member of KCBS, "the world's largest and most influential organization dedicated to promoting and certifying barbeque standards globally," but is a certified barbeque judge within KCBS, "a distinct recognition that follows rigorous training, examination, and evaluation by leading professionals in the American Barbecue industry." The record contains evidence of the Petitioner's membership in KCBS as a certified barbeque judge. The Petitioner claims that to become a certified barbeque judge, he "was required to undergo formal training led by certified experts with years of experience in the field." Though the record contains a code of conduct for KCBS, SCOPS noted that it did not detail the criteria for KCBS membership. Similarly, the code of conduct also does not detail the criteria for certified barbeque judge as a separate level of membership within KCBS. As such, the Petitioner has not established that his membership, at any level of KCBS, requires outstanding achievement, as judged by recognized national international experts in the field.

The Petitioner also asserts that he is a member of the Brazilian Bar Association (OAB-SP), which "is not open to the general public and is granted only to individuals who meet rigorous legal and ethical standards," after undergoing an admission process including an examination and evaluation. The Petitioner further asserts that as a [redacted] he fills a position that "is not open to general membership" and "filled though a rigorous vetting process that involves evaluations and recommendations by senior legal authorities and peers." Though the record contains evidence of the Petitioner's membership in OAB-SP and as a [redacted] it does not contain corroborating documentation detailing the criteria for membership in this association at any level. In addition, though the Petitioner asserts his legal background has assisted him in "the success and expansion of" [redacted] the Petitioner has not demonstrated that membership and other roles in a legal bar organization constitutes membership in an association *in the field for which classification is sought*, namely founding and leading a barbecue company. Accordingly, we concur with SCOPS that the Petitioner has not met this criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

SCOPS found the Petitioner established through registration certificates and patents that he "created/invented different barbecue grills," and noted that at least one of those barbecue grills is sold

by the Petitioner's company as the [redacted][1] SCOPS acknowledged contracts for products and marketing materials in the record and invoices from [redacted] indicating that at least 2000 [redacted] were sold by the company. Though SCOPS found the Petitioner had created an original product, it determined that invoices evidencing the sale of 2000 [redacted] units and submitted letters of support did not demonstrate the Petitioner's grill stood out from other products on the market or otherwise establish it is of major significance in the field.

On appeal, the Petitioner asserts he has led [redacted] "to become the largest and pioneering manufacturer of barbecue equipment in Brazil." The Petitioner contends that each product "developed under [his] guidance is a result of original design and functionality" and "reflect a level of creativity and engineering previously unseen in the domestic barbecue equipment market." The Petitioner claims his products have been featured as prizes in international food competitions, have garnered the attention of international celebrities, and "set benchmarks that others now follow," including "industry-wide changes." The record contains a letter from a customer claiming the [redacted] "provides a unique barbecue preparation experience" and its "unique proportions combines with the exclusive system of deflectors and grills." However, the author does not specify the manner in which this product differs from others, explain how it creates a unique experience, nor indicate how this contribution is of major significance to the field. Similarly, the Petitioner's conclusory statements that his products have changed the industry and set benchmarks for others do not specifically explain the significance of his contributions to the field. Though we acknowledge the use of the Petitioner's products as prizes and the support his products have received, we concur with SCOPS that the Petitioner has not demonstrated the major significance of his contribution to the field.

> *Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.* 8 C.F.R. § 204.5(h)(3)(vii).

When adjudicating this requirement, USCIS first determines whether the displayed work is a petitioner's work product. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). If so, USCIS next determines whether the work's display occurred at artistic exhibitions or showcases. *Id.* *Merriam-Webster's* online dictionary defines "exhibition" as a public showing (as of works of art, objects of manufacture, or athletic skill). SCOPS found that [redacted] a Meatstock Brazil Barbeque and Music Festival and that its grill product was displayed at a Beef BBQ Tour, but determined the Petitioner did not meet this criterion, as he did not establish a barbecue festival constitutes an artistic exhibition or showcase.

