



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

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

MATTER OF A-B-R-

DATE: JUNE 21, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a fashion designer, seeks classification as an individual of extraordinary ability in the arts. *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, Texas Service Center, denied the petition. The Director concluded that the Petitioner had satisfied only one of the regulatory criteria, of which a Petitioner must meet at least three.

The matter is now before us on appeal. In her appeal, the Petitioner submits a statement affirming that she meets an additional two criteria.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b) of the Act states in pertinent part:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph 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,
- (i) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

- (ii) 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).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *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); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that U.S. Citizenship and Immigration Services (USCIS) examines "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").

II. ANALYSIS

The Petitioner is a fashion designer, primarily of shoes, who has worked for several prestigious design companies. The Director found that she had judged the work of others under 8 C.F.R. § 204.5(h)(3)(iv), but had not met any of the other criteria at 8 C.F.R. § 204.5(h)(3). On appeal, the Petitioner maintains that her styles have been featured in major media, that she has made contributions of major significance in the field of fashion design, and that she has performed in a leading or critical role for organizations with distinguished reputations, pursuant to the criteria at 8 C.F.R. § 204.5(h)(3)(iii), (v), and (viii). For the reasons discussed below, while we agree with the Petitioner that her role for various designers has been critical, the record does not support a finding that she meets the plain language requirements of the remaining criteria she has addressed.

A. Evidentiary Criteria¹

As the Petitioner has not affirmed that she received a major internationally recognized award and the record does not contain such an achievement, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

¹ We will discuss those criteria the Petitioner has raised and for which the record contains relevant evidence.

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Published materials 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 record contains numerous examples of celebrities appearing in the media wearing styles on which the Petitioner worked. In some instances, the designer brand is mentioned. The Petitioner also supplied articles that mention the designers for whom she has worked, including favorable coverage of wedge sneakers which the Petitioner helped design. None of this media coverage mentions the Petitioner by name. The Director concluded that the materials were not coverage of the Petitioner or her work.

On appeal, the Petitioner maintains that “only the brand’s name shows up in the publications in magazines,” but that the top brands “hire the best designers to design their collections.” She notes that she submitted sketches of several shoes and some clothing as evidence that she is “the author of these designs.” She further identifies several letters in the record that attest to her participation on designs featured in the media coverage.

Here, the record does not include any published material that mentions the Petitioner by name. Notably, the September 2014 issue of [REDACTED] identifies two designers at [REDACTED] Design Director [REDACTED] and Creative Director [REDACTED]. Another item from February 15, 2015, singles out [REDACTED] a designer at [REDACTED]. While we do not question that the Petitioner participated in the design of shoes and other clothing featured in the media, the plain language of the regulation requires that the items be “about” the Petitioner, relating to her work.² Articles that do not mention the Petitioner by name are not “about” her.

The Petitioner suggests on appeal that this criterion is not relevant to her occupation. The regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence where the standards set forth at 8 C.F.R. § 204.5(h)(3) do not readily apply to the Petitioner’s occupation. As noted above, the record contains two examples of published materials that mention designers by name. Regardless, even if we assumed that this criterion did not readily apply to fashion designers, the Petitioner has not explained how items that are not about a designer are comparable to articles that are. For these reasons, the Petitioner has not satisfied this criterion.

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

The Petitioner documented her review of the portfolios of fashion design students. Specifically, [REDACTED] professor of accessories design, [REDACTED] affirms that he invited the Petitioner to “serve as a judge of the work of other young designers” through his

² Compare 8 C.F.R. § 204.5(i)(3)(i)(C) (requiring published material about the Petitioner’s work).

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program. He explains that she “gives constructive criticism” during her visits, which she makes multiple times per year “to see the student body’s creative growth.” The Director concluded that the Petitioner satisfied this criterion and the Petitioner’s experience critiquing the products from students in her field supports that finding.

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).

Throughout the proceeding, the Petitioner has relied on reference letters to satisfy this criterion. The Director considered the letters and concluded that they did not demonstrate an influence beyond the Petitioner’s employers and clients. On appeal, the Petitioner notes that her references characterize her designs, including the wedge sneaker, as contributions to the field.

