



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 9369644

Date: AUG. 26, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks classification as an alien of extraordinary ability as a fashion model. 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 Petitioner had satisfied only one of the initial evidentiary criteria, of which she must meet at least three.

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

## I. LAW

Section 203(b)(1) 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 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 he or she 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) (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). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “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.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

## II. ANALYSIS

The Petitioner indicated employment as a fashion model for [redacted] in [redacted] New York. As the Petitioner 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 determined that the Petitioner met the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii). The record reflects that major media featured the Petitioner in their publications. In addition, the record shows that the Petitioner displayed her work at fashion shows and exhibits, fulfilling the artistic display criterion at 8 C.F.R. § 204.5(h)(3)(vii). Further, she commanded a high salary in relation to other fashion models, satisfying the high salary criterion at 8 C.F.R. § 204.5(h)(3)(ix).

Therefore, the Petitioner demonstrated that she meets at least three regulatory criteria, and we will evaluate the totality of the evidence in the context of the final merits determination below.

### B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim and that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a 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. 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.<sup>1</sup> In this matter, we determine that the Petitioner has shown her eligibility.

The record reflects that the Petitioner appeared in major media, such as publications by Vogue, Harper's Bazaar, Elle, Glamour, and the New York Times. Further, the news reports provide evidence of the Petitioner's standing in the field, such as [redacted] [redacted] " [redacted] ' and ' [redacted] [redacted] " Indeed, Harper's Bazaar ranked the Petitioner [redacted] in the article, " [redacted] " Accordingly, the Petitioner has demonstrated the required sustained national or international acclaim. See section 203(b)(1)(A) of the Act.

Furthermore, the Petitioner established that she has walked a multitude of runways, including opening and closing at fashion shows. In addition, she has been featured at the top four international fashion week events in [redacted] [redacted], [redacted] and [redacted]. The following samples of media coverage reported on her artistic exhibitions: " [redacted] [redacted] " and " [redacted] [redacted] "

Moreover, the Petitioner demonstrated that the field's demand for her resulted in modeling for prestigious and leading brands, such as [redacted] [redacted] [redacted] and [redacted]. In fact, models.com wrote that "[r]ecently in [redacted] model watchers marked [the Petitioner] as one to watch after she [redacted] the much anticipated [redacted] show with an exclusive." As such, the Petitioner has shown that she has achieved a "career of acclaimed work in the field." See H. Rep. No. 101-723, at 59 (Sept. 19, 1990).

Moreover, the Petitioner has demonstrated that based on her popularity and reputation, she commands a high salary placing her among the small percentage at the very top of her field. See 8 C.F.R. § 204.5(h)(2). Indeed, Vogue commented that [redacted]

[redacted] " As further evidence of her status in the field, the record contains recommendation letters setting her significantly apart from other fashion models, such as "[the Petitioner's] name is repeatedly on every designer's and casting director's radar for shows" and "[t]he quality and caliber of her modeling work keeps her on total recall of key fashion editors and casting directors which speaks to firmly establish her international model status and acclaim."

In summary, the Petitioner has demonstrated her extraordinary ability as a fashion model. The totality of the evidence establishes that she possesses a level of expertise that is consistent with a finding that she is one of a small percentage at the very top of the field of endeavor and that she has documented sustained international acclaim. See section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (3); Kazarian, 596 F.3d at 1119-20. See also Matter of Price, 20 I&N Dec. 953, 956 (Assoc. Comm'r 1994).

<sup>1</sup> See also USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 4 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

### III. CONCLUSION

For the reasons discussed above, the Petitioner has established 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 shown that she intends to continue working in her area of expertise and that she will substantially benefit prospectively the United States. She therefore qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is sustained.