



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF R-P-D-S-

DATE: MAR. 10, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a fashion model, seeks classification as an individual “of extraordinary ability.” *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be sustained.

The classification the Petitioner seeks 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 Director determined that the Petitioner had not met the initial evidentiary requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires a one-time achievement or satisfaction of at least three of the ten regulatory criteria.

On appeal, the Petitioner submits a brief, affirming that he meets at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). He further states that he is one of the small percentage who is at the very top in the field of endeavor, and that he has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). For the reasons discussed below, the Petitioner has established his eligibility for the classification sought.

**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,

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- (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 has risen to the very top of the field of endeavor. 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 sustained acclaim and the recognition of his achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this documentation, then he must provide sufficient qualifying evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Satisfaction of 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 documentation is first counted and then, if fulfilling 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 U.S. Citizenship and Immigration Services' (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 Criteria

The Director concluded that the Petitioner met the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii). The record supports this finding. [REDACTED] named the Petitioner as one of its [REDACTED] men alive, in the [REDACTED] category, and published his biographic information, noting that "[a]long with [REDACTED] [he] is the [REDACTED] of [REDACTED] modeling." Online information from the publication in the record indicates that it has 44 million readers. The Petitioner supplied articles about himself in [REDACTED] including information about the publications themselves consistent with major media. Accordingly, the Petitioner has provided published material about him in professional or major trade publications or other major media, relating to his work in the field for which classification is sought.

The Director also found that the Petitioner met the display criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(vii). The record supports this conclusion. The Petitioner has appeared prominently in a number of advertising campaigns and fashion magazine editorials. Some of the campaigns and

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editorials credited the Petitioner, specifically listing his name, as their featured model. Accordingly, the Petitioner has submitted evidence of the display of his work in the field at artistic exhibitions or showcases.

In addition, the Petitioner has filed sufficient documentation showing that he meets the high salary or other significantly high remuneration criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(ix). According to [REDACTED] an accountant for the modeling agency [REDACTED] the Petitioner earned €164,053 between 2011 and 2013 through that modeling agency, averaging €54,684.33 or \$75,385.60 per year.<sup>1</sup> [REDACTED] Revenues Report provided that the Petitioner's gross income was approximately \$69,000 for 15 days of work in 2010 and approximately \$32,000 for 11 days of services in 2011 through the [REDACTED] agency. [REDACTED] Managing Director, [REDACTED], maintained that the Petitioner earned \$48,000 between 2012 and 2014 through his agency. [REDACTED] Director of [REDACTED] indicated that his "day rate ranges between \$15,000 and \$20,000." She noted that the Petitioner "has earned more than €64,000 by being the face of [REDACTED] [REDACTED]" and "€11,000 plus €24,000 in royalties for the [REDACTED] campaign, and €10,833 for a photoshoot with [REDACTED] in China." [REDACTED] a Photo Production Manager of a creative marketing agency, [REDACTED] stated that the Petitioner "has earned salaries far in excess of the vast majority of male models." An online printout from the Bureau of Labor Statistics reflected that in 2014, the annual wage of a model is \$49,630 at the 90th percentile. The evidence demonstrates that the Petitioner's annual income has been at or above the 90th percentile. The record therefore establishes that the Petitioner has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

## B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will conduct a final merits determination that considers the entire record in the context of whether or not he has demonstrated: (1) that he enjoys a level of expertise indicating that he is one of a small percentage who have risen to the very top of the field of endeavor, and (2) that he has sustained national or international acclaim and that his achievements have been recognized in the field of expertise. § 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. Based on the filings and consistent with *Matter of Price*, 20 I&N Dec. 953 (Act. Assoc. Comm'r 1994), the Petitioner has made the requisite showing.

The published materials in the record verified the Petitioner's achievements as a model. For example, [REDACTED] named him one of its [REDACTED] alive, in the [REDACTED] category. The publication noted that he was [REDACTED] modeling," that he had "posed for [REDACTED] and was featured "in the print campaign for [REDACTED] [REDACTED] stated that the Petitioner was [REDACTED] and "star[red] in [REDACTED] and

<sup>1</sup> According to an online resource, €54,684.33 was equivalent to \$75,385.60 on December 31, 2013. *See* <http://www.oanda.com/currency/converter/>, accessed on January 12, 2016, and incorporated into record of proceeding.

