

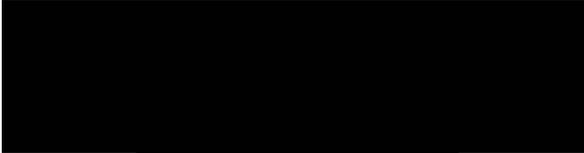


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FILE: [REDACTED]  
LIN 04 101 51009

Office: NEBRASKA SERVICE CENTER

Date: MAY 09 2006

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

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V

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office 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.

On appeal, counsel addresses some of the director’s legitimate concerns. For the reasons discussed below, however, we find that the petitioner has still not demonstrated her eligibility.

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.

At the outset, we note that prior counsel stressed that national acclaim is sufficient; the petitioner need not demonstrate international acclaim. While we concur with that principle, it is significant that, according to the concurrently filed adjustment application and supporting documentation, including Form G-325, the petitioner has resided and worked in the United States since 1997. According to a reference letter from [REDACTED] of Shanghai Television, the petitioner left China for the United States in 1996, at which time she joined [REDACTED] Director of Runway at [REDACTED] indicates in a letter dated February 16, 2004 that she has represented the petitioner "for the past six years." In a letter dated October 16, 2003, however, [REDACTED] President of Meters Bonwe in Shanghai, asserts that the petitioner returned to China in 1998 and "is" the company's top runway and photographic model for new designs. The petitioner is also purported to have judged a fashion show in Shanghai in 2001.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has not resolved the inconsistencies regarding her residence and employment after 1997. Notably, the petitioner must demonstrate *sustained* acclaim as of the date of filing, February 24, 2004. Thus, evidence of her pre-1997 accomplishments in China, without evidence that she has sustained any of the acclaim from those accomplishments after 1997, is insufficient.

The petitioner has submitted evidence that, she claims, meets the following criteria.<sup>1</sup>

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

In 1991, the petitioner won the Golden Prize for China Selection Competition for International Super Model Competition and the 2<sup>nd</sup> National Best Model Artistic Display Competition. According to [REDACTED] Editor Director of a Shanghai fashion television show, the competition lasted five days. Mr. [REDACTED] indicates that his show covered the event and interviewed the petitioner after she won. Mr. [REDACTED] asserts that 80,000,000 people watched the interview, which aired on China Central Television. In 1996, the petitioner received a Golden Award at the First New Silk Road Super Model Grand Competition sponsored by the Culture and Art Department, China Central Television.

In response to the director's request for evidence of the significance of the awards, the petitioner submitted a letter from [REDACTED] Managing Editor of *Elle China*. Ms. [REDACTED] asserts that the Ministry of

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

Culture in China sponsored the 2<sup>nd</sup> National Best Model Artistic Display Competition. In order to manage the competition, the ministry established a special committee of nationally well-known fashion designers, fashion models, fashion critics and professors of art performance. Participants came from 12 big cities in China. Finally, Ms. [REDACTED] asserts that the First and Second National Best Model Artistic Display Competitions shaped the profession as elements of the competition became standard.

Ms. [REDACTED] further asserts that the First Silk Road Super Model Grand Competition was important. According to Ms. [REDACTED] the competition was televised over three consecutive days. The petitioner represented the Shanghai Garment Corporation, the largest state-run fashion enterprise in China.

The director noted that each competition was in its first or second year at the time the petitioner won the awards and questioned whether the competitions could be nationally significant without more of a record.

On appeal, counsel reiterates that 80,000,000 viewers watched the interview of the petitioner after she won the 2<sup>nd</sup> National Best Model Artistic Display Competition. The petitioner also submits a letter from [REDACTED] Director of Publicity at China Central Television. Mr. [REDACTED] asserts that the New Silk Road Modeling Competition has “now” become popular and notes that it is aired on China National Television every year.

While the evidence relating to this criterion is notable, the petitioner has submitted no persuasive evidence relating to any of the criteria after 2001, three years prior to the date of filing. Thus, awards in 1991 and 1996 cannot serve to establish the petitioner’s sustained acclaim in 2004, when the petition was filed.

*Published materials about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

The petitioner initially submitted an article entitled “Being Famous in One Night,” which appeared in the December 20, 1991 issue of *Shanghai Culture and Art Daily*. The petitioner also submitted news coverage of events in which the petitioner participated or competitions in the 1990’s in which the petitioner is mentioned as a winner. The most recent competition, in 1997, is a regional U.S. competition limited to women from China. The petitioner also submitted a 2004 interview with her that appeared in the *Asahi Times*. Initially, the petitioner did not submit a complete translation of the interview.

In response to the director’s request for evidence of the circulation of publications that have featured the petitioner, prior counsel asserted that *Shanghai Culture and Art Daily* has a circulation of 500,000 and that the *Asahi Times* is “one of the best selling entertainment newspaper[s] published in China, Japan and other Asian Countries.” The petitioner submitted the above-mentioned letter from Ms. [REDACTED] asserting that *Shanghai Culture and Art Daily* has a circulation of 500,000.

The director concluded that most of the materials were not primarily about the petitioner. The director acknowledged the statement by Ms. [REDACTED] regarding the circulation of *Shanghai Culture and Art Daily* but noted that Ms. [REDACTED] is not affiliated with that publication.

