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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUN 18 2008
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IN RE: Petitioner: [REDACTED]
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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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.

On appeal, counsel submits a brief. For the reasons discussed below, including the lack of primary evidence of awards and national compensation levels in the field and certified translations as required by the regulation at 8 C.F.R. § 103.2(b)(3), we must uphold the director’s decision.

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 --

- (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.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (Nov. 29, 1991). 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 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 she 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. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained 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 that, she claims, meets the following criteria.¹

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Counsel initially asserted that the petitioner meets this criterion through winning the Latin Model Pageant. The record, however, does not contain the award itself. The only evidence of the award is secondary evidence consisting of references to the pageant in newspaper articles. Even this evidence, however, is flawed because the petitioner did not submit certified translations of these foreign language articles as required under 8 C.F.R. § 103.2(b)(3). While the contest is termed "Latin Model," the uncertified translations of foreign language newspaper articles suggest that the contest won by the petitioner was national. Specifically, one article indicates that the sponsor, CARETAS, invited young women in Peru to compete and, after winning, the petitioner traveled to the International competition where models from 20 countries would compete. The record lacks evidence that the petitioner won at the international level, although we acknowledge that the regulation at 8 C.F.R. § 204.5(h)(3)(i) only requires evidence of lesser nationally recognized awards. The director concluded that the contest was limited to "new talent." On appeal, counsel asserts that the regulation at 8 C.F.R. § 204.5(h)(3)(i) does not preclude awards limited to "new talent."

The evidence submitted to meet a given criterion must be indicative of or consistent with national or international acclaim if that statutory standard is to have any meaning. Moreover, the evidence must show that the alien is one of that small percentage at the top of the field. 8 C.F.R. § 204.5(h)(2). A competition limited to novices cannot serve to meet this criterion as it only sets the alien apart from other novices.

We acknowledge that one of the newspaper articles in the record covering the petitioner's career states that some of the models competing in the Latin Model competition "are already professional models" and that winning the competition resulted in new modeling opportunities. The petitioner, however, did not provide a certified translation of this foreign language article as required under 8 C.F.R. § 103.2(b)(3).

In light of the above, the record lacks the primary evidence required to meet this criterion.

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

Published material 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 director did not contest that the record contains significant coverage of the petitioner individually, including in depth interviews with the petitioner, in several foreign language newspapers and magazines. Rather, the director concluded that the published material was not sufficiently recent to demonstrate sustained national or international acclaim as of the date of filing.

On appeal, counsel relies on the magazines that have featured the petitioner as a model. This material, however, is not published material *about* the petitioner. Significantly, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires the author of the material, strongly suggesting that the regulation contemplates journalistic coverage of the alien, not merely photographs of the alien as a model.

We concur with the director that the evidence submitted must demonstrate that the alien enjoys sustained acclaim at the time the petition is filed. We acknowledge that the petitioner continues to enjoy a successful career as a model. In addition to the lack of recent published material *about* the petitioner, however, the record also lacks certified translations as required under 8 C.F.R. § 103.2(b)(3).

In light of the above, the petitioner has not submitted the required evidence to meet this criterion and counsel has not satisfactorily responded to the director's concern that the published material *about* the petitioner predates the filing of the petition by several years. Thus, the petitioner has not established that the petitioner meets this criterion.

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

Counsel did not previously assert that the petitioner meets this criterion. Thus, the director did not address this criterion. On appeal, counsel asserts that the petitioner made "original artistic or business-related contributions of major significance in the international fashion arena." Counsel further asserts that advertising campaigns in the fashion industry require models and retailers would not be able to sustain their sales volumes without the models. Counsel then asserts that it can be assumed that major retailers only trust their projects "to the very top [models] in the world." Finally, counsel asserts that the letters from "international experts" demonstrate that the petitioner "has indeed left an indelible mark in the industry, and has made original contributions to the fashion industry."

At the outset, we note that we share the director's concerns that the reference letters, while signed, do not all appear to have been authored by those who signed them as they contain phrases such as: "I have been associated with the international modeling industry for over __ years,"² and "I am proud to list amongst my clients such brands as (PLEASE LIST A SELECTION OF CLIENTS)." This latter phrase appears in a letter from [REDACTED] whose letter, as noted by the director, also contains

² Letter from [REDACTED], Agency Director at NEXT.

language that is identical to a letter from the president of the petitioner's managing agency. Finally, Mr. [REDACTED]'s letter appears on paper with the heading, "**(PHOTOGRAPHER LETTERHEAD)**."

