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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAR 17 2005**  
WAC 98 070 52769

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:  
[REDACTED]

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.

*Mari Pluym*

 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 Administrative Appeals Office 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 --

- (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 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 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 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.<sup>1</sup>

*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.*

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

The petitioner submitted two brief articles about the publication of her book, "Storm in a 'D' Cup," one brief article commenting on Princess Diana's statements about bulimia and one brief article about the petitioner's preference in dresses. The copies do not reflect the publications in which these articles appeared or the dates. The petitioner also appeared as a pinup glamour model in the British tabloid, *The Sun* as one of the Page 3 Girls. *The Sun* also ran a story about the petitioner's broken engagement. An unidentified newspaper ran a story about the petitioner's recovery from a dog bite six years previously. Garry Bushell, Show Business Editor for *The Sun*, asserts that the petitioner appeared on popular British morning shows to promote her book.

The director concluded that the articles were not about the petitioner's work in the field as they did not critique, assess, rate or discuss the petitioner's work. The director further concluded that television appearances were not "published materials."

On appeal, counsel asserts that the media coverage about the petitioner results "from her fame as a model." The petitioner submits two articles about her personal life published in *Hello* after the date of filing.

First, it is inherent to the profession of modeling that one's image will appear in print or on television. Glamour shots and advertisements are not published materials about the petitioner; they are the result of being able to work in her field. That said, we acknowledge that the record contains articles about the petitioner beyond her advertisements and page three appearances. We understand the director's concern that these articles are frivolous and minimally relate to the petitioner's work as a model. Nevertheless, counsel is persuasive that even frivolous tabloid media coverage is indicative of some recognition among the general population. Modeling is not a field where published critical analysis of one's work can be expected even of the top supermodels in the field. Rather, the coverage of even the most renowned models is generally limited to their personal lives.

As stated above, the petitioner has not demonstrated that her print media coverage, as of the date of filing, extended beyond *The Sun*. The articles in *Hello* do not establish the petitioner's eligibility as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). We do not contest the national circulation of *The Sun*. Such limited coverage in the publication that is publishing her glamour shots in the first place, however, suggests that her recognition is limited to the fans of the Page 3 girls' pinup photographs. Exposure and recognition are not necessarily indicative of the type of sustained national or international acclaim for recognized achievements in the field as contemplated by the statute.

More persuasive is the petitioner's alleged television appearances. We find that coverage by the major television media can be comparable evidence to meet this criterion. Mr. Bushell's statement regarding these appearances, however, is not supported by the television networks that purportedly broadcast the interviews with the petitioner. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Even if we were to accept Mr. Bushell's unsupported statement and conclude that the petitioner meets this criterion, the evidence falls far short of meeting two other criteria.

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

Initially, counsel asserted that the petitioner had "contributed enormously" to the modeling profession by dispelling myths that models are "women who can only rely on their good looks and bodies to earn their living."

Counsel notes that Mr. Bushell attests to the petitioner's ranking as "one of the top ten beauties in Great Britain," that the petitioner has written columns for *The Sun*, and that the petitioner authored a book.

The director concluded that the petitioner had not demonstrated how her work had changed the field of modeling. On appeal, counsel asserts that the petitioner was the first model to write for a women's section on such topics as health, beauty and fashion. Counsel further asserts that the petitioner's book dispelled myths about the Page 3 girls.

We concur with the director that the petitioner has not demonstrated her impact on the field of modeling. Mr. Bushell asserts, without supporting evidence, that on several occasions, the petitioner "was voted one of the top beauties in Great Britain." Counsel fails to explain how these votes, assuming they occurred, have dispelled the myth that models rely on their looks. The record lacks any evidence that the petitioner's authorship of a few articles prior to the date of filing and a book has led to the hiring of more models as writers. While the petitioner may have gone on a promotional tour for her book, we concur with the director that the record lacks evidence of any influence this book may have had on the modeling field. Not every book by an insider to the field constitutes a contribution of major significance to that field.

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

The record contains three articles published in *The Sun* credited to the petitioner. Specifically, she authored "Dial Your Dream Bachelor Boy" profiling "the tastiest top ten fellas" in Great Britain; "Hunks Who Give Our Page 3 Girls a Thrill" describing a photo shoot of John Huntley and the petitioner's own preferences in men; and "You Can't Bake It, Fake It" reporting the petitioner's opinion on various brands of tanning make-up. The record also includes a report credited to another journalist about the petitioner's method for relieving back pain. As stated above, the petitioner also authored "Storm in a 'D' Cup," a series of interviews with 12 Page 3 girls.

The director concluded that these articles and the petitioner's book were not "scholarly" as required by the regulation at 8 C.F.R. § 204.5(h)(3)(vi). On appeal, counsel continues to assert that the petitioner's writing is scholarly, covering "health, beauty and fashion." Counsel references "articles that stated that [the petitioner] was on a book tour promoting her book and [that she] made appearances on shows such as Good Morning Britain."