On appeal, the petitioner submits a letter from [REDACTED], the Marketing Director of *Shanghai Culture and Art Daily*. Mr. [REDACTED] indicates that the publication was established in 1983, enjoys a circulation of over 500,000 daily and has “continued to gain national exposure and recognition.” The petitioner also submitted a complete translation of the interview in the *Asahi Times* but no evidence of its circulation. Counsel continues to reference the brief mentions of the petitioner in other media.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be about the alien. The only such materials in the record are the articles in *Shanghai Culture and Art Daily* and the *Asahi Times*. The record contains no circulation data for the *Asahi Times*. Mr. [REDACTED] letter is ambiguous as to whether *Shanghai Culture and Art Daily* enjoyed a national circulation in 1991, when it featured the petitioner. Regardless, a single article in China featuring the petitioner in 1991 is not evidence of *sustained* acclaim in 2004, especially as the petitioner had been working in the United States for seven years at that time.

In light of the above, the petitioner does not meet this criterion.

*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 submitted an invitation from the China Ministry of Culture to serve as a panelist for the 1997 Fifth New Silk Road Super Model Grand Competition. [REDACTED], Executive Director of the Massive Culture and Art Promotion Office, Ministry of Culture, asserts that the ministry invited “well-known designers, critics and very famous international models to serve [on] the nine member panel.” In response to the director’s request for additional information about the petitioner’s record as a judge, prior counsel asserts that Ms. [REDACTED] attests to the petitioner’s judging of two competitions. Ms. [REDACTED] makes no such assertion. The petitioner submitted a new letter from [REDACTED], Fashion Director for [REDACTED]. Ms. [REDACTED] asserts that the magazine began hosting fashion shows in 2000 and that the petitioner judged the show in Shanghai in 2001. Ms. [REDACTED] asserts that panelists must be the winner of a fashion show at the provincial level or above, have been the spokesperson for world famous brands for at least five years and have experience in modeling work abroad.

The director concluded that while the letter from Ms. [REDACTED] was indicative of “some measure of acclaim,” the remaining evidence relating to this criterion was not “indicative of sustained national or international acclaim.” On appeal, counsel reiterates the previous evidence and asserts that the petitioner has “consistently participated as a judge of the work of others in the modeling industry.”

The record reflects that the petitioner judged a competition in 1997 and a fashion show in 2001, both in China. We are not persuaded that these responsibilities are indicative of her sustained acclaim in 2004 when she filed the petition. At that time the petitioner had been working in the United States for the past seven years.

In light of the above, we are not persuaded that the petitioner 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 and in response to the request for additional evidence, prior counsel asserted that the petitioner played a leading or critical role for the Shanghai Garment Corporation, Meters Bonwe Shanghai Company, the Chinese modeling industry in general, the Ministry of Culture, Neiman Marcus, Bally and Elite Model Management Company. The petitioner submitted reference letters in support of prior counsel's claims.

The director stated that the petitioner must establish a leading or critical role for a specific organization to meet this criterion and concluded that the petitioner had not done so. On appeal, counsel asserts that the petitioner has been featured in marketing campaigns for major companies, is one of the "top models" with Elite Modeling Agency, advises ██████████ as a member of its Advisory Body, contributed to the commercial success of ██████████, is an asset to ██████████ and serves as a spokeswoman for various products. Counsel relies on the reference letters submitted in support of the petition.

Counsel does not challenge the director's conclusion that vague claims of playing a critical role for an industry are not relevant to this criterion and we concur with the director. At issue for this criterion are the role the petitioner was hired to fill and the reputation of the organization that hired her.

It is inherent to the modeling profession to appear in marketing campaigns. Appearing in a successful marketing campaign for a major company does not constitute a leading or critical role for that company. Counsel does not sufficiently explain how the petitioner served as a spokesperson for products beyond appearing in marketing campaigns.

Initially, ██████████ Director of Runway for Elite Model Management, asserts that the petitioner has worked for Elite Model Management for six years, is an outstanding fashion model, participates in every major fashion show in Chicago, is popular and in demand and has a booking rate of \$100 per hour. On appeal, ██████████ owner and president of Elite Modeling Management, asserts that the petitioner is one of the top models of the industry and affirms her use in "every major fashion show and many unique and internationally renowned events." Ms. ██████████ further asserts that the petitioner is one of Oprah's favorite models and the only Asian model regularly featured on the show. The record does not establish that the petitioner is employed in a more critical capacity than the numerous other models represented by Elite Model Management. Nothing in the record suggests that a \$100 per hour

booking rate is indicative of a leading or critical role with Elite Model Management. Thus, the petitioner has not established her leading and critical role with this agency beyond the obvious need of a modeling agency to represent marketable models.

Ms. [REDACTED] asserts that in 2001, she invited the petitioner to become a member of the Advisory Body of *Elle (China)*. As a result of the petitioner's suggestion, the magazine opened a salon in Shanghai. Ms. [REDACTED] discussion is too vague to establish the significance of the petitioner's role for the magazine as a whole through serving on the Advisory Body, especially given the petitioner's apparent residence and employment in the United States since 1997.

Mr. [REDACTED] asserts that the petitioner contributed to the success of Meters Bonwe's "Madam" dress suit. Once again, the petitioner purportedly worked for Meters Bonwe in 2001, at which time she appears to have been residing and working in the United States. Without additional information confirming exactly how long the petitioner was in Shanghai and able to work for Meters Bonwe during 2001 and an organizational chart of Meters Bonwe demonstrating the significance of a fashion model in the company's hierarchy, we cannot conclude that the petitioner's role for this company was leading or critical. Moreover, while Mr. [REDACTED] attests to the reputation of Meters Bonwe, the petitioner did not submit supporting evidence of that attestation, such as media coverage of the company.

Finally, [REDACTED] is a large department store chain. The petitioner's appearance as a model for the store in Chicago is not evidence of the petitioner's leading or critical role for the chain as a whole.

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