



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

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

In Re: 25483342

Date: FEB. 24, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner is a fashion model seeking 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 Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the Petitioner did not establish she received a major, internationally recognized award, nor did she demonstrate that she met at least three of the ten regulatory criteria. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. 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 international 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 criteria 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 can 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, 1121 (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 Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

The Petitioner has worked as a model for more than a decade and she attained O-1 nonimmigrant status as a fashion model. Over her career, she has appeared in and on the covers of fashion and other types magazines.

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). Before the Director, the Petitioner claimed she met six of the regulatory criteria. The Director decided that the Petitioner satisfied the judging requirement but that she had not satisfied the criteria associated with published material, original contributions, or leading or critical role. The Director further concluded she did not show she met the display of her work and commercial success criteria through comparable evidence.

On appeal, the Petitioner maintains that she meets the same criteria she claimed before the Director. Because she has satisfied one criterion’s requirements, she must meet at least two more within the antecedent procedural step of this adjudication. After reviewing all the evidence in the record, we conclude she has not satisfied at least three regulatory 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).

The Petitioner provided several articles as evidence dating back to the mid-2000s. The Director determined that the Petitioner did not meet the requirements of this criterion. The Director noted several issues with the Petitioner’s claims and evidence. First, she provided recent published material that was not about her and relating to her work and was also not a form of major media. Second, she did not demonstrate some material qualified as major media.

Third, she presented older articles, but the circulation statistics were from around the time of the petition filing date. The issue with this final material was the publication’s circulation data did not

represent the publication's standing close to the time the material was published. On appeal, the Petitioner contends that the Director ignored much of the evidence and applied a standard to the case in excess of the preponderance of the evidence.

The Petitioner claims the Director ignored some evidence because they did not specifically discuss it in the denial decision. Although we agree with the Petitioner that the Director did not directly discuss every piece of evidence that she considers salient, she has not explained how any omitted elements demonstrated eligibility. In other words, the Petitioner did not demonstrate that the Director's failure to discuss every document in detail changed the outcome of the case and that is a petitioner's burden, which she fell short of meeting here.

When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the Petitioner presents. *Amin*, 24 F.4th at 394; *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir. 1992); *aff'd Morales v. INS*, 208 F.3d 323, 328 (1st Cir. 2000); *see also Pakasi v. Holder*, 577 F.3d 44, 48 (1st Cir. 2009); *Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009).

Turning to the evidence under this criterion the Petitioner discusses on appeal, we begin noting that she took issue with the Director requiring circulation and website traffic data relative to the time when a publication occurred. Stated differently, the Director did not accept circulation data from 2021 when an article was published up to 15 years ago. On appeal, the Petitioner not only states that such dated evidence was not available, but she also describes such a requirement as arbitrary and capricious and an abuse of discretion that imposes an improper standard of proof.

We agree that supporting evidence for a publication or a website should reflect its readership proximate to the publication of the article to demonstrate the stature of the medium at the time of publication. When a petitioner relies on 15-year-old articles, they bear the burden to demonstrate that evidence adheres to the regulation's standards when the material was published. The failure to do so affects the quality of the evidence. The greater the difference between the circulation data and an article's published date, the greater the effect on the evidence's relevance and probative value. *See Chawathe*, 25 I&N Dec. at 376 (discussing the necessity that evidence be relevant, probative, and credible).¹

The Petitioner has not established that each publication qualified as a form of major media when each of the relevant articles were published. Nor has she adequately explained how a publication's stature attained well after her articles' publication should qualify her under this criterion. We do not follow the Petitioner's line of reasoning any more than we would consider a person grasping a bit of the earth in their hands to be clenching a diamond, or someone holding an oyster to possess a fully developed pearl. But "[t]here is no pearl within this particular oyster." *Healey v. Bendick*, 628 F. Supp. 681, 693 (D.R.I. 1986) (declining to characterize a government action as arbitrary and capricious or bereft of a standard of proof). In a similar situation but a different context, we rely on *Matter of Izummi*, 22 I&N

¹ The articles that experience diminished evidentiary value the Petitioner discusses on appeal due to this shortcoming include: 2007 articles from *L'Officiel*, *Fakty Magazine*, *Elle Ukraine*; a 2008 article from *The Fashion Spot*; a 2009 article from *Elle Ukraine*; and a 2016 article from *Segodyna Magazine*.

