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U.S. Department of Homeland Security  
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Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

B2

FILE:

[REDACTED]  
LIN 07 019 50049

Office: NEBRASKA SERVICE CENTER

Date: DEC 30 2008

IN RE:

Petitioner:  
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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center and is now before the Administrative Appeals Office (AAO) 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 necessary to qualify for classification as an alien of extraordinary ability. The director also found that the petitioner had not established she is one of that small percentage who have risen to the very top of her field of endeavor.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and has presented comparable evidence of her extraordinary ability pursuant to 8 C.F.R. § 204.5(h)(4).

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* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

This petition, filed on October 2, 2006, 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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. 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). The petitioner has submitted evidence pertaining to 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.*

The petitioner submitted a June 12, 1996 article about her in *The Stittsville News* (Southwest Ottawa-Carleton) stating that she "placed second overall" in competition "with 51 other young models in her category" at the Canadian Model and Talent Convention in March 1996.<sup>2</sup> The record does not include evidence showing that the petitioner received a prize or award for placing second. Further, there is no information in the article or from the competition organizers specifically identifying the category in which the petitioner placed second.

With regard to an award won by the petitioner in an amateur or "young model" competition, we do not find that such an award indicates that she "is one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). There is no indication that the petitioner faced competition from throughout her field, rather than limited to her approximate age group within the field. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.<sup>3</sup> Likewise, it does not follow that a young model who

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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. On appeal, counsel asserts that the petitioner meets the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(iii), (v), (vii) and (viii).

<sup>2</sup> The petitioner was born on August 2, 1981 and was fourteen years old at the time of this competition. The article notes that "490 other competitors" participated in the convention.

<sup>3</sup> While we acknowledge that a district court's decision is not binding precedent, we note that in *Matter of [REDACTED]* 1995 WL 153319 at \*4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of [REDACTED] ability with that of all the hockey players at all levels of play; but rather, [REDACTED] ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this

has had success in a competition for amateurs should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.” Further, the plain language of this regulatory criterion requires “nationally or internationally recognized prizes or awards for excellence in the field of endeavor” and it is the petitioner’s burden to establish every element of this criterion. In this instance, there is no evidence showing that the competition in which the petitioner placed second resulted in a nationally or internationally recognized award and that it was open to experienced models in her field of endeavor (including professionals) rather than limited to “young models” seeking “future employment prospects.”

The petitioner also submitted a photograph of her in the June 2, 2000 issue of the *Ottawa Sun* that was accompanied by a caption stating: “What a hoot! [The petitioner] takes a victory stroll last night after winning the Miss Hooters Ottawa Swimsuit Competition in Bells Corners.” The petitioner’s victory in the Miss Hooters Ottawa Swimsuit Competition reflects local or regional recognition rather than national or international recognition.

In this case, there is no evidence showing that the preceding honors are nationally or internationally recognized prizes or awards for excellence in the petitioner’s field. As such, the petitioner has not established that she meets this criterion.

*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.*

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local or regional publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>4</sup>

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district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court’s reasoning indicates that USCIS’ interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

<sup>4</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual’s reputation outside of that county.

The petitioner submitted a June 27, 1996 article about her and two other aspiring models in the *Ottawa Sun*, but there is no evidence (such as circulation statistics) showing that this regional publication qualifies as a form of major media. The article states:

With supermodels replacing movie stars as the new media royalty, the dream of joining the ranks of the svelte and the overpaid is all the more glamorous . . . and all the more elusive.

Ottawa, with its small modeling market, forces most would-be models to leave home to pursue their aspirations.

\* \* \*

That's where people like [redacted] [the petitioner] and [redacted] come into play. All are local faces charting a path toward one of the most competitive industries.

\* \* \*

Still nothing is enough to keep these young women from pursuing the dream.

"I want to pay my mom back all the money she's put into my career and I'll try the Canadian market. . . ." says [the petitioner] enthusiastically.

As discussed, the petitioner also submitted a June 12, 1996 article about her in *The Stittsville News* which serves the Southwest Ottawa-Carleton area. There is no evidence showing that this newspaper qualifies as a form of major media. The article states: "[The petitioner] . . . says that she hopes to continue in her modeling career, but is concerned that at five feet seven and a half inches, she may not reach the height normally required in the professional modeling field." We note that the content of the preceding newspaper articles does not indicate that the petitioner "is one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2).

The petitioner submitted evidence showing that her photograph has appeared with articles in magazines such as *US Weekly*, *Trump World*, and *Best Body*. On appeal, counsel acknowledges that the preceding articles which included the petitioner's photograph "were concededly not about [the petitioner] herself." The petitioner also submitted evidence showing that her photograph or image was used on the cover of romance novels and in advertising material for Axe Body Spray, Gillette's Right Guard men's deodorant, Hooters, and Estee Lauder's Mustang fragrance. As the plain language of this regulatory criterion requires that the published material be "about the alien" including "the title, date, and author of the material," we cannot conclude that the preceding evidence meets this requirement. We note that it is inherent to the profession of modeling that one's image will appear in print. Glamour shots and advertisements are not published materials about the petitioner; they are the result of being able to work in her field.