On appeal, the Petitioner asserts his "original contributions were prominently displayed during two consecutive editions of the Beef Tour, held in August of 2017 and 2018 . . . among the most relevant national events dedicated to gastronomy and the barbecue culinary arts in Brazil." The Petitioner indicated that his products, "originally designed and manufactured by [redacted] under [his] leadership" were exhibited to the public. The Petitioner also contends his products were awarded as prizes at Meatstock and, at the same event, the [redacted] logo was featured on containers and packaging. For this criterion, the displayed work must be a petitioner's own work product. Based on

[1] It is noted the registrations and patents in the record relate to "configuration applied to/in a barbecue grill." Based on these documents, it is not clear that the Petitioner "created/invented different barbecue grills," including the [redacted] However, as we concur with SCOPS that these do not constitute original contributions of major significance in the field, we need not consider this preliminary issue for this criterion.

the Petitioner's statement that the displayed products were designed and manufactured under his leadership, it is unclear what the Petitioner's role was in the creation of these displayed products. Accordingly, the record is insufficient to demonstrate that the "original creations" at the Beef Tour or "used as the grand prize for the BBQ Wars competition" at Meatstock Brasil 2022, in addition to the [redacted] logo featured on the food containers and packaging, constitute the Petitioner's work product.

Further, the Petitioner asserts that Meatstock Brasil and the Beef Tour constitute "artistic events rooted in gastronomy, where culinary craft, food innovation, and aesthetic presentation are celebrated." The Petitioner submitted screenshots identifying Meatstock as a multi-day barbecue festival featuring "live music, barbecue and grilling competitions, low and slow barbecue, butcher wars, demonstrations, barbecue expo + much more." As stated, to meet this criterion, display must be "at *artistic* exhibitions or showcases." *See* 8 C.F.R. § 204.5(h)(3)(vii) (emphasis added). In this context, the word "artistic" ordinarily means relating to or a characteristic of art or artists." *See* Merriam-Webster Online Dictionary, *supra*. Here, the record evidence depicts Meatstock as a commercial event focused on the consumption of food, the comparison of barbecue techniques, and the marketing of barbecue products. Non-artistic exhibitions or showcases do not satisfy the criterion's requirements. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). As such, the Petitioner has not established that these events constitute artistic exhibitions and showcases.

The Petitioner contends that even if these events are non-artistic, they are still appropriately considered for this criterion under the comparable evidence clause, "due to the substantial nature of the showcase, the public exposure, the artistic relevance of the products displayed . . . the recognition received," "the culinary artistry inherent to the barbecue field and the manner in which [Petitioner's] work was displayed and presented." The regulation at 8 C.F.R § 204.5(h)(4) states "[i]f the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." This regulatory provision provides petitioners with the opportunity to submit comparable evidence to establish the person's eligibility, if it is determined the evidentiary criteria described in the regulations do not readily apply to the person's occupation. *See* 6 *USCIS Policy Manual*, supra, at F.2(B)(1). When evaluating such comparable evidence, officers must consider whether the regulatory criteria are readily applicable to the person's occupation and, if not, whether the evidence provided is truly comparable to the criteria listed in that regulation. *Id.* Here, the Petitioner does not assert or explain how this criterion does not apply to his occupation. Rather, the Petitioner focuses on specific events, Meatstock and Beef Tour, in asserting they include "artistic relevance," "culinary artistry," and allow for substantial exposure.

For the reasons discussed above, we concur with SCOPS that the Petitioner has not met this criterion.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R § 204.5(h)(3)(viii).

To satisfy this criterion, a petitioner must demonstrate both that they have: 1) performed a leading or critical role for an organization, establishment, or a division or department of an organization or establishment and 2) the organization, establishment, or department or division for which a petitioner held a leading or critical role has a distinguished reputation. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B). Organization, establishments, or departments or divisions that enjoy a distinguished

reputation are "marked by eminence, distinction, or excellence." *See id.* (citing to the definition of distinguished from Merriam-Webster, https://www.merriamwebster.com/dictionary). SCOPS found the Petitioner performed a critical role for [redacted] and a leading and critical role for [redacted] but did not demonstrate the distinguished reputation of these companies.[2]

