



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

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

In Re: 7163794

Date: JULY 29, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, an image consultant who coaches beauty pageant contestants, 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 Texas 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 their 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 claims to be “an internationally recognized Image Consultant who has achieved success in her field through her coaching and tutelage of some of Latin America’s most important beauty queens.” The Petitioner is the director and principal instructor at [REDACTED], which she founded in Venezuela in 2003.

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 Petitioner claims to have met five criteria, summarized below:

- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (vii), Display at artistic exhibitions or showcases;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director found that the Petitioner met two of the evidentiary criteria, numbered (iv) and (viii). On appeal, the Petitioner asserts that she also meets the other three claimed evidentiary criteria.

After reviewing all of the evidence in the record, we conclude that the Petitioner has met only the fourth criterion, pertaining to acting as a judge. Below, we discuss the other four claimed criteria.

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)

To satisfy this criterion, the Petitioner submits copies of newspaper articles, mostly discussing individual pageant contestants. The articles identify the Petitioner as the contestants’ trainer, but this one mention does not make the articles published material about her. Other articles briefly quote the Petitioner about upcoming events.

The Petitioner claims that “the plain language of the criterion requires that the articles be about the beneficiary or the beneficiary’s work.” The language of the regulation requires “[p]ublished material about the alien . . . relating to the alien’s work.” The Petitioner’s insertion of the conjunction “or” critically changes the meaning of the passage.¹ The published material must be “about the alien” *and* “relat[e] to the alien’s work in the field.”

The Petitioner contends:

Because [she] is an Image Consultant, her work is always conducted in unison with a contestant/individual. Therefore, when she is featured in major media discussing her work as an image consultant, there will also be references to the contestants with whom she worked in the context of her success. Thus, as required by this criterion, the aforementioned articles are about the beneficiary and her work in the field as an Image Consultant, coaching contestants at beauty pageants.

The submitted articles are not about the Petitioner, with “references to the contestants.” The contestants are the primary focus of the articles; a typical article refers to the Petitioner once, stating that she trained a particular contestant or will be traveling with her. The headlines to the articles refer to the contestants, either by name or by other descriptions. The record does not support the Petitioner’s contention that these articles are “entirely about [the Petitioner] and her work as an Image Consultant.” The Petitioner is not the subject of any of the articles submitted as evidence of published material about her.

The Petitioner has not satisfied this criterion.

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 claims to satisfy this criterion through her work with pageant contestants, and her work on fashion shows and television programs.

The Petitioner states that “her clients’ international beauty pageants” constitute display of her work at artistic showcases, because the Petitioner has significant influence over the appearance and presentation of each contestant. The Director found that the primary purpose behind the pageants was competitive rather than artistic. We acknowledge the Petitioner’s observation that prizes exist in the arts, but the awarding of prizes and titles at beauty pageants is not incidental or ancillary to the events. Rather, competing for titles is the primary purpose of these pageants, many of which are named after the top title to be awarded there.

Furthermore, local news coverage of the pageants focuses on the contestants themselves, mentioning the Petitioner’s name in passing. The Petitioner may have put great effort into instructing and training these models, but ultimately it is the contestants themselves who are presented to the audience, and the contestants, not their trainer, win the pageant titles.

¹ The word “or” appears in the regulation only in a completely separate context, when distinguishing between “professional *or* major trade publications *or* other major media.”

The Petitioner asserts that “beauty pageants . . . evaluate [a] contestant’s artistic abilities.” The Petitioner, however, is not the contestant. She many nurture the talents of the contestants, but ultimately it is the contestants, not their teachers, who are evaluated first-hand, and to whatever extent a pageant may constitute a display, the work displayed is that of the contestants, not their mentors. By way of analogy, when a painting hangs in a museum, it is the painter’s own work that is on display, not the work of the painter’s teachers. A teacher can shape a student’s talents, but those talents ultimately belong to the student.

Furthermore, an organizational chart shows that [redacted] employs several teachers. This indicates that the Petitioner is not solely, personally responsible for training the pageant contestants. The Petitioner does not explain why it is her work, not that of the teachers (or contestants), that is on display at a pageant.

The Petitioner has also organized fashion shows. These events do not appear to be competitive, but the primary focus of attention appears to be the garments shown. The Petitioner does not claim to have designed the clothing that is displayed at these fashion shows.

The Petitioner also contends that “her work on the television programs [redacted] and [redacted] also constitute artistic displays. The Petitioner, however, does not establish that the shows exist in order to display her artistic work. The production manager of [redacted], a regional television station based in [redacted] describes [redacted] as “a reality show where a group of participants . . . demonstrate why do they want to be models . . . dancers . . . [or] singers?, and why do they want the crown?” The record does not show the extent, if any, to which a reality show about aspiring models reflects the Petitioner’s artistry. A television program is not inherently an artistic display or showcase of the work of the program’s producer.

[redacted] is not a television program in its own right. Rather, it is a recurring segment on the children’s program [redacted]. A newspaper article indicates that the segments are filmed by [redacted] “to be later edited and transmitted by [redacted]” That article also states that the segment “is aimed at a child audience, to teach them the importance of having a positive image at all times, based on body hygiene, personal grooming, social behavior, table etiquette, colors and combinations, good posture, good manners, among others.” This description indicates that the principal purpose of [redacted] is educational or instructional, rather than artistic.

The Petitioner has not satisfied this criterion.

