



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

MATTER OF C-D-A-R-

DATE: MAR. 16, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a fashion designer, seeks classification as an individual of extraordinary ability in arts. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those 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 of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not satisfied any of the ten initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits additional evidence and contends that she meets nine criteria.

Upon *de novo* review, we will sustain the appeal.

#### I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability 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." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence

requirements. First, a petitioner can demonstrate a one-time achievement (that is a major, internationally recognized award). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

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 Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *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 U.S. Citizenship and Immigration Services (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”). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2)-(3).

## II. ANALYSIS

The Petitioner is a fashion designer. As she has not established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

### A. Evidentiary Criteria

The Director found that the Petitioner did not meet any of the ten criteria at 8 C.F.R. § 204.5(h)(3). Here, we find that the Petitioner has established that she meets the requirements for published material at 8 C.F.R. § 204.5(h)(3)(iii), display at 8 C.F.R. § 204.5(h)(3)(vii), and leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii). The Director found that the evidence in the record did not support the published material criterion because the Petitioner was merely mentioned in the articles. Regarding display, the Director held that the accessories designed by the Petitioner and worn by models in runway shows was not directly a display of her work as an artistic exhibition or showcase. And with respect to the leading or critical role, the Director held that the two letters from [REDACTED] of [REDACTED] discussing the Petitioner’s role on three projects does not indicate how this constituted a leading or critical role.

On appeal, for published material, the Petitioner references pieces written about her in [REDACTED] and [REDACTED] which discuss her design philosophy and background as a fashion designer. For display, the Petitioner cites to her accessory line that was exhibited at several artistic events in [REDACTED] and her handbags which were showed at the [REDACTED] California. For

leading or critical role, the Petitioner cites documentation showing her role as a lead designer for Ferre's main line, in addition to her roles as a key creator for [REDACTED] and [REDACTED], among other renowned fashion companies, noting that she has been contracted to design collections for [REDACTED] and [REDACTED]. We conclude that this evidence establishes that the Petitioner meets these three initial evidentiary criteria, as required, and therefore, we will discuss the remaining documentation in the context of a final merits determination.<sup>1</sup>

## B. Final Merits Determination

As the record satisfies at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), we will analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if her successes are sufficient to demonstrate that she has extraordinary ability in the field of endeavor. We evaluate whether she has demonstrated, by a preponderance of the evidence, that she has sustained national or international acclaim and that her achievements have been recognized in the field through extensive documentation, making her one of the small percentage who have risen to the very top of the field of endeavor. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3): see also *Kazarian*, 596 F.3d at 1119-20. Here, the Petitioner has shown her eligibility for this classification.

The Petitioner has been a leading fashion designer for many different top brands in the fashion industry, such as [REDACTED] and [REDACTED] demonstrating that she has performed a leading role in an organization with a distinguished reputation. The record contains a letter from [REDACTED] Brand Director for [REDACTED] stating that the Petitioner worked there as a lead designer from 2003 through 2005 and that her designs were "very lucrative for the company" and "had very impressive sales on the international level." The record indicates that in 2004, the readers of the British [REDACTED] magazine nominated [REDACTED] as the [REDACTED] as part of the [REDACTED]. The record indicates that the Petitioner was a lead designer for [REDACTED] during this time and that her accessory items, particular a specific chain she designed, were in high demand during that period.

The record contains a letter from [REDACTED] who was the Director of Sales and Marketing for [REDACTED] from 2005 through 2008. He indicates that [REDACTED] himself personally requested the Petitioner to stay with his company upon learning that another leading design company was offering her a position there, and in the course of those discussions he nearly doubled her salary for her to remain with the company.

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<sup>1</sup> On appeal, the Petitioner maintains that she also meets the criteria relating to awards at 8 C.F.R. § 204.5(h)(3)(i), membership at 8 C.F.R. § 204.5(h)(3)(ii), judging at 8 C.F.R. § 204.5(h)(3)(iv), original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v), high salary at 8 C.F.R. § 204.5(h)(3)(ix), and commercial success at 8 C.F.R. § 204.5(h)(3)(ix). Because she has established that she meets three other criteria to thus warrant a final merits determination, we will not address whether the Petitioner has established that she meets these additional ones. Instead, we will evaluate all of the submitted evidence in the final merits analysis.

██████████ the President and Co-Owner of the ██████████ companies, which includes ██████████ and ██████████ attests in a letter to the Petitioner's experience as a "one of the top accessory designers in the field" and that he hired her to rebrand ██████████ as the lead designer. While the Director focused on the fact that ██████████ hired the Petitioner for three projects, we find the President of ██████████ entrusting the Petitioner with rebranding an entire collection more indicative of the caliber of her work. The record indicates that the Petitioner has worked for many of the top brands in the industry and that she has been sought out to join competing companies at the top of the industry. Therefore, the length of time or number of projects she undertook is not as important as the impact she had in the position for these companies as a leading designer.

Regarding the Petitioner's original contributions, the record indicates that her designs have received a great deal of acclaim in the industry. The Petitioner submitted a photoshoot of ██████████ posing with a ██████████ that the Petitioner designed, which plays a prominent role in the photograph. As stated above, the Petitioner's designs were very lucrative for ██████████ with impressive international sales from 2003 through 2005. In addition, ██████████ states that the Petitioner "designed the hugely successful chain accessory that was all over the runways and campaigns for 2004." The record also demonstrates that she has developed ██████████ her own luxury brand of Italian handbags.

The record contains articles written about the Petitioner and her ██████████ brand in ██████████ and ██████████ which discuss her design philosophy and background as a fashion designer. The record contains evidence that the Petitioner was nominated by the ██████████ fashion editor, ██████████ as a ██████████ in 2014. The record reflects that the Petitioner's work has been on display at several artistic events in ██████████ and that her handbags which were displayed at ██████████

██████████ the director of the ██████████ film that won the 2017 ██████████ at the ██████████ among other awards, states that ██████████ placed the Petitioner in the Creative Director position to choose the accessories at the center of the film.<sup>2</sup> He states that this award "is directly attributed to [the Petitioner] because she chose and styled the accessories to be used in the film" and that this festival is equivalent of the "██████████". Together, this evidence demonstrates that the Petitioner has achieved sustained acclaim in her field.

Here, the record reflects that the Petitioner is well-regarded by top design companies in the fashion industry. This evidence, in totality, is consistent with a finding that the Petitioner is among the small percentage at the top of her field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). When considered in the aggregate with the evidence discussed above, the Petitioner has demonstrated that her achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep.

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<sup>2</sup> While the award was granted after the filing of the petition, the evidence in the record establishes that the video upon which the award was based had a release date of December 1, 2016, which preceded the filing of this petition.

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No. 101-723, 59 (Sept. 19, 1990). We conclude that the record supports a finding that the Petitioner is among the small percentage at the top of her field of endeavor with sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2)-(3).

### III. CONCLUSION

The Petitioner has shown that she meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). She has also demonstrated sustained national and international acclaim and that her achievements have been recognized through extensive documentation. Lastly, the Petitioner has indicated that she intends to continue working in her area of expertise. She therefore qualifies for classification as an individual of extraordinary ability.

**ORDER:** The appeal is sustained.

Cite as *Matter of C-D-A-R-*, ID# 934470 (AAO Mar. 16, 2018)