



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

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

In Re: 5199705

Date: JUNE 2, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a fashion model, seeks classification as an individual 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 Petitioner did not satisfy any of the ten 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 dismiss 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 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual’s occupation.

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).

II. ANALYSIS

The record reflects that the Petitioner has worked as a model in Venezuela and the United States in advertising campaigns for food, fashion, and beauty brands, in editorials in men’s magazines, and as a co-host and model on television shows such as [REDACTED] [REDACTED] and [REDACTED]. The Petitioner asserts that her “ability to excel as both a commercial and television model” demonstrates her extraordinary ability as one who is among “the top percentage” of the field.

A. Comparable Evidence

The regulation at 8 C.F.R. § 204.5(h)(4) allows for comparable evidence if the listed criteria do not readily apply to a petitioner’s occupation.¹ A petitioner should explain why she has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3), as well as why the evidence she has included is “comparable” to that required under 8 C.F.R. § 204.5(h)(3).² Here, the Petitioner did not demonstrate how her evidence establishes that the criteria do not readily apply to fashion models and why she cannot offer evidence that meets at least three of the criteria.

Furthermore, as discussed later, the Petitioner claimed to meet five criteria without the submission of comparable evidence, including lesser awards under 8 C.F.R. § 204.5(h)(3)(i), published material under 8 C.F.R. § 204.5(h)(3)(iii), judging under 8 C.F.R. § 204.5(h)(3)(iv), leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii), and high salary under 8 C.F.R. § 204.5(h)(3)(ix). In fact, the Petitioner asserts to only satisfying the criteria relating to artistic display under 8 C.F.R. § 204.5(h)(3)(vii) and commercial success under 8 C.F.R. § 204.5(h)(3)(x) through comparable evidence, discussed below. Moreover, the Petitioner did not show that models cannot present evidence relating to the other criteria, such as memberships under 8 C.F.R. § 204.5(h)(3)(ii), original contributions under 8 C.F.R. § 204.5(h)(3)(v), and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). The fact that the Petitioner did not provide documentation that fulfills at least three criteria is not

¹ See 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* 12 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

² *Id.*

evidence that she could not do so. For these reasons, the Petitioner did not establish that she qualifies for two criteria, as well as other criteria, through the submission of comparable evidence.

B. Evidentiary Criteria

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).³

The Director found that the Petitioner submitted evidence relating to six of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3) but did not establish that she met any of them. On appeal, the Petitioner asserts that she meets seven criteria, relating to lesser nationally or internationally recognized awards, published materials in major media, judging the work of others, artistic display, leading or critical role, high salary, and commercial success in the performing arts. After reviewing all the evidence in the record, we find that the Petitioner has not demonstrated that she meets at least three criteria.

Documentation of the individual'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 maintains that she meets this criterion based on her receipt of an award from the Stars of Venezuela Foundation. The Petitioner previously submitted her award letter and information about the organization. The award letter indicates the Petitioner was selected for the Stars of Venezuela Award in the category of [REDACTED] to be awarded on [REDACTED] 2015, in [REDACTED] Venezuela. Information from the Stars of Venezuela Organization indicates it is involved in artist representation and promotion through “the production and organization of shows, music festivals, tourism and food festivals.”

In support of her claim that the Stars of Venezuela award is a nationally recognized award for excellence in the Venezuelan modeling industry, the Petitioner also provided letters from [REDACTED] [REDACTED] of the Stars of Venezuela Foundation. In her first letter she states that the award recognizes “personalities of the artistic, sporting, cultural, social, political and business media in Venezuela . . . who . . . have achieved meritorious labor for the development of this country, becoming a role model” The letter indicates that winners are determined by “a large panel of judges” and that the award “has the greatest credibility and prestige in this country.” The letter lists a number of award recipients including Venezuelan actors [REDACTED] and [REDACTED]. The letter is accompanied by articles about [REDACTED] and [REDACTED] from www.imdb.com and www.nytimes.com which, however, do not contain any information regarding whether they were Stars of Venezuela award recipients. In her second letter, [REDACTED] indicates that the Petitioner received the award based upon “[h]er constant appearances on television, fashion shows and editorials.

³ We note that the Director determined that the Petitioner initially submitted evidence related to a major, internationally recognized award at 8 C.F.R. § 204.5(h)(3) but did not satisfy that criterion. On appeal, the Petitioner does not contest this issue, rather she asserts that the evidence related only to the lesser awards criterion at 8 C.F.R. § 204.5(h)(3)(i).

On appeal, the Petitioner provides two additional letters from [redacted]. In a letter dated 2016 she indicates that in the Petitioner's award category, a judging panel made up of professionals "renowned in the arts" considered "all professional models working in or from Venezuela." In a letter dated 2019, [redacted] provides that the award recognized the Petitioner's professional achievements, such as her work "as a host and model of the international show [redacted]" that "[t]he selection criteria of our award are based on the achievements, contributions and professional development of each of the nominees to the different categories in each year," and that the judges included singer [redacted] [redacted] columnist [redacted] and model scout [redacted].

