



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

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

In Re: 5960528

Date: DEC. 12, 2019

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a fashion model, seeks classification as an alien of extraordinary ability. *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 petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens 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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether 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. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

II. ANALYSIS

The Petitioner entered the United States in November 2016 as a B-2 nonimmigrant visitor for pleasure, a classification that does not permit employment in the United States. After filing the petition, she obtained employment authorization and has participated in various fashion shows.¹

Because the Petitioner has not indicated or 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). The Director found that the Petitioner met one of the evidentiary criteria, relating to judging the work of others under 8 C.F.R. § 204.5(h)(3)(iv) (the Petitioner judged a regional pageant). The Petitioner claims also to have met three other evidentiary criteria, discussed below. After reviewing all of the evidence in the record, we agree with the Director that the Petitioner has only met the criterion relating to judging the work of others.

On appeal, the Petitioner submits a three-page letter describing her career to date, including events that occurred after the petition’s filing date. In this letter, the Petitioner does not directly address the evidentiary criteria or show how the Director’s findings were in error. The Petitioner also submits photographs showing her participation in various projects.

We have reviewed all of the evidence in the record, and conclude that it does not show that the Petitioner satisfies the requirements of at least three criteria.

Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

The Petitioner won the title “Miss [redacted]” at the 2015 Miss [redacted] beauty pageant. The Director found that the Petitioner did not establish that this title is a nationally or internationally recognized prize or award for excellence. We agree with this finding. On appeal, the Petitioner repeats the assertion that she won the “Miss [redacted]” title, but she provides no new information to establish its recognition.

¹ Initially, the Petitioner identified herself as a fashion model and actor. Later, she stated: “My field of expertise is Fashion business and I am a Model. . . . I will continue [to] work in Fashion business as [a] model,” although the Petitioner expressed an intention eventually to resume acting.

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. 8 C.F.R. § 204.5(h)(3)(iii)

This is the only criterion that the Petitioner specifically addresses on appeal. We agree with the Director that the Petitioner has not satisfied its requirements.

In general, in order for published material to meet this criterion, it must be 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.

A [] magazine, identified only by its [] name *βοοβο*, ran a feature on the Miss [] 2015 pageant, including a captioned, full-page photograph of the Petitioner. The translated caption is written in the first person, indicating that the Petitioner wrote it herself. The Petitioner identified herself as a “professional actress and psychologist,” listed her interests (such as dancing and writing novellas), and described her career goals (such as screenwriting, directing, and performing Shakespeare on Broadway). Due to the autobiographical nature of this caption and its lack of details regarding her work, this material has not been shown to be about the Petitioner’s work in the field. The magazine piece relates to her participation in a pageant, and the Petitioner has not shown that competing in a pageant constitutes work in the field.

A second magazine, with the [] name *οοδοβο*, appears to be a newsletter for customers of [] Bank. The Petitioner did not show that the magazine contains any articles about her, relating to her work in the field. Rather, the Petitioner stated that she is the “face of [] Bank,” and therefore appears in many of its promotional photographs.

The Petitioner did not submit evidence to show that either of the submitted magazines are professional or major trade publications or other major media.

The Director found that the Petitioner had not shown that she was the subject of qualifying media coverage. On appeal, the Petitioner submits photographs showing her:

- In advertisements for a mobile communications provider;
- Appearing “in one of the most famous music video[s] ever released in []”;
- Reading poetry on an unidentified “mid Day talk Show” on IMEDI-TV; and
- Participating in the 2015 Miss [] pageant.

The above evidence shows that the Petitioner has appeared on television, but the Petitioner has not established that these appearances were about the Petitioner, relating to her work in the field. Participation in an advertising campaign is not qualifying media coverage; the advertisements, by nature, are about the products advertised, and purchasing advertising space is not the same as attracting third-party coverage.