Dec. 169, 175 (Comm'r 1998) to conclude that filing parties cannot demonstrate eligibility at some future date after they become eligible under a new set of facts.²

The Petitioner also discusses the *distinguished nature* of publications in a way that implies this term is part of this criterion's requirements when it is not. But we will adhere to the regulation's requirements and to agency policy to evaluate whether each publication is a professional or a major trade publication, or a form of major media. Those requirements are that the published material must be about the Petitioner and the contents must relate to the Petitioner's work in the field. Further, the published material must also appear in professional or major trade publications or other major media. Professional or major trade publications are intended for experts in the field or in the industry.

To qualify as major media, the Petitioner must establish the circulation statistics are high relative to other similar forms of media. The final requirement is that the Petitioner provide each published item's title, date, and author and if the published item is in a foreign language, they must provide a translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3). The Petitioner must submit evidence satisfying all these elements to meet the plain language requirements of this criterion.

The article from diply.com is not about the Petitioner. Instead, it mentions the Petitioner within two sentences and discusses her among 19 other models. An article that is not about the Petitioner does not meet this regulatory criterion. *See Victorov v. Barr*, No. CV 19-6948-GW-JPRX, 2020 WL 3213788, at *8 (C.D. Cal. Apr. 9, 2020) (quoting *Noroozi v. Napolitano*, 905 F. Supp. 2d 535, 545 (S.D.N.Y. 2012) (finding that articles that are about a team or a competition and only briefly mention a foreign national do not satisfy the published material criterion); *see also generally, Negro-Plumpe v. Okin*, No. 2:07-CV-820-ECR-RJJ, 2008 WL 10697512, at *3 (D. Nev. Sept. 9, 2008) (upholding a finding that articles about a show or a character within a show are not about the performer).

And even though the Petitioner claims that all the submitted articles contained the title, date, and author, even the appeal brief reflects the publication date is unknown for the work titled [redacted] [redacted] from *Vogue Girl Korea*. This material does not meet the regulation's requirements.

Finally, the 2021 article from *Fakty Ukraine* was translated into English, but it was not accompanied by a translator's certification as required by the regulation. Also, the information relating to this publication's circulation statistics originated from *Wikipedia* and there are no assurances about the reliability of the content from this open, user-edited internet site. *See United States v. Lawson*, 677 F.3d 629, 650–51 (4th Cir. 2012); *Badasa v. Mukasey*, 540 F.3d 909, 910–11 (8th Cir. 2008); *see also Sibanda v. Holder*, 778 F.3d 676, 680 (7th Cir. 2015).

Furthermore, the Petitioner did not identify the circulation figures for other publications in Ukraine by which it can be determined through comparison that *Fakty Ukraine* is a major medium. *See generally 6 USCIS Policy Manual F.2 (Appendices)*, <https://www.uscis.gov/policymanual> (noting that “[e]vidence of published material in professional or major trade publications or in other major media publications about the alien should establish that the circulation (on-line or in print) is high compared to other circulation statistics. . . .”). In summary, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

² While this precedent does not directly apply here, the concept is sufficiently similar.

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).

The primary requirements here are that the Petitioner's contributions in their field were original and they rise to the level of major significance in the field as a whole, rather than to a project or to an organization. *See Amin*, 24 F.4th at 394 (citing *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134 (D.D.C. 2013)). The regulatory phrase "major significance" is not superfluous and, thus, it has some meaning. *Nielsen v. Preap*, 139 S. Ct. 954, 969 (2019) (finding that every word and every provision in a statute is to be given effect and none should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence). Further, the Petitioner's contributions must have already been realized rather than being potential, future improvements. Contributions of major significance connotes that the Petitioner's work has significantly impacted the field. The Petitioner must submit evidence satisfying all these elements to meet the plain language requirements of this criterion.

The Petitioner provided media relating to her career, and several letters from those who work in the fashion industry. The Director acknowledged articles praising her achievements and the fact that she is known for her unique eyes, then decided that her claims and evidence did not meet the requirements of this criterion. On appeal, the Petitioner notes the Director did not offer analysis relating to much of her evidence and continues to focus her claims on the uniqueness of her facial features having an impact within the modeling industry.