Although [redacted]'s letters refer to the award as "a tremendous feat" and "of greatest credibility and prestige," they do not show that the field recognizes the Stars of Venezuela Award as a national or international award for excellence. Moreover, the Petitioner did not offer supporting evidence, such as widespread media coverage of the award in major newspapers or other evidence showing the award's recognition for excellence in the field. The Petitioner provided a press release from the website of *La Patilla* which does not mention her, announcing an upcoming Stars of Venezuela Award gala in [redacted] 2015 at which the music group [redacted] will perform, and printouts from Similar Web regarding the "traffic overview" for Lapatilla.com indicating that it has 11.9 million total visits. However, the Petitioner did not demonstrate the significance of the viewing statistics or explain how such information reflects status as major media. Further, one submitted publicity release is not sufficient to establish that the Stars of Venezuela award winners receive a level of media coverage that is commensurate with a nationally or internationally recognized award in the modeling industry.

The Petitioner submitted little background information regarding the Stars of Venezuela awards, such as a complete list of all the award categories and the criteria used to grant the prizes or awards. In addition, it is not clear how many awards ceremonies take place annually. The submitted article from *La Patilla*, pertaining to a different gala than that at which the Petitioner was recognized, indicates that there are multiple award ceremonies each year. The limited background information provided here is insufficient to establish the level of national or international recognition associated with the Stars of Venezuela Award, and there is no documentary evidence showing that the Petitioner's specific Star of Venezuela Award was recognized beyond the presenting organization and, therefore, commensurate with nationally or internationally recognized prizes or awards for excellence in the field. Without independent, objective evidence which establishes that this award is a nationally or internationally recognized award for modeling, the Petitioner has not demonstrated that she meets this criterion.

For the reasons discussed, the Petitioner has not established that she meets this criterion.

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).

The Petitioner provided articles from several Venezuelan newspapers in support of this criterion. The Director found articles from *Meridiano* and *El Nuevo Pais* to be deficient because they do not include the required author. In addition, the Petitioner provided articles from the newspapers *La Region* and *La Voz*. However, she did not submit supporting evidence to show that *La Region* qualifies as a

professional or major trade publication or other major media. Further, the Petitioner did not provide evidence indicating that the print edition of *La Voz* qualifies as major media.⁴ The Petitioner offered printouts from Similar Web regarding the “traffic overview” for Diariolavoz.net indicating that the online version of the publication has 320,600 total visits.

For the foregoing reasons, the Petitioner did not establish that she meets this criterion.

Evidence of the individual’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

In order to meet this criterion, the Petitioner must show that she participated “as a judge of the work of others in the same or an allied field of specialization.” The Petitioner initially submitted a certificate of appreciation dated November 19, 2016, for her participation as “an honorable Judge” in the 2016 Miss [redacted] Juniors International pageant in [redacted] Florida, signed by the pageant director [redacted]. She also included photographs of herself and two unidentified persons in front of a promotional banner for the event. She further provided a letter from [redacted] of [redacted] in [redacted] Florida, that provides some background information about the pageant, for instance, that the winner is “selected to represent the [redacted] Juniors Athletic Club of Argentina” and that “[s]everal models compete at a chance to win the competition . . . of which 26 go on to the finals before a single winner is selected,” based upon criteria including charisma, artistic talent, and public-speaking ability. Regarding the Petitioner’s participation in the pageant, [redacted] provides that the Petitioner was “selected to serve as a member of the selection committee because she is a successful model with many years of professional experience in the industry.” He indicates that the Petitioner “served as a jury member in each step of the competition, including selecting the winner” He states that as member of “the jury panel selecting the winner, her role included evaluating each one of the contestants who made it to the finals and presented her case during the live event.”

Upon review, we find insufficient evidence to establish that the Petitioner actually participated as a judge in the competition. Although [redacted] states that the Petitioner “was crucial to our competition’s success and professional outlook,” the record does not document the manner in which [redacted] is authorized to represent or speak on behalf of the Miss [redacted] Juniors International pageant, nor does it contain evidence from the competition’s organizers about the 2016 Miss [redacted] Juniors International pageant showing the competitors judged by the Petitioner and the name of the finalists and winner she specifically selected. Merely submitting a certificate of appreciation and a statement asserting that the Petitioner judged the work of others without evidence showing who she judged, and their field of specialization is insufficient to establish eligibility for this criterion. If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for a petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). Here, there is no documentary evidence showing the Petitioner’s specific assessments and the names of the models whose work she evaluated. For these reasons, we find the evidence submitted insufficient to verify the Petitioner’s participation as a judge in the competition

⁴ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (indicating that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

The Director determined that the above-referenced materials do not meet this criterion, because they do not address how the Petitioner “is one of that small percentage who have risen to the very top of the field of endeavor and that [the Petitioner] enjoys sustained national or international acclaim.” On appeal, the Petitioner asserts that the Director went beyond the plain language of the regulation in considering the nature of her judging duties. We agree. If the Petitioner submits evidence that she participated in judging of the work of others in the same or allied field of specialization, we will conclude that the evidence satisfies the plain language of this criterion.⁵ For the foregoing reasons, the Petitioner did not present such evidence.

