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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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[Redacted]

Identifying data deleted to
protect clearly unwarranted
privacy of personal privacy

File: WAC-99-132-51494

Office: California Service Center

Date: JAN 03 2002

IN RE: Petitioner:
Beneficiary:

[Redacted]

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

[Redacted]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if

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(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 to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual 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). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a fashion model.¹ The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained

¹ Counsel argues on appeal that the director erred by considering whether the petitioner was an extraordinary fashion model, as opposed to an extraordinary "black fashion model in the area of print." First, the director recognized that the petitioner was a print advertising model. Furthermore, a field of endeavor cannot be narrowed to a particular ethnic group.

national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, he claims, meets the following 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 disciplines or fields.

In response to the director's request for additional documentation, the petitioner claimed to meet this criterion through his membership in the Screen Actor's Guild. While the association may be competitive due to the competitiveness of the industry, it is simply a trade union that screen actors join to secure employment. Counsel asserts that a member must be a "performer" or "professional extra performer." Obtaining employment in one's field is not an outstanding achievement in the field simply because the field is competitive. As stated by the director, the Screen Actor's Guild does not require outstanding achievements of its members. Counsel does not challenge that conclusion on appeal.

Furthermore, the petitioner seeks classification as an extraordinary fashion model. While many models seek to enter the field of acting, it is a separate field. The petitioner's membership in the Screen Actor's Guild does not reflect on his acclaim as a model.

Published materials 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.

The petitioner submitted a profile of his career printed in the *Toronto Star*. The director concluded that the petitioner had not established the circulation of the paper and, thus, that it was major media. Counsel does not challenge the director's characterization of the paper as a local one. Even if the petitioner had demonstrated that the circulation of the *Toronto Star* elevated it to "major media," the article itself is not evidence of national acclaim. At the end of the article appears the statement, "Freelance writer Ellen Bot profiles a Toronto-based model every second week." As Ms. Bot selects the models for her column from Toronto only, the petitioner's selection for this column is not evidence of national acclaim.

Counsel subsequently argued that the numerous print advertisements in which the petitioner appears is evidence relevant to this criterion. Appearing in advertisements is inherent in the print fashion model industry. In order for such evidence to be considered comparable evidence for this criterion under 8 C.F.R. 204.5(h)(4), the petitioner would need to demonstrate that his appearances in print advertisements significantly exceeds those of most print models. Counsel asserts that it is rare for any model to appear in the advertisements for numerous top companies, but this assertion is unsupported. It is the petitioner's burden to demonstrate that the amount of advertising in which he has appeared is impressive; the petitioner must provide some basis for comparison with other

models. The record contains several letters from individuals in the industry who provide general praise of the petitioner's abilities and assert that he has been featured world-wide. While they rate him as one of the top models, they fail to provide specific comparisons. For example, they do not claim that the petitioner has appeared in more print advertisements than other successful models.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

Counsel asserts on appeal:

[The petitioner] has become one of the world's foremost black fashion models in the area of print. He has helped revolutionize the vision of what is attractive in the eyes of consumers who view catalogs, newspapers and other print work. His contributions have helped change the look of catalogs and newspapers. No longer do they display just the Anglo-Saxon female, but now advertisers also contain multi-racial individuals of both sexes.

[The petitioner] has opened the eyes of multinational corporations. He has shown them that a black model can be both an international success as a fashion model, and can be used as the primary model in their national and international advertising campaigns. He has also shown them the added benefit of being able to target the black audience by using black fashion models in their print work. Consequently, he has helped pave the way for success for other rising black models.

The assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). Thus, the petitioner must provide evidence to support counsel's assertions. In his initial brief, counsel makes similar assertions and refers to the petitioner's reference letters. These letters, however, do not support the above assertions. Rather, the letters provide general praise of the petitioner's work, looks, and professionalism and assert that he is featured world-wide. While the petitioner is referred to by one reference as "the top black model to come out of Canada," that statement does not imply that the petitioner has changed the world of modeling. None of the industry experts who provide letters in support of the petition claim that they or their clients used few black models prior to the petitioner's success as a model. Nor is there evidence that black models have had an easier time obtaining jobs as models since the petitioner's success as a model. As the petitioner has not demonstrated any link between the use of black models and his career, the record does not support counsel's assertions.