Several of the letters focus on the Petitioner’s work on a wedge sneaker. [REDACTED] design director for [REDACTED] and [REDACTED] affirms that the style “became an international phenomenon and created a trend that changed the way sneakers can be worn in a fashion-forward way. This shoe has been reinterpreted and reimagined by numerous other high-end brands.” [REDACTED] characterizes the Petitioner as a “critical” and “integral” member of the design team. [REDACTED] senior designer of shoes, [REDACTED] maintains that the Petitioner’s design for this sneaker “was truly remarkable and created an immense following within the high-end shoe design arena, particularly among international celebrities such as [REDACTED]” [REDACTED] director of development for footwear, [REDACTED] verifies that the Petitioner “conceptualized, developed and concluded every shoe design in our collection with our divisional design leadership” and that the wedge sneaker “went on to be one of our strongest styles for many consecutive seasons.”

The record confirms that the sneaker received media coverage. For example, [REDACTED] described a “shoe frenzy” after the shoe’s debut at a fashion show in September 2011, predicting the shoes would “blow off shelves.” While [REDACTED] mentioned [REDACTED] high-top in an article on that style of sneaker, the piece also mentioned a wedge sneaker by [REDACTED]. The Petitioner did not offer letters from independent brands corroborating the Petitioner’s influence on their own designs or news articles noting [REDACTED] influence on emerging sneaker styles. Moreover, the record does not contain evidence that the Petitioner is recognized by independent experts in the field as the primary designer of the shoe. As noted above, the media coverage does not mention the Petitioner by name. While [REDACTED] explains that the Petitioner was the sole member of the design team with the title [REDACTED] neither she nor the other representatives of [REDACTED] provides the number of team members who worked on the shoe.

Other letters discuss the Petitioner’s work in more general terms. For example, [REDACTED] owner and creative director, [REDACTED] characterizes the Petitioner’s designs as “groundbreaking,” “revolutionary,” “trend-setting,” and “pioneering,” but includes no examples of how the Petitioner’s styles have influenced brands beyond where she has worked. Merely repeating the language of the

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statute or regulations does not satisfy a petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory affirmations. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.D.C. 1990).

Regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer and clients or customers. See *Visinscaia*, 4 F. Supp. 3d at 134-35. For the reasons discussed above, while the letters confirm the Petitioner's value to her employers, they do not detail how she has influenced the field at a level consistent with contributions of major significance in the field. Thus, she 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).

The record contains several letters detailing the Petitioner's roles for her various employers. As the Petitioner notes on appeal, [REDACTED] confirms that, based on her "impressive work" with other brands, the Petitioner currently works as the design director for ready to wear and shoes at [REDACTED]. In this role, the Petitioner "has been primarily responsible for launching new and existing shoe and ready to wear lines at [REDACTED]. In addition, as discussed above, [REDACTED] and [REDACTED] all detail the critical nature of the Petitioner's role at [REDACTED]. [REDACTED] provides the profits of the footwear division in her letter. The record contains media coverage of both the wedge sneaker to which the Petitioner contributed for [REDACTED] and of her styles for [REDACTED].

The above roles are sufficient to meet this criterion. A leading role should be apparent by its position in the organizational hierarchy and the role's matching duties. A critical role is evident from its overall impact on the organization or establishment. The record in the aggregate verifies both the Petitioner's participation in designs for distinguished brands and the significance of these styles for her employers. Accordingly, the Petitioner satisfies this criterion.

B. Summary

As explained above, the exhibits the Petitioner provided satisfy only two of the regulatory criteria. As a result, 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 listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

III. CONCLUSION

Had the Petitioner satisfied at least three evidentiary categories, the next step would be a final merits determination that considers all of the filings in the context of whether or not the Petitioner has

demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor,” and (2) that the individual “has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20 (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). Although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate supports a finding that the Petitioner has not established the level of expertise required for the classification sought.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the Petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of A-B-R-*, ID# 17443 (AAO June 21, 2016)