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FILE: [REDACTED]
WAC 03 269 53258

Office: CALIFORNIA SERVICE CENTER

Date: **SEP 02 2005**

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.

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 in the arts. The director determined that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

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

(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.

Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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).

In this case, the petitioner seeks classification as an alien with extraordinary ability in the arts as a model. Much of the evidence submitted concerns the petitioner's accomplishments as a beauty pageant winner. The director determined that the record did not demonstrate that the petitioner had achieved the requisite sustained acclaim as a model. On appeal, counsel contends:

The denial is based upon the incorrect assertion by the USCIS that evidence of [REDACTED] honors, awards and success as a beauty pageant winner and judge is not relevant to a finding of extraordinary ability in the modeling field. According to the norms and standards of the modeling field,

the same extraordinary abilities that [REDACTED] has demonstrated in the beauty pageant [sic] context are extremely relevant to her work as a model, and elevate her to the top rank [sic] of models.

To support his claim, counsel submits on appeal two letters from modeling agencies.

While the petitioner's beauty pageant experience may be relevant to her subsequent modeling work, the two endeavors are not equivalent. An alien who seeks to enter the United States as a model under the extraordinary ability immigrant classification cannot rely solely on acclaim as a beauty pageant queen. However, in comparable situations where former athletes sought entry to the U.S. to work as coaches in their sport, the AAO has determined that given the nexus between competing and coaching, in a case where an alien has clearly achieved national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national level, an adjudicator may consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability. We apply a similar standard here. We have reviewed the evidence in this case to determine whether the petitioner achieved the requisite sustained acclaim as a beauty pageant winner and then sustained that acclaim as a model. We address the record and counsel's claims in the following discussion of the regulatory criteria relevant to the petitioner's case.

Evidence of a one-time achievement (that is, a major, internationally recognized award).

Counsel claims the petitioner's title as "Miss Commonwealth of Independent States (CIS) 1999" constitutes a major, internationally recognized award. The record does not support this claim. The petitioner submitted no primary evidence of her purported receipt of this title. The record contains copies of nine media articles that identify the petitioner as Miss CIS 1999, but seven of these articles are accompanied by uncertified English translations, three of which are also incomplete. Because the petitioner failed to submit complete and certified translations of the documents, we cannot determine whether the evidence supports the petitioner's claimed eligibility under this criterion. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The remaining two articles are in English. The first article consists of one short paragraph printed above a photograph of the petitioner. The source and date of the article are not identified. The article states, "In January, [the petitioner] won the title of [REDACTED] in the first year of this new contest, beating out 34 other contestants from 12 republics." The second article is entitled "[REDACTED] Wins New Beauty Contest and Becomes [REDACTED]" and was published in the February 6, 1999 edition of *The International Armenian Reporter*. This article explains that the petitioner "won the title of [REDACTED] in a beauty contest held in Moscow" and that C.I.S. is "a term that identifies former republics of the Soviet Union." The record contains no evidence that *The International Armenian Reporter* is a major international newspaper read by individuals other than those with an interest in Armenian news and culture. The record contains no primary evidence of the petitioner's [REDACTED] title and does not demonstrate that this title is equivalent to a major, internationally recognized award, rather than a regional honor. Accordingly, the petitioner does not meet this criterion.

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

The petitioner claims to satisfy this criterion by virtue of her title as [REDACTED] 1998. Again, the petitioner submitted no primary evidence of her receipt of this title. The record contains copies of 11 articles that identify the petitioner as [REDACTED]. One of these articles is in French and is not accompanied by a certified

English translation. Another three articles were submitted with incomplete and uncertified English translations. Again, without complete and certified translations of these four documents, we cannot determine whether the articles support the petitioner's claimed eligibility under this criterion. *Id.*

The remaining seven articles are printed in English. The submitted copies of five of these articles do not identify the source or date of the article. Of the remaining two articles, one was published in the April 24, 2002 edition of *The Armenian Observer* and the second is the aforementioned article from the February 6, 1999 edition of *The International Armenian Reporter*. All but two of the English articles discuss the petitioner's charitable activities during her visit to Armenian communities in the United States. None of the articles discuss the significance of her title as [REDACTED]. In addition, the record does not establish that any of the submitted articles in English were printed in nationally or internationally circulated newspapers, publication in which might reflect national or international acclaim. Yet even if the record established that the petitioner's [REDACTED] title was equivalent to a nationally recognized prize or award, the petitioner would not meet this criterion. Her title was awarded in 1998, five years before her petition was filed, and does not demonstrate the requisite sustained acclaim.

Similarly, the record fails to demonstrate that the petitioner's [REDACTED] title satisfies this criterion. As discussed above, the petitioner submitted no primary evidence of her receipt of this title. While the contestants may have come from different countries, the record does not establish that the [REDACTED] 1999 competition was internationally recognized. The petitioner submitted articles about her [REDACTED] title that cannot be considered because they were submitted with incomplete and uncertified translations. Hence, her title is only documented by two English articles published in Armenian newspapers. The record contains no evidence that these newspapers are major national or international publications. Yet even if we considered the petitioner's [REDACTED] title as a prize or award under this category, she would still not meet this criterion. Her [REDACTED] title was awarded in 1999, four years before her petition was filed, and does not demonstrate sustained acclaim. Accordingly, the petitioner does not meet this criterion.

(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.

As discussed above, the record contains numerous articles about the petitioner as a beauty pageant queen. The majority of these articles are untranslated or accompanied by incomplete and uncertified English translations. Because the petitioner failed to submit certified translations of the documents, we cannot determine whether the evidence supports the petitioner's claimed eligibility under this criterion. *See* 8 C.F.R. § 103.2(b)(3). The record contains a few articles in English, but many of the submitted copies of these articles do not identify the source or date of the articles as required by this regulatory criterion. In addition, the petitioner submitted no evidence that any of the articles were printed in professional, major trade publications or other major media. Accordingly, the petitioner does not meet this criterion.