One reference letter makes vague references to "contributions" by the petitioner, an individual "who sets the trends for others to follow," but provides no specifics. The studios do not claim that they have changed the way they shoot models based on their work with the petitioner. There are no letters from other successful models asserting that they have been influenced by the petitioner's style.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

Counsel initially claimed that the *Toronto Star* article discussed above is also evidence to meet this criterion since the information on the petitioner is provided by him and written in the first person. As stated by the director, this article is not scholarly and Ms. Bot is credited as the writer. Counsel does not challenge that conclusion on appeal and we concur with the director.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner submits photographs of himself allegedly displayed in the 1995 Canadian International Photo Art exhibition. The director concluded that the photographs were not taken by the petitioner and that the criterion applies to artists and photographers, not fashion models.

On appeal, counsel argues:

This interpretation, however, is a very narrow reading of the provision, and a very narrow view of art. Being a print model involves working closely with the photographer to capture the desired look. It involves changes in posture and facial expression, clothes and hair to attain the desired appearance. As they shoot film, photographers instruct models to pose in certain positions and to interact with the physical surroundings. Modeling is in fact art, and [the petitioner] is an artist in the field of photography.

We do not find this argument persuasive. The evidence submitted for each criterion must be evaluated as to whether or not it demonstrates that the petitioner has sustained national or international acclaim. It appears from the title, that the exhibition was one of photos. The petitioner has not demonstrated that it was an exhibition of acclaimed models appearing in photos. The petitioner has also not demonstrated that the photographs were credited to him at the exhibition, instead of, or even in addition to the photographer. Similarly, the record does not reflect that people went to the exhibition to see photos of the petitioner, as opposed to seeing photos by well-known photographers. Thus, assuming the photos appeared in the exhibition as claimed, the petitioner has not demonstrated that the photos are evidence of his national or international acclaim, as opposed to that of the photographer.²

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

Counsel asserts that the petitioner has performed leading or critical roles for major companies because he was the "primary" model in most of the advertisements in which he appears. Counsel argues that without effective advertising, a business will certainly fail. Counsel goes on to state that

² Robert Maplethorpe is an example of a photographer whose name is well known while those of his human subjects are generally not.

“advertising alone is the most crucial and integral part” of a company’s success. The record clearly shows that, in addition to modeling clothes in catalogs, the petitioner appears in print advertisements for major companies such as Dell and Budweiser. On appeal, counsel argues that the petitioner must play a critical role since the modeling industry is so competitive and because so few of the people involved in the advertising process are models.

Advertising is obviously important to any company and major companies spend considerable sums of money on advertising. In addition, we do not contest that the modeling industry is competitive. We cannot conclude, however, that every model who appears prominently in a print advertisement played a critical role for the company featured in the advertisement. The petitioner has not submitted evidence that an increase in sales correlated with his appearance in the company’s advertisements. The petitioner has not even demonstrated that top executives at these companies know of the petitioner and consider him in particular responsible for the success of the company or even a print advertising campaign.

Finally, it is not clear that a petitioner can demonstrate that he has performed a leading or critical role for a company for which he was never employed even as a contractor. The petitioner has not claimed that he played a critical role for a distinguished advertising agency or studio. The studio officials who write on the petitioner’s behalf do not claim that their own success has increased overall as a result of their use of the petitioner or that their campaigns which do not involve the petitioner do not do as well.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

While counsel does not claim that the petitioner meets this criterion, it is addressed in one of the reference letters. Sue Jane, Agency Director for Armstrong Group, the petitioner’s agent, states:

[The petitioner’s] earnings potential is on par with his veteran status. Because [the petitioner] has sustained a successful career, he demands a higher than usual compensation for his bookings.

This statement is ambiguous and unsupported. If Ms. Jane is saying that the petitioner is paid the same as those models with the same number of years of experience, that is not evidence of national acclaim, but experience. Regardless, Ms. Jane submits no evidence of the petitioner’s compensation as compared to the salaries for other experienced models, including those at the top of the field, such as so-called “supermodels.” While a petitioner need not demonstrate that he meets every criterion applicable to his field, it bears explanation that one at the top of the modeling field would not be compensated as such.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a model to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a model, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.