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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B2

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: AUG 06 2010

IN RE: Petitioner: [redacted]
Beneficiary:

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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas 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" 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.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

At the outset, we note that the petitioner also filed an earlier petition in the same classification, [redacted], which the director also denied. In filing the current petition, counsel referenced some of the director's favorable findings with respect to the first petition. The AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had set forth favorable findings, the AAO would not be bound to follow the contradictory findings of a service center. *See Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at *3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001).

On appeal, counsel submits a brief. For the reasons discussed below, we uphold the director's ultimate conclusion that the petitioner has not established her eligibility for the exclusive classification sought. Beyond the decision of the director, the petitioner has not submitted the required initial evidence mandated under 8 C.F.R. § 204.5(h)(5) regarding her intent to continue working in her field in the United States.

I. Law

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.

U.S. Citizenship and Immigration Services (USCIS) 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* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). 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. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the following ten categories of evidence.

> (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
>
> (ii) 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;
>
> (iii) 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;
>
> (iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;
>
> (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;

> (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
>
> (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
>
> (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
>
> (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
>
> (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.[1] With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

> If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained

[1] Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

> national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-20.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See* 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) (recognizing the AAO's *de novo* authority).

II. Analysis

A. Evidentiary Criteria[2]

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

The petitioner submitted a 2002 foreign language article in *Caras* accompanied by a summary translation certified by the translator. According to the summary translation, the article reports on the results of the [redacted]

The director accepted that the competition was qualifying but concluded that [redacted] We withdraw the implication that only a first place prize or award can be considered a lesser nationally or internationally recognized prize or award. The regulation at 8 C.F.R. § 204.5(h)(3)(i) does not distinguish between levels of prizes or awards provided they are nationally or internationally recognized.

While we reject the director's dismissal of any prize or award below first place, we find no evidence that the [redacted] competition is nationally or internationally recognized. We acknowledge that the results were announced in *Caras*. According to a foreign language document in the record, this magazine appears to have a circulation of 280,615. Nevertheless, additional information about competition would bolster the claim that it is nationally or internationally recognized. The summary translation indicates that one of the judges was [redacted] but does not indicate who is eligible to compete in the competition.

Even if we accepted that the competition is nationally or internationally recognized, the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of qualifying prizes or awards in the plural, consistent with

[2] The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

the statutory requirement for extensive evidence set forth at section 203(b)(1)(A)(i). Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. Thus, we can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation.[3]

Counsel asserts that the petitioner's second prize or award is her "selection" by [redacted]. Counsel references a letter and documentation about a "contest." [redacted] of [redacted], confirms that the agency represented the petitioner from March 2005 through April 2007 but does not suggest that this representation constitutes a prize or award and does not reference a "contest." The petitioner submitted Internet material about [redacted] from *Wikipedia* that references a contest sponsored by the agency, the [redacted]. The record, however, contains no evidence that the petitioner won an award at such a contest. Regardless, there are no assurances about the reliability of the content from *Wikipedia*, an open, user-edited internet site.[4] *See Lamilem Badasa v. Michael Mukasey,* 540 F.3d 909 (8th Cir. 2008).

At best, the petitioner has demonstrated that [redacted] represented her. A contract with a modeling agency, even a renowned competitive agency that, presumably, represents many models, is not an award or prize.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(i).

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[3] *See Maramjaya v. USCIS,* Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff,* 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

[4] Online content from *Wikipedia* is subject to the following general disclaimer:

> WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on August 5, 2010, a copy of which is incorporated into the record of proceeding.

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 regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about" the petitioner relating to her work. The regulation requires the submission of the title, date and author of the material, revealing that published material is considered an article rather than a mere photograph.

[redacted] of [redacted] asserts that the petitioner "is quickly becoming one of the most recognized faces in the fashion world. Her consistent appearances on major magazine [*sic*] and her appearances for major fashion houses qualify her as a star." USCIS need not accept primarily conclusory assertions.[5]

The petitioner's photograph appears on the cover of [redacted] The certified translation of the caption indicates that the petitioner "appears in sensual Carnaval custom clothes on the internet" and that the full article appears on page 12. None of the remaining material appears to include page 12 of this article, accompanied by a complete certified translation as required under 8 C.F.R. § 103.2(b)(3). As such, we cannot determine whether the full article in [redacted] is "about" the petitioner relating to her work.

The petitioner also submitted two pages from an unidentified newspaper in which the petitioner's photograph appears with a caption in which she is named. The petitioner did not submit translations of the captions or the surrounding articles. As such, we cannot determine whether the articles with which these photographs are associated are "about" the petitioner relating to her work.

The petitioner further submitted pages from [redacted] where she is pictured with a caption that provides her name. The photographs do not appear to be associated with articles that are "about" the petitioner relating to her work.

As stated above, the petitioner also submitted the article in *Caras* about the [redacted] competition. While the petitioner is mentioned in the article, it is about the competition and not about the petitioner.

Finally, the petitioner submitted magazine pages where she appears as a model. She is not specifically identified in these photographs. As stated above, photographs do not constitute published material about the petitioner.