(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 specification for which classification is sought.

The petitioner claims eligibility under this criterion because she purportedly judged the 2003 [REDACTED] beauty pageant. The record contains a printout of an undated article entitled "Beautiful Night: [REDACTED] 2003." The article lists the petitioner as one of the members of the jury and quotes the petitioner regarding the

cultural barriers surrounding the swimsuit portion of the competition. The submitted printout does not identify the source of the article and the record contains no evidence that the petitioner's participation in this jury was reported in nationally circulated Armenian newspapers or other major media or is in any other manner consistent with the requisite sustained acclaim. Accordingly, the petitioner does not meet this criterion.

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

The record indicates that the petitioner has engaged in commendable charitable endeavors as [REDACTED] and [REDACTED]. However, the petitioner submitted no evidence that she has made original artistic contributions of major significance to the beauty pageant or modeling fields. Accordingly, she does not meet this criterion.

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

Counsel claims the petitioner meets this criterion because "[a]s an internationally renown [sic] spokesperson and model, [her] work is regularly on public display, whether as a runway model at fashion shows, as a fashion model in print advertisements published in magazines of mass circulation, as a spokesperson/model at public events or through her appearances on television." The record does not corroborate this claim.

[REDACTED] President of Nous Model Management (the company which petitioned for [REDACTED] nonimmigrant H1-B status), states that the petitioner "has provided her services as a top model for evening and day garments, sportswear, cosmetics, eyewear, beverages, hair and haircare products and billboard advertisements. . . . [and] her services as a model have been requested by world renowned fashion designers. . . . She has also hosted the television show *Z Project* and appeared on the television show *Monk*, the film *Paparazzi* and in a music video for the group Blondie. As a spokesmodel, she has been chosen to represent the spirits manufacturer Beefeater as well as restaurant chain Togo's." The record contains no evidence to document these alleged accomplishments. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The only evidence of the petitioner's work as a model consists of two articles. First, a copy of an excerpt from an unidentified source which features a photograph of the petitioner and a caption which reads, in part, [REDACTED] and former [REDACTED] participated this January in a fashion show by up-and-coming French designer, [REDACTED] states that the petitioner's work in this show was featured in "France Armenia magazine in February 2000," but a copy of this article was submitted without an English translation as required by 8 C.F.R. § 103.2(b)(3). Second, an article from the April 24, 2002 edition of *The Armenian Observer* reports that the petitioner would be volunteering her time to participate in a "Luncheon Fashion Show" sponsored by the "Central and Valley Guild." This evidence does not demonstrate that the petitioner has exhibited her work as a model in a manner consistent with the requisite sustained acclaim.

Finally, even if the [REDACTED] 1998 and the [REDACTED] 1999 pageants constituted artistic exhibitions or showcases, the petitioner's participation would not meet this criterion because the events occurred five and four years prior to when her petition was filed and consequently do not demonstrate sustained acclaim. Accordingly, the petitioner does not meet this criterion.

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

Counsel claims the petitioner meets this criterion because “[i]n the capacity of the First Beauty of the CIS, [she] officially visited all countries of the Commonwealth of Independent States. Accompanied by the former State Secretary of the CIS, she visited the Republic of Azerbaidzhan [sic] with a political mission of peace and reconciliation between Armenians and Azeris. Furthermore, [she] continued her humanitarian mission by working to raise money for an orphanage in Vanadzor, Armenia.” The record does not corroborate this claim. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Some of the submitted media articles may discuss the petitioner’s activities as Miss C.I.S., but the articles were submitted without complete and certified English translations as required by 8 C.F.R. § 103.2(b)(3). Moreover, even if sufficiently documented, the petitioner’s activities as [REDACTED] are those of a reigning beauty pageant queen and the record does not demonstrate that she performed a leading or critical role for the Commonwealth as a whole.

Counsel also claims the petitioner satisfies this criterion because she has allegedly modeled for “World renowned fashion designers,” appeared on television, and worked as a “spokesmodel” for various programs and companies. As discussed above under the seventh criterion [REDACTED] describes such work in her letter, but the record documents the petitioner’s modeling for just one “up-and-coming French designer,” and is devoid of any evidence of her work for other designers, television appearances or work as a “spokesmodel.” Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Soffici*, 22 I&N Dec. at 165. Accordingly, the petitioner does not meet this criterion.

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

The record contains three “[REDACTED]” for the petitioner signed by [REDACTED] of Nous Model Management. The memos describe future modeling jobs and list the petitioner’s compensation as between \$2,000 and \$2,500 per day. The memos do not document modeling jobs completed by the petitioner and the record is devoid of any primary evidence of the petitioner’s income or remuneration as a model. Even if the petitioner’s remuneration was documented as described in the “Deal Memos,” the record contains no evidence that her compensation is significantly higher than others in her field or comparable to models at the very top of her field. The record contains a printout listing the Level 2 wage for models as \$11.27 per hour. Yet, this wage includes many kinds of modeling, not just the work purportedly done by the petitioner as a model for “World renowned fashion designers” and a “spokesmodel” for prominent companies. Accordingly, the petitioner does not meet this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The evidence in this case indicates that the petitioner received limited media coverage as a beauty pageant winner in Armenia and the C.I.S. However, the record does not establish that the petitioner has achieved sustained national or international acclaim as either a beauty pageant winner or a model. She is thus ineligible for classification as an

alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and her 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.