



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

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

MATTER OF M-C-E- CORP.

DATE: MAR. 8, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a fashion merchandising company, seeks to classify the Beneficiary as an “alien 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 classification makes visas available to foreign nationals 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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not established that the Beneficiary satisfies any of the initial evidentiary criteria, of which she must meet at least three.

The matter is now before us on appeal. In its appeal, the Petitioner contends that the Beneficiary meets more than three criteria based on her awards, published material, original contributions, artistic display, leading or critical role, and commercial successes.

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

I. LAW

Section 203(b)(1)(A) of the Act states, in pertinent part:

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,
- (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 the beneficiary’s achievements in the field through a one-time achievement (that is a major, internationally recognized award). If the petitioner does not submit this documentation for the beneficiary, then it must provide sufficient qualifying evidence that meets at least three of the ten criteria listed at 8 C.F.R. §§ 204.5(h)(3)(i)-(x).

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), *aff’d*, 683 F.3d. 1030 (9th Cir. 2012); *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”). Accordingly, where a petitioner submits qualifying evidence for the beneficiary under at least three criteria, we will determine whether the totality of 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.

II. ANALYSIS

The Beneficiary is a fashion designer. At the time of filing, she was working for the Petitioner as a design consultant. The Petitioner did not indicate, and the record does not establish, that the Beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 204.5(h)(3). The Petitioner must therefore demonstrate the Beneficiary’s eligibility under at least three of the criteria listed at 8 C.F.R. §§ 204.5(h)(3)(i)-(x). On appeal, the Petitioner maintains that the Beneficiary meets the awards criterion under 8 C.F.R. § 204.5(h)(3)(i), the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), the original contributions criterion under 8 C.F.R. § 204.5(h)(3)(v), the display criterion under 8 C.F.R. § 204.5(h)(3)(vii), the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii), and the commercial successes criterion under 8 C.F.R. § 204.5(h)(3)(x). We have reviewed the entire record of proceedings, and it does not support a finding that the Beneficiary meets the plain language requirements of at least three criteria.

A. Evidentiary Criteria

Documentation of the alien’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).

(b)(6)

Matter of M-C-E- Corp.

The Petitioner submitted photographs of the Beneficiary's [REDACTED] award that she received from her alma mater, the [REDACTED] "a two year associate degree program." On appeal, the Petitioner contends that [REDACTED] rector of the [REDACTED] [REDACTED] discussed the award in his letter of support. The record includes a June 2014 letter from [REDACTED] but he did not comment about the school's [REDACTED] award. While a [REDACTED] 2005 article in [REDACTED] mentions in passing that five of the "15 new designers from the [REDACTED] "were recognized with the [REDACTED] [REDACTED] at a fashion event organized by the school, the article does not discuss the significance of the award or demonstrate its level of recognition. Lastly, the Petitioner provided an online profile of [REDACTED] a fashion designer, which stated: "Beginning his journey at [REDACTED] in the Dominican Republic, [REDACTED] was recognized with the [REDACTED] awards, and was awarded a full scholarship to study at [REDACTED] in [REDACTED] As the aforementioned documentation is insufficient to demonstrate that the [REDACTED] award is a nationally or internationally recognized prize or award for excellence in fashion design, the Petitioner has not established that the Beneficiary meets this regulatory 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).

As evidence for this criterion, the Petitioner provided a [REDACTED] 2005 article in [REDACTED] entitled [REDACTED] While the Beneficiary's blouse design is identified in a caption under one of 15 accompanying photographs, the article is about a school fashion show and not the Beneficiary. The plain language of the regulatory criterion requires "published material about the alien." Articles that are not about the Beneficiary do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-00820 at *1, *7 (D. Nev. Sept. 2008) (upholding a finding that articles about a show are not about the actor). A webpage from [REDACTED] list's [REDACTED] circulation and readership as 80,000 copies, but the record does not include documentary evidence showing that the number elevates the magazine to a form of major media relative to other news and fashion sources.

The Petitioner also submitted two [REDACTED] 2005 articles in [REDACTED] entitled [REDACTED] and [REDACTED] At the conclusion of the articles, the Beneficiary is listed in a group of more than a dozen students from the [REDACTED] The articles, however, are about the school's upcoming show rather than the Beneficiary. Furthermore, the record does not contain evidence showing that [REDACTED] is a form of major media.

As mentioned in the discussion of the awards criterion, the Petitioner provided a [REDACTED] 2005 article (entitled [REDACTED]) in [REDACTED] a supplement of [REDACTED] discussing a fashion event featuring students from the [REDACTED] The article, however, is not about the Beneficiary and only mentions her in passing. A webpage from [REDACTED] list's [REDACTED] circulation and readership as 70,000 copies, but the Petitioner has

(b)(6)

Matter of M-C-E-Corp.

not established that the number elevates the publication to a form of major media relative to other news sources. Furthermore, the record does not include information about [REDACTED] or its status as a form of major media.