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

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

We acknowledge the petitioner's submission of several reference letters praising her talent as a model and discussing her activities in the field. Talent and employment in one's field, however, are not necessarily indicative of original artistic contributions of major significance. The record lacks evidence showing that the petitioner has made original contributions that have significantly influenced or impacted her field.

states that he directed and photographed Macy's commercials in which the petitioner appeared. He further states: "The fact that [the petitioner] was selected to appear in such a large campaign for such a major department store with such a large diverse consumer base, shows her mass appeal. . . . The footage from the shoot looks great and the finished product exceeded everyone's expectations."

a make up artist, states:

I have had the privilege of working with [the petitioner] on many occasions. She is always a pleasure to work with. I respect her and her work immensely. She is professional, punctual, prepared, and always excited to work. Her look is in high demand because of her versatility and classic beauty. It is easy to bring out [the petitioner's] naturally beautiful features.

an acting studio owner who teaches classes and workshops, states:

I have taught [the petitioner] acting for over 2 years. She has regularly attended all three of my classes and intensive workshops. [The petitioner] has also worked for me as an intern in exchange for classes.

\* \* \*

[The petitioner's] talent combined with her beauty and drive have made her a model of extraordinary ability. She has received work in all media outlets worldwide. Having appeared in magazines, on billboards, in catalogues, on television and in films. In fact [the petitioner] has repeatedly been selected to appear in national television commercials for major companies including Macy's, Comedy Central, Caesar's Resorts, Hooter's [sic] and in infomercials for various products.

President and Owner, Eye5, an event marketing agency, states: "I have had the privilege of working with [the petitioner] since 2003. She has been one of my top requested models and spokesmodels. . . . Her look is extremely versatile and has led to her tremendous success to date and impressive body of work."

Co-founder, Hooters Restaurants, states:

The influence of [the petitioner's] charismatic personality made her stand out among her peers, which has secured her position as one of our top models and Hooters celebrities, competing in our international swimsuit pageants, appearing and touring on an array of top quality media and events such as television, radio, billboards, charity events, menus, buses, etc. [The petitioner] has had four consecutive featured appearances in the Hooters Calendar, which has a circulation of nearly half a million. . . . She has also been featured in our Hooters Magazine.

an actor, television host, and musician, states:

I met [the petitioner] in [redacted] acting class. Having seen her ability to present herself, adapt to any given situation, deal with pressure and express herself, I have no hesitation in stating that she is extremely talented.

\* \* \*

I am familiar with [the petitioner's] modeling work, and am very impressed. Her portfolio is a great example of her talent and versatility.

Publisher and Photographer, Provident Creative, states:

I have known [the petitioner] since 2000, and have worked with her on countless occasions. I have photographed her for a national Hooters billboard, taxi-top signage, calendars, catalogs, and magazines. She has also traveled across the United States on a national Hooters Calendar tour and made many special appearances on various media outlets, such as radio and television.

[redacted] President of the Sports Book, a sports modeling agency, states:

Through my agency, [the petitioner] booked a job with "Walking for Fitness," which is an internationally sold fitness book that can be found at any major book retailer. For this job, [the petitioner] a featured model, has to pose in a variety of difficult athletic positions and demonstrate various exercises. [The petitioner] is one of the select few models who possessed both the modeling abilities and the athletic abilities necessary for this kind of demanding job.

[redacted] a professional photographer, states:

I have worked with [the petitioner] twice. The first time at the International Eyewear Expo where she was hired by Revolution Eyewear to model the sunglasses and take pictures with the attendees and the celebrity guests . . . . The second time was when I shot her for the Hustler Lingerie campaign. She was hired for three days and was shot in countless outfits which will appear in the catalogue, on the website, on packaging and in advertisements.

Senior Vice President and Senior Creative Director, BBDO New York, an advertising agency, states:

My experience and knowledge of [the petitioner] began on a commercial shoot for Gillette Right Guard, where she was selected as a principal model for the national ad campaign, which is currently running across the country for a year with the possibility of running for an additional year. A diverse and numerous array of models auditioned for this sought after position. In the end, the client, Gillette, picked [the petitioner] for the look and qualities she possessed. Her unique and very marketable look combined with her athletic physique fit the criteria for this advertisement, as it has for many other jobs. For the client, the overall experience was pleasing and [the petitioner's] ability to take direction effectively made the process effortless.

a model, states:

I have modeled with [the petitioner] on many occasions such as for Jewelry, Fight Night, the book release, the Sports Illustrated Swimsuit party, and La Dolce Vita charity event, among others. I have witnessed her working and know from personal experience the level of professionalism required for these high-profile jobs.

an anchor and reporter for ESPN, states:

Professionally, [the petitioner] and I worked together in October of 2005. She played a key role in one of my parodies for Sunday NFL Countdown on ESPN. [The petitioner] was a pleasure to work with and we were fortunate to have a young actress/model such as her become involved in our project. She was able to master her part in the production on short notice.