The Petitioner appeared in a music video for the song [] by []. The creator of the video claimed that it was his most successful project, and the Petitioner calls it “one of the most

famous music video[s] ever released in [redacted]” but the record lacks documentary evidence to show the extent of its distribution. Furthermore, the music video is not about the Petitioner, relating to her work. Rather, she essentially played a character in a promotional film that exists primarily to advertise a record.

Regarding the unnamed IMEDI-TV talk show, the Petitioner stated that she read a Shakespeare sonnet, and had “been invited to the show for being the contestant of Miss [redacted] 2015 [and] to talk about why beauty queen beside external beauty needs to be intellectual and talented as well.” The Petitioner stated that she was also interviewed on Rustavi 2 by the “Executive Producer of Miss [redacted] [and] Owner & General Manager of [redacted] Model Management.” The accompanying screen captures do not show any interview taking place, nor were any interview transcripts provided. In addition, the Petitioner claims that “Rustavi 2 is the most successful private television broadcasting company in [redacted]” but does not submit documentary evidence to show that the programs were nationally broadcast on major media.

The Petitioner has established some degree of media presence in [redacted] but the submitted evidence does not meet the requirements spelled out in the regulation.

Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

In order to satisfy this criterion, petitioners must establish that not only have they made original contributions, but also that those contributions have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. The phrase “major significance” is not superfluous and, thus, it has some meaning. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The Director found that the Petitioner had not satisfied this criterion. The Director cited various letters in the record, offering general praise for the Petitioner, but the Petitioner does not appear to have specifically claimed to have satisfied the requirements for this criterion.²

Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases.
8 C.F.R. § 204.5(h)(3)(vii)

The Petitioner submitted two letters from the head of a [redacted] film studio, stating that they address this criterion. One letter indicated that the Petitioner had worked with the company “several times on [a] number of commercial productions as well as feature films.” Without further elaboration and corroborating evidence, this letter cannot satisfy the requirements of the regulation. Films and advertisements are not intrinsically artistic exhibitions or showcases, but generally serve a commercial purpose. We can give some consideration to the circumstances under which a given film is shown (such as film festivals), but the Petitioner has not provided information in that regard.

² On appeal, the Petitioner lists eight criteria she claimed to have met in responding to the Director’s request for evidence, but she does not indicate which evidence was submitted to establish which criterion.

The second letter indicated that the Petitioner is an “Executive Producer of several movie projects . . . in pre-production,” and will “attend the American Film Market and Location Show . . . from October 29 thru November 9, 2018, to showcase [the] above mentioned projects.” The Petitioner did not initially claim eligibility as a film producer, and the Petitioner does not explain how a “Market and Location Show” is an artistic exhibition or showcase, nor does she specify what work of hers was displayed there. (By definition, films in pre-production do not yet exist and cannot be displayed.) The show in question took place nearly a year after the Petitioner filed the petition in November 2017, and therefore cannot establish eligibility as of the filing date. The Petitioner must meet all eligibility requirements at the time of filing. *See* 8 C.F.R. § 103.2(b)(1).

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien was responsible for the success or standing of the organization or establishment.

The Petitioner claimed that she fulfilled the requirements for this criterion by appearing in advertisements for major brands. The Director acknowledged these appearances, but found that the Petitioner had not established that she performed in a leading or critical role for any named organization.

We agree with the Director’s finding. The Petitioner has worked for important clients, but has not shown that her appearances in advertisements have significantly contributed to the success or standing of those clients.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix)

The Director found that the Petitioner had not satisfied this criterion. The Petitioner did not specifically claim to have satisfied it, although she submitted letters that specify the fees she received for appearing in various advertisements. The Petitioner did not provide any basis for comparison to show that these fees were high in relation to others in the field.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. 8 C.F.R. § 204.5(h)(3)(x)

As above, the Petitioner did not specifically claim to have satisfied this criterion. The Director acknowledged that the Petitioner had worked in the performing arts, but the record contains no documentation of the types described in the regulation.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.