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)

We disagree with the Director’s conclusion that the Petitioner has satisfied this criterion. The Petitioner claims that her roles with [redacted] and [redacted] satisfy this criterion, but the record does not support these claims.

The Petitioner’s leading role as director of [redacted] is not in dispute. To establish [redacted]’s distinguished reputation, however, requires evidence to allow a meaningful comparison between [redacted]

and other entities of its kind. A printout from [redacted]'s own website amounts to self-serving promotional material rather than evidence of the entity's reputation.

The Petitioner submits copies of newspaper articles dated between 2005 and 2012, said to be "about the distinguished reputation of the organization." Some articles are about individual pageant contestants, while others are about events such as a pageant at a fair and a fashion show at a shopping center; the articles indicate that the various models and contestants trained at [redacted]. Some of the events were in-house pageants, in which all the contestants were [redacted] students. The articles show that [redacted]'s contestants receive some degree of news coverage, and have won some of the pageants in which they competed, but this information lacks necessary context. The term "distinguished reputation" is inherently comparative, but the submitted articles do not provide any basis for comparison between [redacted] and other agencies. For example, they do not show that contestants trained by [redacted] win more pageants, or that contestants from [redacted] receive more news coverage than contestants who trained elsewhere.

Because preparing contestants for beauty pageants is a fundamental purpose of the [redacted] it is not inherently a mark of distinction that some of [redacted]'s students have participated in some of those pageants. Not all pageants are of equal importance; the Petitioner acknowledges that "2.5 million girls participate in 100,000 beauty pageants each year." The Petitioner has not established the prestige of the particular events in which [redacted] has entered contestants. The presence of contestants from more than one country does not suffice in this regard.

The Petitioner also claims that she performed in a leading or critical role for [redacted] by producing [redacted] and producing and hosting [redacted]. Another [redacted] official states that the station does not employ the Petitioner as the producer of [redacted] rather, the Petitioner is an "independent . . . Producer" who purchased the airtime for the program. This is consistent with social media posts in the record that identify [redacted] as the show's sponsor. The Petitioner does not establish that her independent production of a television program amounts to a leading or critical role for the television station that broadcasts that program. The Petitioner does not show, for example, that the program significantly increased the channel's viewership. A screen capture of an advertisement for [redacted] from that program's own YouTube channel, shows that the advertisement had been viewed 11 times since May 2018, nearly 10 months before the petition's May 2019 filing date. Another clip from the show indicated three views since February 2018.

The Petitioner has also not established that [redacted] has a distinguished reputation. Information in the record indicates that the channel broadcasts "in the [redacted] Region" of Venezuela. A printout from *CorpWeb.net* indicates that [redacted] "has a series of strategic alliances that position it not only nationally but also internationally," but does not elaborate. A web printout from *ProductionHub.com* states that [redacted] is Venezuela's largest production company and television station," but this information appears not in a news article, but in a promotional press release from the company that provided equipment to the station. (The phrase "press release" appears between the headline and main body of the text.)

For the above reasons, the Petitioner has not shown that she has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

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 Petitioner submits a three-page list, showing her claimed monthly income between October 2003 and November 2018. This document is not contemporaneous documentation, and it does not identify the source(s) of the Petitioner's income or explain how she earned it.

Income statements from an accountant attest to the Petitioner's annual income for the above years. The accountant lists several seemingly independent sources of income, but rather than break down the amounts from each source, the accountant simply states the total. For example, the Petitioner earned her 2009 income as "Manager and Sole Shareholder of [REDACTED], Image Advisor, Organizer of Beauty events, beauty and modeling contests and as host of television events with several companies as per contracts and Independent Professional."

Itemized lists of contracts and work agreements show fees paid for specific projects, but do not distinguish between fees paid to [REDACTED] and income directly earned by the Petitioner. Sample work agreements in the record name the Petitioner as the contracted party, but those documents also indicate that she is acting as [REDACTED]'s representative. Even as [REDACTED]'s sole shareholder, she cannot claim the company's gross income as her personal salary or remuneration for services, as some of that money must go toward other expenses, such as salaries for the [REDACTED]'s other employees.

The Petitioner states that she submits "articles discussing the salary for the highest paid Image Consultants/Pageant Coaches in the United States," but these articles are inadequate for several reasons: The Petitioner's work took place outside the United States; the figures cited in the reports are anecdotal, rather than the result of systematic surveys; and the Petitioner's income derives from several sources besides one-on-one coaching of pageant contestants. The Petitioner has not provided a sufficient basis for comparison to show that her earnings are high compared to others performing similar work in Venezuela.

On appeal, the Petitioner focuses on the distinction between "salary" and "other remuneration," and does not address other significant deficiencies in the evidence, discussed above.

The Petitioner has not met the requirements of this criterion.

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 determination that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner asserts that she is "one of Venezuela's most important Image Consultants in the Beauty Pageant Industry," and has worked "[a]s an Image Consultant for top level beauty pageants." The record, however, lacks evidence to support these claims by allowing an objective comparison between the

Petitioner and other image consultants in Venezuela. Most of the evidence in the record concerns the [redacted] of Venezuela, particularly the city of [redacted] in the state of [redacted] consistent with a primarily local or regional reputation. The Petitioner has judged pageants outside of Venezuela, but the pageants named on a submitted list were all produced by the same person in the Dominican Republic, which does not indicate widespread recognition.

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.