President, a talent agency in New York that represents actors and models for commercial print and television, states:

I have been representing [the petitioner] since 2004, and I am constantly impressed with her exceptional work. The agency has a web site with the model pictures posted and [the petitioner] is repeatedly selected by our clients for direct bookings and auditions.

She has been recognized in a broad spectrum of media outlets. With regard to television, she has appeared in national television commercials and infomercials. Examples of this work include multiple Hooters commercials, a Bun'n'Thig Max infomercial, a Comedy Central commercial, a Caesar's Resort commercial and an infomercial for NTS7 Car Wax and Polish.

a freelance photographer, states:

I have photographed [the petitioner] on numerous occasions, including the cover of the 2003 Hooters international calendar, the back cover of the 2002 Hooters international calendar, and the Hooters international magazine. As a principal photographer for Hooters, I shoot countless models a year for their calendar. It is a prestigious honor for these models to be featured in the Hooters calendar, and only the models of the highest caliber, who possess a captivating beauty that Hooters feels will entice people to purchase the calendar, are selected to appear.

With regard to the petitioner's achievements as a model, the letters of recommendation do not specify exactly what the petitioner's original artistic contributions have been, nor is there an explanation indicating how any such contributions were of major significance in her field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner's modeling has earned the admiration of those with whom she has worked, there is nothing to demonstrate that her modeling has had major significance in the field at large. For example, the record does not indicate the extent of the petitioner's influence on other models nationally or internationally, nor does it show that the field has somehow changed as a result of her work.

In this case, the reference letters submitted by the petitioner are not sufficient to meet this regulatory criterion. We note that the above letters are all from individuals who have worked or interacted with the petitioner. While such letters can provide important details about the petitioner's role in various projects, they cannot form the cornerstone of a successful extraordinary ability claim. The statutory requirement that an alien have "sustained national or international acclaim" necessitates evidence of recognition beyond the alien's immediate acquaintances. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Further, USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 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 of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of an individual who has sustained national or international acclaim at the very top of the field. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout her field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that she meets this criterion.

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

We withdraw the director's finding that the petitioner meets this regulatory criterion. Regarding the evidence of the petitioner's promotional appearances, print advertisements, and television appearances, they are not artistic exhibitions or showcases. Rather, their purpose is to market products and services or to provide information and entertainment. The plain language of this regulatory criterion indicates that it applies to visual artists (such as sculptors and painters) rather than to models such as the petitioner. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. Appearing in a print advertisement, on television, or at a special event is evidence that a 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. The petitioner's evidence is not comparable to the type of exclusive artistic exhibition or showcase contemplated by the regulations.

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

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

In order to establish that she performed in a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment.

On appeal, counsel asserts that the petitioner "has played a primary role in the publicity campaigns for several well-renowned companies. In addition . . . , [the petitioner] is also a personality for the web-based feeds at [www.locatestock.com](http://www.locatestock.com)." There is no evidence showing that this internet site has a distinguished reputation or that the petitioner performed in a leading or critical role for the company that owns it.

The letter from [REDACTED] states that the petitioner was one of his company's "top models and Hooters celebrities." He further states: "Instrumental in the tremendous success the Hooters concept has enjoyed, our Hooters models such as [the petitioner] have enabled Hooters to continue to rank high amongst the industry's growth leaders." While the petitioner and numerous other models have contributed to the success of the Hooters concept, there is no evidence showing that her individual role for the company was leading or critical. For example, there is no evidence showing that the company's market share or sales revenue significantly increased as result of the petitioner's advertising material. Further, aside from the self-serving information in [REDACTED] letter, the record does not include evidence showing that his company has a distinguished reputation.

The petitioner submitted evidence showing that her photograph or image was used on the cover of romance novels and in advertising material for Axe Body Spray, Gillette's Right Guard men's deodorant, and Estee Lauder's Mustang fragrance. The record, however, does not include letters of support from the preceding companies indicating that the petitioner's role for them was leading or critical, or supporting evidence showing that they have distinguished reputations. We acknowledge that advertising is important to any company and that 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 has played a critical role for the company featured in the advertisement. For example, the petitioner has not submitted evidence that an increase in sales correlated with her appearance in the preceding companies' advertisements.