Moreover, the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through her reputation and who explain how they have been influenced by the petitioner's work are the most persuasive. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

Before we discuss the letters in the context of this criterion, it is necessary to examine the language of the pertinent regulation. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be both original and of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. To be considered a contribution of major significance in any field, it can be expected the contribution would go beyond the mere ability to succeed in the field and would be apparent from a demonstrable influence on the field. We will not presume some unidentified contribution of major significance from the petitioner's affiliation with distinguished clients. Moreover, the contributions must be of major significance "in the field." Thus, the petitioner cannot merely demonstrate that she has "contributed" to the success of a given advertising campaign or client. Rather, she must demonstrate an impact on the field as a whole.

The original letters from individuals who have worked with the petitioner and others in the fashion industry praise her natural talent, ability to appeal to different markets and professionalism. Several of them assert that she commands high remuneration. They do not identify any original contribution or explain how the petitioner has been emulated or otherwise influenced the field of modeling as a whole.

In response to the director's request for additional evidence, the petitioner submitted additional letters. [REDACTED], President of NEXT Management, the petitioner's managing agency, asserts that the petitioner appeals to both conservative advertising markets and the edgy editorial arena. We are not persuaded that versatility is original or of major significance. [REDACTED] then discusses the difficulty in succeeding in the fashion industry, discusses the petitioner's "extreme beauty, confidence before the camera and charismatic personality," and concludes that she is a "tremendous presence in the fashion world with a body of work that more than impresses." [REDACTED] does not explain, however, how any of these talents are original or how they have changed the field of modeling in a demonstrable way.

[REDACTED] an art director with "extensive experience" whose letter does not appear on any letterhead, asserts that the petitioner is "excitingly unique" and "possesses a wonderfully charismatic appearance that designers and photographers love." [REDACTED] concludes that she has repeatedly chosen the petitioner "to please the most discriminating clients." [REDACTED] does not explain how the petitioner's work as a model has impacted the field of modeling. As stated above, success is not necessarily original or a contribution of major significance. Even assuming the petitioner's "unique" style is original, the record does not demonstrate that this original style has been emulated or otherwise impacted the field.

The petitioner also submitted a letter from [REDACTED]. Ms. [REDACTED] does not provide her job title or employer. Rather, she merely references her "colleagues in the fashion publishing business" without explaining her own connection to the industry. Her letter does not appear on letterhead. Ms. [REDACTED] notes that beauty alone is insufficient and asserts that the petitioner has "a unique ability to combine form and composure, contrast and color, mood and emotion that sets her apart from her peers." As with [REDACTED]'s letter, [REDACTED] does not explain how this "unique ability" has been emulated or otherwise impacted the field.

While the petitioner may have her own unique style and has succeeded in a competitive industry, the petitioner has not demonstrated how these talents have impacted the field of modeling such that they can be considered to be contributions of "major significance" to the entire field of modeling. Thus, the petitioner has not established that she meets this criterion.

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

Counsel initially asserted that the petitioner meets this criterion through her appearance in fashion magazines and advertising campaigns. In the director's request for additional evidence, the director noted that this criterion relates to the visual arts. Counsel did not address this concern in her response to the director's notice. Rather, counsel referenced a "plethora of photographs, advertisements, catalogs and 'tear-sheets'" and listed several magazines in which the petitioner has appeared. The director concluded that the advertisements in which the petitioner appeared were designed to showcase the clothing, and not her talents.

On appeal, counsel quotes a dictionary definition of “showcase” as a “setting for advantageous display” and concludes that the petitioner has appeared in showcases because magazine advertisements are “a setting for advantageous display.” **Counsel is not persuasive.** Even if we concluded that advertisements are *artistic* showcases as required under the regulation at 8 C.F.R. § 204.5(h)(3)(viii), that regulation also requires that the display be “of the alien’s work.” We concur with the director that the regulation at 8 C.F.R. § 204.5(h)(3)(viii) contemplates a showcase whose primary purpose is to display the petitioner’s artistic work.

As stated in the director’s request for additional evidence, this criterion was designed to apply to the visual arts. The petitioner is not a visual artist. Thus, this criterion does not apply to her field. Even if we were to consider the magazine advertisements “comparable evidence” to meet this criterion pursuant to 8 C.F.R. § 204.5(h)(4), the advertisements provide an advantageous display, according to counsel, of a company’s products in order to increase an “awareness of the product being advertised.” The purpose of advertisements is not to exhibit or showcase the art of the model. Thus, we do not find that they are comparable to artistic exhibition or showcases designed to feature an artist’s work.³

In light of the above, the petitioner has not established that she meets this criterion.