We affirm the director's conclusion that the petitioner's articles do not provide a scholarly analysis of the art of modeling. At best, they constitute her personal reflections on men and tanning creams. Characterizing these articles as addressing health and fashion issues is simply inaccurate. Nevertheless, it is acknowledged that this criterion does not apply to the field of modeling. As such, we will consider whether the petitioner's writing might be comparable evidence to meet this criterion.

The petitioner's articles in *The Sun* not only lack a scholarly content, they do not focus on the field of modeling. Thus, they are not persuasive. While the petitioner began writing for the *Santa Monica Observer* after the date of filing, those articles do not reflect upon the petitioner's eligibility as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Counsel asserts that the petitioner's book was a British best seller. 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). None of the articles submitted, including those that mention the petitioner's book, refer to the book as a best seller or mention the petitioner's promotional tour. The only reference to the book tour and television interviews is in Mr. Bushell's letter. Moreover, even assuming that the petitioner did tour to promote her book, such promotion does not guarantee that the petitioner's book sold well.

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

The record contains considerable evidence of the petitioner's work as a Page 3 girl and print advertising model. The director questioned whether these "displays" were designed to showcase the petitioner's talents. On appeal, counsel asserts that the petitioner's modeling of the fashion designs of JonValdi serves to meet this criterion.

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. Moreover, we must consider the evidence submitted as to whether it is indicative or consistent with national or international acclaim. Appearing in a fashion show is evidence that the model is capable of securing employment. Even in a competitive field like modeling, the ability to secure employment is not indicative of national or international acclaim.

Regarding the petitioner's glamour shots and advertisements, they are not artistic exhibitions or showcases. Thus, they cannot serve to meet this criterion. Ultimately, we find that this criterion relates to visual artists, not modeling. The evidence submitted to meet this criterion is not comparable to the type of exclusive artistic exhibition or showcase contemplated by the regulations.

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

The President of JonValdi, a design company that purportedly caters to "a major celebrity clientele," asserts that the petitioner modeled their 1998 spring collection. The petitioner appeared on several covers of *Puzzler*, other puzzle publications and *Practical Photography*. She has appeared in print advertisements for ICI, Interflora, Black and White, Adidas, St. Troy Lycra Sensations by Dupont, and others. After the date of filing, the petitioner worked as a model for Clear Choice Satellite. According to Mr. Bushell, the petitioner represented *The Sun* on a trip to Hamburg, Germany "with many other celebrities." Mr. Bushell and another reference attest to the petitioner's appearance in television commercials.

Stephen Herzberg, Executive Producer at PrairieFire Productions, asserts that the petitioner is essential to a reality based soap opera he is developing entitled "Strippers." The record contains no evidence that, as of the date of filing or anytime after, this show enjoyed a distinguished reputation. After the date of filing, the petitioner also served as a managing editor for the *Santa Monica Observer*. The record also contains several letters from individuals at Metro-Goldwyn-Mayer Studios (MGM) asserting that the petitioner is working on MGM's "EDAM" project. None of these letters provide the petitioner's job title or description of her duties.

The director concluded that the petitioner had not demonstrated the leading or critical nature of her roles for the above organizations. On appeal, counsel reiterates prior arguments.

We concur with the director. 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 her appearance in the company's advertisements.

Finally, we are not persuaded that a petitioner can demonstrate that she has performed a leading or critical role for a company for which she was never employed even as a contractor. The petitioner has not claimed that she played a critical role for a distinguished advertising agency or studio. The record lacks letters from studio officials claiming that their own success has increased overall as a result of their use of the petitioner or that their campaigns that do not involve the petitioner do not do as well.

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

Counsel asserts that the petitioner's commercial success is demonstrated by her appearance in the advertisements for so many leading companies. The director concluded that the petitioner was not a "performing artist" and that she had not demonstrated that the organizations she represented enjoyed commercial success largely due to her efforts. On appeal, counsel asserts that the petitioner's promotion and advertisement for "such a plethora of varying products shows her tremendous commercial value for designers', manufacturers' and stores' products."

The regulation at 8 C.F.R. § 204.5(h)(3)(x) makes very clear the type of evidence necessary to meet this criterion: box office receipts or sales of media featuring the petitioner's performances. We do not find that the petitioner's "commercial value" to marketers is comparable to the type of data evidencing commercial success specifically mandated by this criterion. Significantly, while a petitioner need not meet any particular criterion, we note that the regulation at 8 C.F.R. § 204.5(h)(3)(ix), relating to a significantly high remuneration, is more relevant to the petitioner's field of modeling than commercial success in the performing arts. Yet, the petitioner does not claim to meet that criterion.

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. 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.