With regard to the recommendation letters from talent agencies for which the petitioner has worked such as Eye5, the Sports Book, and Gilla Roos Ltd., there is no supporting evidence showing that these agencies have distinguished reputations. Further, the evidence submitted by the petitioner does not establish that her role for them was leading or critical. There is no evidence demonstrating how the petitioner's role differentiated her from the other models utilized by these agencies, let alone their senior management. For example, there is no evidence showing the percentage of revenue earned by the petitioner's bookings in comparison to that of the other models the agencies represented.

In this case, the documentation submitted by the petitioner shows that she performed admirably on the modeling projects assigned to her, but it does not establish that she was responsible for the preceding organizations' success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim. As such, the petitioner has not established that she meets this criterion.

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

In response to the director's request for evidence, the petitioner submitted an agreement for modeling services with Aramis and Designer Fragrances dated July 1, 2007, a "Deal Memo" for performing services for Madvision Entertainment Corporation dated August 1, 2007, and a "Performer Agreement" with NBC Universal Television Studio Digital Development LLC dated July 2007. The preceding agreements were executed subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); see *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider this evidence in this proceeding. Nevertheless, the plain language of this regulatory criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that her compensation was significantly high in relation to others in her field.

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

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). Having some degree of national or international exposure as a model is not necessarily

indicative of the type of sustained national or international acclaim for recognized achievements in the field as contemplated by the statute and regulations.

On appeal, counsel argues that several of the regulatory criteria “are completely inapplicable to the field of modeling” and therefore USCIS should consider comparable evidence of the petitioner’s extraordinary ability. For example, counsel asserts that “[t]here is no evidence that there are any lesser prizes for models.” The unsupported assertions of counsel 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). Contrary to counsel’s observation that models do not receive prizes, the evidence submitted by the petitioner includes articles discussing *Trump World* magazine’s Fresh Face Contest prize and the Canadian Model and Talent Convention competition.

The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of “comparable evidence,” but only if the ten criteria “do not readily apply to the beneficiary’s occupation.” The regulatory language precludes the consideration of comparable evidence in this case, as there is no evidence that eligibility for visa preference in the petitioner’s occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, counsel has already argued in this proceeding that the petitioner meets four of the ten criteria at 8 C.F.R. § 204.5(h)(3). The evidence of record indicates that additional regulatory criteria can be applied to petitioner’s field, including 8 C.F.R. §§ 204.5(h)(3)(i) and (ix). Further, the petitioner’s acting roles relate directly to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(x). Where an alien is simply unable to meet three of the regulatory criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

Nevertheless, counsel argues that the petitioner’s “prominent employment and testimonials from independent experts” should have been considered as comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4). This evidence has already been addressed under the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(v) and (viii). Further, there is no evidence showing that the documentation the petitioner requests re-evaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of her field. While recommendation letters can provide useful information about an alien’s qualifications or help in assigning weight to certain evidence, such letters are not a substitute for objective evidence of the alien’s achievements and recognition as required by the statute and regulations. The nonexistence of required evidence creates a presumption of ineligibility. **8 C.F.R. § 103.2(b)(2)(i)**. Further, the classification sought requires “extensive documentation” of sustained national or international acclaim. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing the statute provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Primary evidence of achievements and recognition is of far greater probative value than the opinions of one’s professional acquaintances.

Review of the record does not establish that the petitioner has distinguished herself 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 is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

In response to the director's request for evidence and again on appeal, counsel requests that the petitioner also be considered for classification as an alien of exceptional ability pursuant to section 203(b)(2) of the Act. USCIS, however, is statutorily prohibited from providing a petitioner with multiple adjudications for a single petition with a single fee. The initial filing fee for the Form I-140 covered the cost of the director's adjudication of the I-140 petition under section 203(b)(1)(A) of the Act. Pursuant to section 286(m) of the Act, 8 U.S.C. § 1356, USCIS is required to recover the full cost of adjudication. In addition to the statutory requirement, Office of Management and Budget (OMB) Circular A-25 requires that USCIS recover all direct and indirect costs of providing a good, resource, or service.<sup>5</sup> If the petitioner now seeks classification as an alien of exceptional ability pursuant to section 203(b)(2) of the Act, then she must file a separate Form I-140 petition requesting the new classification. There is no statute, regulation, or standing precedent that permits a petitioner to change the classification of a petition once a decision has been rendered by the director. In addition, the Ninth Circuit has determined that once USCIS concludes that an alien is not eligible for the specifically requested classification, the agency is not required to consider, *sua sponte*, whether the alien is eligible for an alternate classification. *Brazil Quality Stones, Inc., v. Chertoff*, Slip Copy, 2008 WL 2743927 (9<sup>th</sup> Cir. July 10, 2008).

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.

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<sup>5</sup> See <http://www.whitehouse.gov/omb/circulars/a025/a025.html>.