While the Petitioner provided numerous testimonial letters from well-known members in the fashion world, not all of them addressed how she has made original contributions to the industry. Although a select few did discuss her contributions, they lack specific information to demonstrate her contributions rose to a level of major significance. Several letters characterize the Petitioner as a pioneer for models with a unique appearance and imply that she changed the standards for models through her unusual look, while others state that she has reinforced the industry's embrace of bold and differing looks. For instance, [redacted] attributes the Petitioner's appearance in the industry as the turning point when designers, creative directors, and fashion industry executives began to gravitate toward her look, which paved the way for other models with a similar appearance.

Although some supporting materials in the record reference her unique eyes and reinforce that she is known for this feature in the industry, what is lacking is probative evidence demonstrating her field was actually impacted by her appearance. She did not establish that prior to her arrival, models with large eyes or other bold facial features were not present or were not employed in the fashion industry. Nor did she illustrate that because of her emergence and her unique look, that this served as a turning point in which those with similar features were sought out in a widespread manner. Essentially, the Petitioner did not show that her claimed contribution resulted in a significant impact in her field.

Within other letters, the Petitioner asserts the authors detailed the impact she has had on the modeling industry, but a review of those materials does not bear out those claims. For example, the letter from [redacted] details the role the Petitioner played within her organization and although she discusses how her unique appearance resulted in monetary gain for [redacted] agency, she does not explain how that impacted the field as a whole in a significant manner.

Although the Petitioner has shown that she is known for her unique appearance within the industry, she has not explained or demonstrated that this factor has significantly impacted the field.

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).

Before the Director, the Petitioner claimed she satisfied this criterion in one of two methods. She first claimed the regulatory standards readily apply to her occupation, and if that method did not result in a favorable determination, her evidence qualified as comparable evidence under the regulation at 8 C.F.R. § 204.5(h)(4). The Petitioner provided multiple administrative decisions in support of her claim that the standards under this criterion readily applied to her occupation. The Director determined that the Petitioner did not meet the requirements of this criterion finding that when she modelled the clothing of designers, that did not constitute the display of her work.

While two things can both be true at one time, the Petitioner's contradictory positions cannot. Because the Petitioner presents a dichotomy and both statements cannot be true (i.e., the standards both readily apply to her occupation and that they do not), and because she presented affirmative materials supporting the position that this regulation is applicable to her vocation, we do not accept her alternative claims that this criterion's requirements are not readily applicable to her profession.

Various forms of artistic display may satisfy this criterion's requirements and we evaluate the nature of the display. The regulation's plain language requires the exhibition or showcase to be artistic in nature. The arts may include visual art, the performing arts, music, graphic art, and other examples of the fine arts. And just as the event must be artistic, the evidence must also demonstrate the artistic nature of a petitioner's work displayed at the event.

Here, the regulatory standards are readily applicable to the Petitioner's occupation. The Petitioner's evidence consists of photographs of her appearing in fashion and other types of magazines within tear sheets, as well as on the cover of foreign editions of fashion and other categories of magazines. Within the appeal, the Petitioner offers a 2016 unpublished administrative decision from this office indicating the foreign national in that case met this criterion's requirements through appearing "prominently in a number of advertising campaigns and fashion magazine editorials. Some of the campaigns and editorials credited the Petitioner, specifically listing his name, as their featured model." However, while 8 C.F.R. § 103.3(c) provides that this office's precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. We may consider the reasoning within the unpublished decision; however, the analysis does not have to be followed as a matter of law.

The Petitioner claims the present case is corollary to the unpublished decision, but we do not agree that the facts in her case are sufficiently similar. She does not argue, nor does she identify the evidence demonstrating she prominently appeared in a number of advertising campaigns and editorials, some of which listed her as the campaign's featured model. Even if that were the case, we are not bound by the findings in a previous decision. There is a myriad of factors that might have led to the positive decision in that 2016 decision, and we cannot know all of them. Nor do we know that all the factors

in the present case sufficiently correlate. The Petitioner must demonstrate her eligibility through her own evidence and arguments.

Turning to the Petitioner's claims and supporting material, she discusses various methods in which models in general might satisfy this criterion's requirements. Her claims under this criterion consist of photographs of her appearing in magazines and on their cover and her appearance on fashion show runway events. The record does not establish that her appearance in magazines represents a display of her work at artistic exhibitions or showcases. Although the images the Petitioner offers of those campaigns show that her work was displayed in print and in digital media, this criterion specifically requires display of the Petitioner's work at "artistic exhibitions or showcases." *Also see generally 6 USCIS Policy Manual, supra, F.2 (Appendices) (focusing on the artistic nature of the venue).* The Petitioner's arguments lack adequate analysis to demonstrate that these forms of media constitute the type of venue the regulation requires that is an artistic exhibition or an artistic showcase.