The record contains no articles with complete certified translations that are "about" the petitioner relating to her work. As such, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

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[5] *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).

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

Counsel asserts that the petitioner's "unique style, talent and beauty" constitute a contribution of major significance because they contribute to the success of the fashion collections she models. We must presume that the word "original" and the phrase "major significance" are not superfluous and, thus, that they have some meaning. Moreover, the contribution must be to the field as a whole rather than to a specific client. It is the role of a fashion model to present the product being modeled. Contributing to the success of a client is not a contribution of major significance in the field as a whole. Rather, the petitioner must demonstrate her impact on the field of modeling.

[redacted] of [redacted], affirms that the petitioner has "unique skills and knowledge in the competitive field of fashion." He further asserts she was one of the best models at [redacted] and that she "attained national recognition for her vital contributions to the fashion world." He does not identify a specific contribution or explain how she has influenced the fashion industry. Similarly, [redacted] merely provides general praise of the petitioner without identifying any specific contributions or their impact in the field.

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS 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; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS 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 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of acclaim and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions rise to a level consistent with major significance in the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.[6] The petitioner also failed to submit corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

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[6] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 15.

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

Counsel notes that the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of "comparable" evidence where the standards at 8 C.F.R. § 204.5(h)(3) are not readily applicable to the petitioner's occupation. Counsel then asserts that the "display of the work of [a] fashion model is exhibited in Fashion events," which counsel compares to an art exhibition. Counsel concludes that the petitioner's work "has been exhibited all over the world throughout the international media such as websites, magazines, fashion catalogues, airplane company's magazines and fashion events and [a] video clip." Finally, counsel notes that the director previously concluded that the petitioner meets this criterion when adjudicating the prior petition.

The unsupported assertions of counsel regarding where the petitioner's work has been exhibited do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980). Moreover, as stated above, the AAO is not bound to follow the contradictory findings of a service center. *See Louisiana Philharmonic Orchestra,* 2000 WL 282785 at *3.

[redacted] confirms that he worked with the petitioner and that she was one of the models represented by [redacted] He does not reference any fashion shows. [redacted] also confirms that he represented the petitioner and also does not mention fashion shows. Rather, he confirms only that she appeared in magazines. [redacted] confirms that [redacted] represented the petitioner from March 2005 through April 2007 but does not mention fashion shows specifically. As such, the record does not establish that the petitioner has ever appeared in a fashion show. Regardless, we do not agree that fashion shows are designed to exhibit the work of the models. Rather, their purpose is to exhibit the work of the fashion designers. The selection of participants for the show by its organizers is based on the talents of the designers, not the models. As such, we cannot conclude that fashion shows are artistic showcases or exhibitions of fashion models.

The record does establish that the petitioner has appeared in print advertisements and contains what purports to be a frame of a "video clip." The record does not establish where this clip was broadcast. Advertisements are not artistic exhibitions or showcases. Thus, they cannot serve to meet this criterion.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii). Moreover, counsel has not explained how the print advertisements are comparable to artistic showcases or exhibitions. Nevertheless, in the interest of thoroughness, we will consider this evidence below in our final merits determination.

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 worked for top fashion agencies such as [redacted] and [redacted] and "performed a critical role in promoting the fashion brands and generating high profits for fashion

companies such as [redacted], the largest lingerie manufactory [*sic*] company in Brazil and an internationally recognized brand." Once again, counsel notes that the director found the petitioner had met this criterion in a decision involving a previous petition.

We reiterate that the unsupported assertions of counsel regarding the petitioner's role for various entities 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. We also reiterate that the AAO is not bound to follow the contradictory findings of a service center. *See Louisiana Philharmonic Orchestra*, 2000 WL 282785 at *3.

[redacted] confirms that [redacted] represented the petitioner during an unknown period and [redacted] confirms that [redacted] represented the petitioner from March 2005 through April 2007. [redacted] states that the petitioner "was one of the best Models in our organization."

According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii), the petitioner must establish that she was selected for a role that is inherently leading or critical for an organization or establishment as a whole and the reputation of that organization or establishment. The petitioner submitted results from a search on *Google* that contains phrases from [redacted] indicating that [redacted] "is the world's most prestigious modeling network."

Even assuming that [redacted] enjoys a distinguished reputation, the petitioner has not established that she performed in a leading or critical role for the company. [redacted] does not make this assertion and the record contains no evidence regarding the number of models the company represents or how they fit within the hierarchy of the company.

The record contains no evidence establishing the reputation of [redacted]. Moreover, [redacted] does not indicate the number of models that [redacted] represents and the record contains no evidence establishing how models fit within the hierarchy of the company.