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

Initially, counsel noted that the petitioner is represented by NEXT Model Management, and discusses the reputation of that agency. Counsel further noted that the petitioner was previously discovered and represented by Ford Models, Inc. and similarly discusses the reputation of that agency. Finally, counsel asserted that the petitioner meets this criterion through her appearance in magazines with a distinguished reputation and in the advertising campaigns of companies with distinguished reputations.

The director concluded that the petitioner was “one of many successful fashion models whom [her] agency represents.” On appeal, counsel no longer asserts that the petitioner meets this criterion through her representation, but focuses on the petitioner’s appearances in advertisement campaigns for major companies. Counsel notes that “without the model, there will be no campaign or catalog” and concludes that, thus, “the role of the mode[l] is leading and critical in the process.” As a specific example, counsel asserts that the petitioner “has become the face of the Cato Corporation” and was the first model chosen to appear in their television commercials. The record contains a letter from [REDACTED], Art Director for the Cato Corporation, which affirms that the petitioner is the “face of Cato” and is the feature model in the company’s newest venture into television advertising.

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected her. In other words, the position must be of such significance that the alien’s selection to fill the position is indicative of or consistent with national or international acclaim. In the

³ For example, the display of the “Mona Lisa” exhibits the artistic work of Leonardo DaVinci, not the unknown model who may have sat for the painting.

case of modeling, some advertising campaigns feature recognized models for the purpose of demonstrating that this famous model uses a specific product. If demonstrably successful for the company, such as demonstrated by the submission of data showing a significant increase in sales, such a campaign could potentially serve to demonstrate that the model played a leading or critical role for the company. In contrast, appearing in a catalogue with several other models is not persuasive. While the use of models *in general* may be critical to the creation of a catalogue, it does not logically follow that every model in that catalogue plays a leading or critical role for the company issuing the catalogue. The evidence to meet this criterion must set the petitioner apart from others in her occupation, including those who are successful.

It is significant that it is inherent to the field of modeling to appear in advertising campaigns. While modeling is a competitive field, it is insufficient for the petitioner to merely demonstrate success in a competitive field. Like modeling, athletics is extremely competitive, especially at the major league level. Nevertheless, it is insufficient to merely demonstrate participation at the major league level. 56 Fed. Reg. 60899 (Nov. 29, 1991). Similarly, merely modeling for major companies cannot demonstrate eligibility for the classification sought. While the letter from [REDACTED] indicates that the petitioner is the feature of their newest television campaign, the record does not demonstrate the significance of this campaign to Cato as a whole. Specifically, the record lacks evidence as to how many television campaigns are ongoing and how television campaigns compare with the company's other advertising campaigns.

While the petitioner has appeared in numerous advertising campaigns, we are not persuaded that the evidence sets the petitioner apart from the many models who also have been featured in advertising campaigns for the same clients such that she can be said to have individually played a leading or critical role for the company. Thus, we find that the petitioner has not demonstrated that she meets this criterion.

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

Initially, counsel asserted that the petitioner earned well over the national annual mean wage for a fashion model, determined by the Department of Labor Bureau of Labor Statistics to be \$27,570 per year. The petitioner submitted evidence from the Foreign Labor Certification Data Center's website, www.flcdatacenter.com, indicating that the 4th level wage for models in New York in 2006-2007 was \$65,728 per year. In response to the director's request for additional evidence, which explicitly requested evidence as to how the petitioner's remuneration compares with top models, the petitioner submitted her 2004 and 2005 tax returns. The director concluded that the petitioner earned over \$200,000 per year but had not established how these wages compared with the earnings of top models. On appeal, counsel asserts that the petitioner earns well over the 90th percentile wages in the industry. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-*

Sanchez, 17 I&N Dec. at 506 (BIA 1980). The petitioner did not provide statistics demonstrating what the national 90th percentile wages in the industry are.

At issue is how the petitioner's remuneration for her work compares with other models, including those at the top of the field. In 2005 she received \$327,211 and in 2004 she received \$368,106. Without evidence that these wages are high in comparison to the wages of top models nationally, however, we cannot conclude that she meets this criterion.

Counsel argues that the petitioner's failure to meet this criterion would not preclude eligibility had the petitioner demonstrated that she meets three additional criteria. For the reasons discussed above, the record does not demonstrate that the petitioner does, in fact, meet three additional criteria.

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 herself as a model to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner is a successful model, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.