



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

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

In Re: 8264039

Date: MAY 27, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a fashion designer, 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 Nebraska Service Center denied the petition, concluding that although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is an individual in that small percentage at the very top of the field. The matter is now before us on appeal.

The petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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 is a fashion designer and chief executive officer of [REDACTED]. He received his Bachelor of Fine Arts in fashion design from [REDACTED] School of Design in 2016.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x).

The Petitioner claims that he meets five of the ten initial evidentiary criteria. The Director determined that he submitted sufficient evidence to establish that he meets four of them, including: lesser nationally or internationally recognized awards at 8 C.F.R. § 204.5(h)(3)(i); published material in major trade publications or other major media at 8 C.F.R. § 204.5(h)(3)(iii); display of his work at artistic exhibitions or showcases at 8 C.F.R. § 204.5(h)(3)(vii); and performance in a leading or critical role for an organization that has a distinguished reputation at 8 C.F.R. § 204.5(h)(3)(viii).

The record supports the Director’s determination that the Petitioner satisfied these four criteria. The Petitioner has established that he received a [REDACTED] Merit Award that is internationally recognized in his field, and that he has been featured in major trade and media publications including *Vogue*. In addition, the record reflects that his artistic work has been displayed at several major fashion shows, and that he holds a leading and critical role as the founder and CEO of his own design studio.

On appeal, the Petitioner maintains that he also meets the criterion related to outstanding contributions of major significance in his field at 8 C.F.R. § 204.5(h)(3)(viii). However, as he has established that he satisfies four other criteria, we need not address whether he meets a fifth, but we will consider the evidence submitted as part of the final merits determination below.¹

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim, that he is one of the small percentage at the very top of the field of endeavor, and that his 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 his successes are sufficient to demonstrate that he 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 1119-20.² In this matter, we determine that the Petitioner has not demonstrated his eligibility.

As noted, the Petitioner graduated from [redacted] School of Design in 2016 and was recognized by the [redacted] as one of the top design graduates from around the world that year. He established his eponymous fashion label in 2016, founded his company, [redacted] in [redacted] in 2017, and holds a trademark for his brand, which is sold through his online store and at several retail fashion boutiques.

The Petitioner was the recipient of [redacted]'s Merit Award in 2016 for his [redacted] 2017 collection, the first collection released on his fashion label. [redacted] is described as a [redacted] International emerging designer platform." Winners of its Merit Award receive £20,000 in financial support across three seasons and a fully sponsored solo show at the [redacted] Showcase at [redacted] Fashion Week, which is regarded in the field as one of the four major international shows, along with [redacted]. The evidence reflects that the Merit Award is competitive, with one winner chosen from hundreds of international applicants. The Petitioner provided evidence that his receipt of the Merit Award was announced on [redacted]'s website and reported by major media. For example, his 2017 [redacted] collection appeared on the [redacted] *Vogue* website in connection with his catwalk show at [redacted] Fashion Week.

Based on the foregoing, the evidence demonstrates that the [redacted] Merit Award is an internationally recognized award that garnered the Petitioner acclaim and major media attention. Further, the record reflects that he was invited to return to [redacted] Fashion Week to show his [redacted] 2017 and [redacted] 2018 collections which received similar recognition. He has shown subsequent collections at [redacted] Fashion Week, where his collection was highlighted by *Elle* and *Vogue*. This evidence demonstrates that he has been able to sustain his initial acclaim by

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* 13 (Dec. 22, 2010), <https://www.uscis.gov/legal-resources/policy-memoranda> (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act).

² See also USCIS Policy Memorandum PM 602-0005.1, *supra* at 4 (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).

continuing to garner recognition from industry professionals and the media at the industry's major fashion showcases each season.

The Petitioner also provided evidence that his collections have consistently appeared in major online fashion media, including *Nylon*, *Marie Claire*, *Schön!*, *Bazaar*, and *Elle*, with *Bazaar* and *Elle* also featuring his brand in articles about their favorite new labels and designers. This recognition from major media in the industry demonstrates that the Petitioner's company and brand have achieved a distinguished reputation. As the CEO of the brand, the Petitioner himself has been featured in interviews with *Vogue* and *Interview* in which he discussed his background, inspiration, and design philosophy.

The Petitioner has also submitted evidence that addresses his contributions to his field and the impact and influence of his work. This evidence includes reference letters, additional media reports, social media, and evidence that the Petitioner's designs have been sought after by celebrity stylists and/or worn by influential celebrities.

[redacted] editor-in-chief at [redacted] emphasizes that the Petitioner's work is unique and praises the broad appeal of his designs to a variety of women. She states that she regards the Petitioner as "a standout fashion designer among all others within the field" based on his work, noting that he has cultivated a distinct space for his brand despite being in the early stages of his career. [redacted] [redacted] who is self-described as a fashion influencer, director and model, comments on the "[redacted] [redacted] detail design" elements in the Petitioner's collection, noting that it "is an effective signature design that instantly sets him apart from the rest of the designer crowd." [redacted] describes his work as "pioneering and groundbreaking" and opines that he is "a leading fashion designer."

We have also considered evidence that the Petitioner's work has received significant attention from fashion stylists, who have either dressed their celebrity clients in his pieces or have sought out his work in the process of choosing potential looks for their clients. Specifically, the Petitioner provided evidence that actress [redacted] and model [redacted] wore pieces from his collections for photoshoots that appeared in *Bazaar* magazine, and actress [redacted] wore one of his dresses on the cover of *Esquire*. In addition, the Petitioner provides evidence that musician [redacted] prominently wore pieces from his collection in the music video for "[redacted]" which has seven million views. He also submits email communications indicating that stylists working with Alicia Keys, Lady Gaga, Rita Ora, and Solange Knowles have reached out to his studio to request pieces from his collection as options to present to their clients for television appearances and public events. Finally, the record establishes that the Petitioner's designs are regularly featured by popular fashion influencers on Instagram and receive substantial attention from what he describes as "niche" media (in the United States and abroad) focused on fashion and culture, such as *Fashionista*, *The Impression*, *L'Officiel*, *WWD*, *PlusMinus*, *Notis*, *Design Now*, *Fashion Capital*, and *PopSugar*.

Overall, the evidence shows that the Petitioner has received sustained acclaim for his work since he established his brand and that he is recognized and highly regarded by major media and by other professionals in the fashion industry. Although the Petitioner entered the industry only a few years prior to the filing of the petition, we note that his entry into the industry received international attention and that he has sustained that recognition while growing his brand; there is no definitive time frame

on what constitutes “sustained.”³ The totality of the evidence establishes that the Petitioner possesses a level of expertise that is consistent with a finding that he is one of a small percentage at the very top of the field of endeavor and that he has documented sustained 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.

III. CONCLUSION

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

ORDER: The appeal is sustained.

³ *See* USCIS Policy Memorandum PM 602-0005.1, *supra* at 14 (stating that “[a] beneficiary may be very young in his or her career and still be able to show sustained acclaim”).