In light of the above, the Petitioner has not demonstrated that she meets 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 asserts that she meets the plain language of the criterion through the documentation submitted of “her work at artistic *showcases* through fashion exhibitions, runway shows, and print and commercial advertisements because these are places or events where something may be shown or performed.” In the alternative, the Petitioner requests that we consider that documentation as “comparable evidence” in support of this criterion. The Director found that “because the evidence does not indicate that [the Petitioner’s] works were displayed at artistic exhibitions or showcases (virtual or otherwise)” the Petitioner did not satisfy the evidentiary requirements of this criterion.

Upon review, the Petitioner has not established that the evidence submitted represents a display of her work at artistic exhibitions or showcases. The Petitioner provided evidence of her having been a host and model in the entertainment shows [redacted] [redacted] and [redacted]. She also submitted evidence of her having appeared and been featured as a model in print and online advertising campaigns for companies including [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] and [redacted], and in editorials in the men’s magazines [redacted], [redacted] and [redacted]. Although the screenshots provided of those entertainment programs and the tear-sheets or copies submitted of those advertisements and editorials show that the Petitioner’s work was displayed on television and in print and digital media, the language of this criterion specifically requires display of the Petitioner’s work at “*artistic exhibitions or showcases*” (emphasis added). The documentary evidence the Petitioner submitted was insufficient to establish that the catalogues, lookbooks, magazines, and TV programs in which her work was displayed can be considered “artistic” in nature,⁶ as required under this criterion, as opposed to commercial media.

⁵ The nature of the Petitioner’s judging duties would be more relevant to an examination of the totality of the evidence. As discussed above, where a petitioner meets at least three of the initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3), 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*, 596 F.3d at 1115.

⁶ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 9-10.

In light of the above, the Petitioner has not established that she satisfies the plain language requirements of this evidentiary criterion or that the evidence on which she relies is comparable to the evidence required by the criterion.

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)

This criterion focuses on volume of sales and box office receipts as a measure of a petitioner's commercial success in the performing arts. As evidence for this criterion, the Petitioner presented the above-referenced documentation indicating that she appeared in advertisements for companies including [redacted] [redacted] [redacted] and [redacted] and information about these companies. In addition she provided media articles discussing the television programs [redacted] [redacted], [redacted], [redacted] in which she appeared as a host and model. On appeal, the Petitioner argues that "as a Model working in the field of television and advertising, box office receipts and video sales are not always available to document [the Petitioner's] commercial success because several of her productions are broadcast in real time to viewers on a television screen and through other media." The Petitioner further states that she submitted "evidence of the revenue and profits for several of the distinguished organizations and establishments for which [the Petitioner] has played a lead and critical role in their commercial success."

While the evidence established that the Petitioner has appeared in advertisements for various companies and television programming, she has not shown that the success of those companies and television shows was attributable to her specific work as a model or television host. Furthermore, she has not demonstrated that her televised performances have attracted substantial audiences or that her advertising work generated significant sales. In order to meet this criterion, the evidence must show that the volume of sales and box office receipts reflect a petitioner's commercial successes relative to others involved in similar pursuits in the performing arts.⁷ Here, the record does not include evidence identifying the Petitioner as having commercial successes relative to other performing artists. Nor is the evidence sufficient to demonstrate that the commercial successes of the aforementioned companies and television programs in which she appeared were mainly because of the Petitioner's work.⁸ In light of the above, the Petitioner has not established that she satisfies the plain language requirements of this evidentiary criterion or that the evidence on which she relies is comparable to the evidence required by the criterion.

III. CONCLUSION

We find that the Petitioner does not satisfy the criteria relating to awards, published material, judging, artistic display, and commercial success. Although she submits evidence for two additional criteria on appeal, relating to leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii) and high salary at 8 C.F.R. § 204.5(h)(3)(ix), we need not reach these additional grounds. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve these issues.⁹

⁷ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 11-12.

⁸ For example, with respect to the Venezuelan and U.S. entertainment programs in which she appeared, the Petitioner has not shown that their television ratings or viewing audience increased significantly once she joined their programs.

⁹ See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).

Accordingly, 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.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). Although the Petitioner has appeared in advertisements for various companies and television programming, the record does not contain sufficient evidence establishing that she is among the upper echelon in her field.

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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.