As it relates to appearing on fashion show runways, the evidence shows she appeared on the runways, but the record does not establish that it was her work that was primarily on display as opposed to the fashion items she was wearing. For instance, the record does not reflect that the focus was on the models themselves at the claimed fashion shows.

In other contexts, fashion stylists or "image architects" might make such a showing at a competition in which clothing, jewelry, hairstyles, makeup, and fingernails created by the stylist are displayed at a runway show attended by judges and spectators. In that instance, the work of stylists was on display at an artistic exhibition or showcase. While the Petitioner's claims and evidence might factor more appropriately within a final merits determination, it falls short of satisfying the plain language requirements of this 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).

When this criterion is readily applicable to an occupation, it requires a petitioner to establish eligibility through evidence showing a volume of sales or box office receipts as a measure of a foreign national's commercial success in the performing arts. However, if a petitioner demonstrates these requirements are not readily applicable to their occupation, they may submit evidence they consider to be comparable that shows commercial success through some monetarily measurable factors or through a form of monetization (i.e., through commerce).

In the end it is not a petitioner who decides what materials may qualify as comparable evidence; instead "USCIS determines if the evidence submitted is comparable to the evidence required in 8 CFR 204.5(h)(3)." *See generally 6 USCIS Policy Manual, supra, F.2 (Appendices); see also Matter of Caron International, 19 I&N Dec. 791, 795 (Comm'r 1988) (concluding USCIS "is responsible for making the final determination regarding a beneficiary's eligibility for the benefit sought").*

The Petitioner claimed she met this criterion through comparable evidence before the Director. The Director declined to grant this criterion and determined that the regulation did not permit such a showing because it "does not allow any alternative measure of one's commercial success other than

‘by box office receipts or records, cassette, compact disc, or video sales.’” We do not agree with the Director’s reasoning here.

The Petitioner argues and has shown that this criterion’s standards are not readily applicable to her occupation. To meet her burden of proof under this requirement, the Petitioner must provide evidence and an explanation of why that material is comparable to this criterion’s original standards. On appeal the Petitioner argues a model’s commercial success is demonstrated by their ranking with major industry journals and organizations, their ability to consistently land important jobs for leading commercial clients, and their appearance on the cover of multiple publications. The Petitioner further posits that success in the industry via these means demonstrates her success commercially.

However, absent from the arguments and the evidence is the commercial or monetary aspect relating to compensation for these events. While the regulation contains a criterion relating to a high salary or significantly high remuneration at 8 C.F.R. § 204.5(h)(3)(ix), comparable evidence under this criterion could be of lesser qualitative means such that it might not satisfy the salary or remuneration regulation, but it could demonstrate a sufficient level of commercial success to comparably show eligibility under this requirement.

The Petitioner has not submitted evidence that demonstrates her claimed achievements are comparable to the standards under this criterion. Absent from the arguments and the evidence is the monetary or other comparable commercially successful aspect relating to her compensation for the methods she claims demonstrate a model’s commercial success (i.e., ranking in major industry journals and organizations, ability to land important jobs for leading commercial clients, and appearance on the cover of multiple publications). Possible examples might include: (1) a product’s revenues have dramatically increased from the time a model has been featured in advertising that product; (2) their presence at fashion shows that don’t normally sell out resulted in uncommon demand for the events where they are marketed as a featured model; or (3) a magazine’s sales significantly increased for the particular issue, or issues, as a direct result of a particular model appearing on its cover.

We conclude that although the Petitioner claims she meets five criteria in addition to judging, because her arguments fail on the criteria we discussed above, that means she cannot numerically meet the required number of criteria and it is unnecessary for us to reach a decision on her other claimed elements. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve our evaluation of those claims under the leading or critical role criterion. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *see also Matter of D-L-S-*, 28 I&N Dec. 568, 576–77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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 do not need to provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119–20. Nevertheless, we advise that we have reviewed the material in the aggregate, concluding that while we acknowledge the

Petitioner has built a reputation, the record does not support a finding that she 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 that goal. 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 the significance of their 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). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated their 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.