On appeal, the Petitioner asserts that as the "owner and leader of [redacted]," he has led the company "to become the largest manufacturer of barbecue equipment in Brazil," with a reputation for "innovation, craftsmanship, and market dominance" that has been acknowledge by media sources. The Petitioner claims the license agreement he entered into with [redacted] and with [redacted] to bring Meatstock festival to Brazil for the first time could only have been executed with "the participation of entities with distinguished reputations." The Petitioner also claims the "esteemed standing of [redacted]' is further evidenced by Tuffy Stone, an "internationally recognized American pitmaster[]" visiting their manufacturing facility. Several relevant, non-exhaustive, factors are considered together in determining whether a distinguished reputation exists, including the "relative size or longevity" of an organization or establishment and "the scale of its customer base or relevant media coverage." *See id.* Here, the record contains references to [redacted] in a [redacted] magazine article related to [redacted], a [redacted] blog post about one of [redacted] products, a [redacted] Instagram post picturing a product, a video about preparing American barbecue from [redacted] and a CNN Brazil article related to brands that profited from the barbecue demand during the pandemic. The [redacted] magazine article and [redacted] blog post acknowledge that [redacted] is the [redacted] in Brazil. However, this characterization alone is insufficient to demonstrate the eminence, distinction, or excellence of [redacted]. And the record does not contain consistent information related to the longevity of [redacted] or information related to its size or scale of customer base, or supporting documentation that would provide context for these figures. *See id.* (indicating the *relative* size or longevity of an organization or establishment is not in and of itself a determining factor but is considered with other information to determine whether a distinguished reputation exists). Petitioner alternatively asserts he founded [redacted] in 2016 and 2019, and letters of support contain similarly conflicting information related to the year [redacted] was founded. Overall, we concur with SCOPS that the Petitioner has not demonstrated the distinguished reputation of an establishment for which he has performed a leading or critical role.

> *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).

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).

[2] As the Petitioner does not address SCOPS' findings related to [redacted] on appeal, we need not additionally consider whether [redacted] has a distinguished reputation under this criterion. Any ground of ineligibility that is not raised on appeal is waived. *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).

SCOPS noted that an accountant letter indicated the Petitioner earned 40,000.00 Brazilian reals (R) a month as the owner and manager of [redacted] from May 2022 to May 2024. SCOPS found that submitted comparative salaries for a barbecue chef and commercial director did not meet this criterion as, respectively, the Petitioner was not employed as a chef and the accountant letter did not specify whether the monthly earning reflected base salary or additional payments.

On appeal, the Petitioner asserts that as "owner and leader of [redacted]" he earns a monthly salary of R 40,000.00. The Petitioner previously submitted comparative salary data for CEOs in Brazil, with a monthly base salary ranging from R 8,000 to R 30,0000 and an additional monthly R 3,000 to 42,000 variable remuneration; and commercial directors in Brazil, with a monthly base salary of R 10,000 to 35,000.00 and an additional monthly R 4,000 to 19,000 variable remuneration. The Petitioner claims this data demonstrates his own salary "is well above others in the field, even among senior-level executives in similar leadership roles within the field." In response to SCOPS' decision findings, the Petitioner acknowledges the accountant letter does not specify whether his earnings are from base salary or other payments but asserts that if the variable income from the average salary is considered, "it would still result in [his] remuneration being higher than others in the same field." However, the highest CEO salary from the comparative salary data, inclusive of the highest base salary and variable remuneration would amount to R 72,000 a month, which exceeds the Petitioner's R 40,000 a month salary. As the record continues to lack clarity related to the Petitioner's monthly earnings for his work at [redacted] the evidence is also insufficient to reliably demonstrate the Petitioner base salary for comparison to others in the field.

The record also contains conflicting information related to the Petitioner's roles for [redacted] during the specified period the accountant letter addresses, May 2022 to May 2024. A letter of support and the Petitioner's resume indicates the Petitioner acted as a founder and director of marketing and sales for [redacted] until September 2023, when he sold his ownership stake. However, the accountant letter from May 2024 indicates the Petitioner's monthly salary is based on his work as both an owner and manager of [redacted] Without clarity regarding the Petitioner's roles during the time period covered by the accountant's letter, we cannot determine whether any submitted comparative salaries are reflective of the Petitioner's peers and can be considered in relation to the Petitioner's salary. In addition, the submitted comparative salary information provides general monthly salaries for CEOs and commercial directors across Brazil. Broad descriptions of CEOs and commercial directors include multiple occupations or multiple industries and may not provide an accurate comparison to others in the field. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). Part of this criterion requires comparison to others in the field, which demands evidence regarding individuals in comparable roles. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-714 (9th Cir. 2011) (finding salary information for those performing lesser duties in not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N.D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Accordingly, both the Petitioner's base salary data and comparative salary submissions are insufficient to demonstrate he earned a high salary in relation to others in his field. We concur with SCOPS that the Petitioner has not met 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. 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. at 25 (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an alien of extraordinary ability.

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.