While the petitioner has appeared in several print advertisements, including a catalogue for [redacted] the record contains no evidence that her work as a model for these clients constitutes performing a leading or critical role for these companies beyond the obvious need for these clients to advertise their products with models.[7]

Assuming that the petitioner was affiliated with a major modeling agency, the regulation at 8 C.F.R. § 204.5(h)(3)(viii) does not suggest that employment for a distinguished entity alone is sufficient; rather, the nature of the role within that organization is a second factor. Significantly, the supplementary information at 56 Fed. Reg. 60899 (Nov. 29, 1991) states that there is no blanket rule for

[7] The use of the petitioner's services demonstrates that the clients required a model, but the same could be said for any position. The existence of a position does not establish that it is a critical or leading role for the employer within the context of 8 C.F.R. § 204.5(h)(3)(viii).

athletes playing on a major league team. Similarly, we find that there is no blanket rule for models represented by major modeling agencies.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

> *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 specifically assert that the record includes evidence relating to 8 C.F.R. § 204.5(h)(3)(ix), the record contains a letter from [redacted] in which he asserts that the petitioner receives "a top salary." As stated above, USCIS need not accept primarily conclusory assertions.[8] The petitioner did not submit pay stubs or tax records documenting her actual salary or other remuneration. The petitioner also failed to submit evidence of the top modeling salaries in Brazil. As such, the petitioner has not submitted the required initial evidence necessary under 8 C.F.R. § 204.5(h)(3)(ix).

> *Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

Counsel asserts:

> [The petitioner] has been modeling for the largest fashion brands in Brazil generating high revenue for the corporations. Her work directly generated commercial success and high profits to the companies and agencies she represented. [The petitioner] participated in the largest commercial advertisings in the field of fashion in Brazil as evidenced by the articles in the famous fashion magazines.
>
> She was elected among thousands of models to launch a new cosmetic line from [redacted], the largest lingerie company in Brazil.

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. Counsel references the magazine advertisements as evidence to support these assertions.

The regulation at 8 C.F.R. § 204.5(h)(3)(x), by its language, is limited to occupations within the performing arts. The regulation is extremely specific in the type of evidence that must be submitted under this criterion: box office receipts or evidence of media sales of the alien's performances. USCIS may not unilaterally impose novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5. *Kazarian,* 596 F.3d at 1221, *citing Love Korean Church v. Chertoff,* 549 F.3d 749,

[8] *1756, Inc.,* 745 F. Supp. at 15.

758 (9th Cir.2008). The record contains no box office receipts or evidence of media sales of the petitioner's "performances."

Even if we concluded that evidence of the commercial success of the products marketed by a model was qualifying evidence under 8 C.F.R. § 204.5(h)(3)(x), and we do not, the record lacks such evidence. The magazine advertisements reflect that the petitioner modeled products but cannot demonstrate any commercial success or that the petitioner was responsible for that success. It is not apparent from the [redacted] catalogue that the petitioner was advertising a new cosmetic. The record contains no confirmation of this role from any official at [redacted] or evidence of the commercial success of the cosmetic in relation to its marketing through the petitioner.

In light of the above, the petitioner has not submitted any qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(x).

Summary

In light of the above, the petitioner has not submitted the requisite evidence under at least three of the evidentiary categories for which evidence must be submitted to meet the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. Nevertheless, we will review the evidence in the aggregate as part of our final merits determination.

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). *See Kazarian,* 596 F.3d at 1119-20.

While the petitioner won a second place award at the [redacted] competition, the record contains no information about this competition other than it was covered in *Caras* and featured [redacted] as a judge. A competition limited to novices in the field is not indicative of national or international acclaim.

As stated above, the record contains no evidence that the petitioner has been featured in an article. Her appearances in magazines, whether considered under 8 C.F.R. § 204.5(h)(3)(iii) or (vii), are commensurate with her occupation as a model. Assuming the petitioner has a "unique" style, the record contains no evidence that her style is influential at a level consistent with national or international acclaim. Finally, the petitioner must document her personal national or international acclaim and cannot rely on her affiliation with distinguished associations or clients. We note that the more elite modeling agencies are likely to represent a large number of models, not all of whom are among the

among the small percentage who has risen to the very top of the field. The fact that the petitioner was represented by a modeling agency, by itself, does not set her apart from other models able to make a living in the occupation.

Finally, the petitioner earned her award in 2002. The most recent magazine advertisement that is dated is from 2007. [redacted] indicates that [redacted] only represented the petitioner through April 2007. The record does not establish when the petitioner was represented by [redacted]. As such, the evidence is not indicative of or consistent with *sustained* national or international acclaim in May 2009 when the petition was filed.

III. Job Offer

The regulation at 8 C.F.R. § 204.5(h)(5) provides:

> *No offer of employment required.* Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

Counsel asserted that the petitioner "received several work proposes [*sic*] from large fashion agencies in the U.S. and her intention is to continue her fashion model career after the approval of her petition. Counsel does not reference any exhibits in support of this statement. The record does not contain letters from prospective employers, evidence of prearranged commitments such as contracts or even a statement from the petitioner detailing her plans on how she intends to continue her work in the United States.

IV. Conclusion

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 shows talent as a model, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field. The record also lacks evidence supporting the petitioner's intent to continue working in her occupation.

For the above stated reasons, considered both in sum and as separate grounds for denial, 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.