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ad campaigns.” A [redacted] article, [redacted] [Petitioner],” referred to the Petitioner as “a [redacted] male model,” who had been featured in the advertising campaigns of [redacted] by [redacted] [with] [redacted] with [redacted] with [redacted] [and] [redacted] Some of the print advertising campaigns credited the Petitioner as their featured model, specifically listing his name. The [redacted] article also confirmed that the Petitioner was photographed for published fashion magazine editorials, including those from [redacted] with [redacted] with [redacted] with [redacted] with [redacted] [that was] photograph[ed by] [redacted]

Not only has the Petitioner worked for well-known international fashion brands and starred in their advertising campaigns, some of the Petitioner’s references noted that his services have been critical to the success of the fashion brands. For example, [redacted] a Press Attaché for [redacted] “a world-renowned manufacturer of luxury goods,” provided that the Petitioner’s work “has been an integral part of driving [redacted] sales and securing and maintaining [its] position in the competitive fashion industry” and that he “is a valuable brand ambassador.” [redacted] Image Director, [redacted] the menswear division of [redacted] fashion design house, stated that the brand has utilized the Petitioner “for advertising campaigns because he is one of the most talented models in the industry” and that he has “played an immensely critical role” for the brand.

Moreover, according to a number of reference letters and published materials, in [redacted], the Petitioner won a national modeling contest in [redacted] the [redacted] competition. [redacted] article and another article entitled “The Handsome [Petitioner]” in [redacted] indicated that the Petitioner won the event that attracted 60,000 male participants in [redacted] Owner and Director of [redacted] Management [redacted] which “represents the rights of the contest [redacted] formerly [known as the] [redacted] confirmed that in 2001, the Petitioner won the national contest, which launched his modeling career. An archived page from [redacted] noted that the Petitioner is “the [redacted] as well as one of the burnished stunners in the [redacted] and referred to him as “the very [redacted] star on the scene.”

Furthermore, the record demonstrates that the Petitioner has been represented by some of the most prestigious and well-known international modeling agencies, including [redacted] the only Parisian agency exclusively representing male models; [redacted] “one of the most prominent talent management agencies in the world”; [redacted] an agency that represents “only international celebrities, top models and select image models in the fashion and advertising markets”; and [redacted] one of the leading modeling agencies in Germany. Information from [redacted] indicated that these are top modeling agencies in the fashion industry.

Finally, the Petitioner has submitted reference letters attesting to his international acclaim as a model. A September 2014 letter from a legal representative for [redacted] stated that the Petitioner “is renowned in the luxury fashion industry and in addition to his work with elite photographers, designers and celebrities he has garnered impressive industry accolades including winning the [redacted] contest, being named one of the [redacted] by [redacted]

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\_\_\_\_\_ and snagging the \_\_\_\_\_ spot on \_\_\_\_\_” \_\_\_\_\_ Casting Director of \_\_\_\_\_ which publishes the fashion magazine \_\_\_\_\_ maintained that the Petitioner “is a well-known leader among fashion models,” he is “truly a pioneer in the modeling industry as one of the world’s most prominent male models,” and that he “has remained at the highest echelons of his field for more than a decade.” Online material provided that \_\_\_\_\_ is an international publication that “has become a reference in men’s fashion.” \_\_\_\_\_ a fashion photographer whose work has been published in \_\_\_\_\_, and \_\_\_\_\_ “confirm[ed] without hesitation that [the Petitioner] is unquestionably a model of extraordinary ability who has reached the very pinnacle of the model industry.”

The record in the aggregate, including published materials, the prestige and significance of the Petitioner’s work, the top modeling agencies that have represented the Petitioner, and the reference letters that attested to the Petitioner’s acclaim, confirm that the Petitioner enjoys a level of expertise that is consistent with a finding that he is one of a small percentage who have risen to the very top of the field of endeavor, that he has sustained national or international acclaim, and that his achievements have been recognized in the field of expertise. *See* § 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. Accordingly, the Petitioner has established by a preponderance of the evidence that he is eligible for the exclusive classification sought.

### III. CONCLUSION

The materials supporting a petition seeking extraordinary ability must establish that the Petitioner has achieved sustained national or international acclaim and is one of the small percentage who have risen to the very top of his or her field of endeavor. The Petitioner has submitted qualifying evidence under at least three of the ten evidentiary criteria and has documented that he has achieved a “level of expertise indicating that [he] is one of that small percentage who have risen to the very top of the field of endeavor” and “sustained national or international acclaim.” The Petitioner’s achievements have been recognized in his field of expertise. He has shown that he seeks to continue working in the same field in the United States and that his entry into the United States will substantially benefit prospectively the United States. Therefore, the Petitioner has demonstrated his eligibility for the benefit sought under section 203 of the Act.

In visa petition proceedings, it is the Petitioner’s burden to establish eligibility for the immigration benefit sought. § 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.

Cite as *Matter of R-P-D-S-*, ID# 15762 (AAO Mar. 10, 2016)