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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: **AUG 27 2015**



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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner seeks classification as an individual “of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), which makes visas available to foreign nationals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. The petitioner’s experience includes graphic and fashion design. The director determined that the petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria.

On appeal, the petitioner submits a statement with new documentary evidence. For the reasons discussed below, we find that the petitioner has submitted qualifying evidence that satisfies at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). The evidence in the aggregate is consistent with national or international acclaim. As such, the petitioner has demonstrated that she is one of the small percentage who are at the very top in the field of endeavor, and that she has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will sustain the petitioner’s appeal.

I. LAW

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

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien’s entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2). The regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate the petitioner’s sustained acclaim and the recognition of the petitioner’s achievements in the field through evidence of a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then a petitioner must submit sufficient qualifying evidence that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The submission of evidence relating to at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS*, 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming USCIS’ proper application of *Kazarian*), *aff’d*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the “truth is to be determined not by the quantity of evidence alone but by its quality” and that USCIS examines “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true”).

II. ANALYSIS

A. Evidentiary Criteria¹

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

The director determined that the petitioner submitted an article titled, “[REDACTED]” that appeared on the website of [REDACTED] and was about the petitioner, relating to her work in the field. The director, however, noted that the petitioner did not submit evidence to demonstrate that this website qualifies as a professional or major trade publication or other major media. On appeal, the petitioner submits circulation and distribution statistics demonstrating that the publication is major media. Therefore, the petitioner has established that the evidence meets the plain language requirements of this criterion.

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

The director determined that the petitioner met the requirements of this criterion based on two letters that discuss the display of the petitioner’s work at two events in 2004. The record contains letters

¹ We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner claims to meet or for which the petitioner has submitted relevant and probative evidence.

supported by fliers for curated events listing the petitioner as an artist. Accordingly, the petitioner has satisfied this criterion.

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

A leading role should be apparent by its position in the overall organizational hierarchy and the role's matching duties. A critical role is evident from the petitioner's impact on the organization or the establishment's activities.² Initially, the petitioner asserted that she provides web design and administrative services for "prominent businesses and charitable organizations," including [REDACTED]

[REDACTED] The petitioner next explained that she has been "a very valuable contributor and collaborator" for several entities. She submitted evidence relating to 16 entities. In the request for evidence (RFE), the director concluded that the letters of support confirmed the petitioner's talent, but did not establish her leading or critical role. In response, the petitioner focused on her work for the [REDACTED]

and [REDACTED] The director considered the new evidence relating to [REDACTED] and concluded that it did not establish that the petitioner's role was leading or critical for that company. On appeal, the petitioner relies on her work for the same three companies and submits an additional letter dated January 28, 2015, from [REDACTED] Chief Executive Officer of [REDACTED] the parent company of [REDACTED]

The petitioner submitted a letter in the initial filing from [REDACTED] Creative Director at [REDACTED] [REDACTED] With respect to the petitioner's work in graphic design, [REDACTED] indicates that, since he hired the petitioner the previous year, she cooperated well with the marketing department and carefully researched online marketing trends to create a sophisticated and user-friendly website. He also indicates the petitioner's design has worked to upscale the brand image value and has attracted a larger number of individual and organizational clients who have accessed the website internationally in the past five years.

Within the RFE response, the petitioner provided a November 7, 2014 letter from [REDACTED] in which he indicated that the petitioner created a website for [REDACTED] which has resulted in an improvement of their brand image, and a substantial increase in traffic to their website over recent years. In addition to her graphic design duties, [REDACTED] asserts the petitioner performed in a critical role in the company's design department and that she is responsible for the company's substantial rise in the industry and recognition of the [REDACTED] label, which enabled the company to sign a celebrity spokesperson in 2012 and top runway fashion model in 2014. [REDACTED] supports this assertion by stating: "Based on her innovations that boosted our Brand image, she renewed our website and subsequently our online presence and access rates." [REDACTED] also discusses the petitioner's

² While neither the regulation nor precedent speak to what constitutes a distinguished reputation, Merriam-Webster's online dictionary defines distinguished as, "marked by eminence, distinction, or excellence."² Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden*, 149 U.S. 304, 306 (1893).

recruiting, marketing, and managing responsibilities. Based on the foregoing, the petitioner has submitted evidence that meets the plain language requirements of this criterion.

B. Summary

For the reasons discussed above, the petitioner has submitted the requisite initial evidence, in this case, evidence that satisfies three of the ten regulatory criteria.

III. FINAL MERITS DETERMINATION

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

The petitioner’s work has appeared at curated events in Japan. She has been covered in major media in Japan, discussing her work in New York. She has performed in a leading or critical role for a major denim designer with an international reputation, contributing to their fashions, website, marketing and management. Other denim manufacturers have copied her pocket embroidery designs. Considered in the aggregate, as well as other evidence of record, the petitioner has established her national or international acclaim by a preponderance of the evidence.

In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has met that burden.

ORDER: The appeal is sustained.