In addition, the Petitioner offered a [REDACTED] 2005 article in [REDACTED] entitled "[REDACTED]" but the author is not identified and the Beneficiary is not discussed in the article. While Petitioner contends in an accompanying English language translation that the article includes an [REDACTED] [the Beneficiary]," the article is not about her. Furthermore, although the Petitioner submitted a screenshot from [REDACTED] website, the screenshot did not include information to demonstrate that the magazine qualifies as a form of major media. Finally, the record includes an [REDACTED] 2012 article about the Beneficiary in the blog [REDACTED] but the Petitioner did not provide evidence showing that the blog is a form of major media.

In light of the above, the Petitioner has not established that the Beneficiary meets this regulatory criterion.

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).

As evidence under this criterion, the Petitioner provided letters of support discussing the Beneficiary's [REDACTED] design. The Director determined that the evidence did not show that the Beneficiary's work constituted original contributions of major significance in the fashion industry.

In its appeal, the Petitioner argues that the Director's decision did not properly consider the documentation it offered in response to the request for evidence. The Petitioner's response included a letter from [REDACTED] design director of [REDACTED]¹ stating:

[The Beneficiary's] contributions have become classics for our company, such as the [REDACTED] that has been featured in many leading fashion department stores, among them [REDACTED] who continues to sell the style today under the [REDACTED] brand, and has every season since it's [*sic*] inception for [REDACTED] 2011 [REDACTED]

In addition, the Petitioner offered a letter from [REDACTED] owner of the [REDACTED] children's clothing line, indicating that she and the Beneficiary worked "on the [REDACTED] label for [REDACTED] stated that the Beneficiary's [REDACTED] "has become a classic for [REDACTED] Designed for [REDACTED] 2011, it has also been done for [REDACTED] for the [REDACTED] label consistently

¹ The Petitioner also submitted a company profile for [REDACTED] the Beneficiary's previous employer, describing the company as "a diversified international manufacturer and wholesale marketer and retailer" of fine apparel brands. The Beneficiary worked as a designer at [REDACTED] "from November 2009 to December 2013."

Matter of M-C-E- Corp.

every season since and is still selling today” She further noted that [redacted] and [redacted] and other stores have also bought large quantities of this style” and that it “has marked the way people dress in our culture.” The Petitioner also provided two screenshots from [redacted] website listing prices for the [redacted] and [redacted].

The [redacted] company profile, [redacted] retail apparel website screenshots, and statements from the Beneficiary’s two former coworkers at [redacted] are not sufficient to demonstrate that she was the first designer to originate the [redacted] style and that her design rises to the level of a contribution of major significance in the fashion industry. For example, the record does not include corroborating evidence from [redacted] and [redacted] or other major retailers identifying the Beneficiary as the originator of [redacted] design or distinguishing her work from other marketable retail fashion styles. Although [redacted] and [redacted] praise the Beneficiary’s work, their letters of support are insufficient to show that her designs have widely affected the industry beyond [redacted] retail partnerships or have otherwise risen to the level of artistic or business-related contributions of major significance in the field. The plain language of the regulation requires that the Beneficiary’s original contributions be “of major significance in the field” rather than only to her employer’s retail clients.

In this instance, the uncorroborated statements from the Beneficiary’s colleagues are not sufficient to demonstrate her eligibility. *See Visinscaia*, 4 F.Supp.3d at 134-35; *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988) (holding that an agency “may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony,” but is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought and “is not required to accept or may give less weight” to evidence that is “in any way questionable”). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the beneficiary’s eligibility. *Id.* *See also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”). Without additional, specific evidence showing that the Beneficiary’s design work has been unusually influential, has substantially impacted the fashion industry, or has otherwise risen to the level of original contributions of major significance in the field, the Petitioner has not established that the Beneficiary meets this regulatory 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 provided published articles stating that the Beneficiary exhibited her work at the [redacted] fashion show. In addition, the Petitioner offered photographs and letters of support indicating that the Beneficiary’s [redacted] fashion designs appeared in a window display of [redacted] in [redacted]. The record therefore establishes that the Beneficiary meets this regulatory criterion.

(b)(6)

Matter of M-C-E- Corp.

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).

In the appeal brief, the Petitioner contends that the Beneficiary has performed in a leading or critical role for the Petitioner, [REDACTED] and the [REDACTED] fashion line. The record, however, does not indicate that the Petitioner has worked for [REDACTED] or developed any of its fashion lines. For example, the letter from [REDACTED] owner of the [REDACTED] children's clothing line, does not state that the Beneficiary has worked for her company. Furthermore, the Beneficiary's résumé does not list [REDACTED] under her job experience. The Petitioner has not demonstrated that the Beneficiary performed in a leading or critical role for [REDACTED] and the record does not include evidence establishing that the company has a distinguished reputation.

[REDACTED] chief financial officer for the Petitioner and [REDACTED] stated that the Beneficiary's role as creative director for [REDACTED] was critical to the organization's success in the Dominican Republic and the [REDACTED] [The Beneficiary] provides the company with effective marketing material and chooses the clothing, jewelry and fragrance to accompany the marketing material." In addition, [REDACTED] administrative vice president of [REDACTED] discussed the Beneficiary's work for the company as a creative consultant and creative director. [REDACTED] contended that the Beneficiary "has proved critical to our company's success" and that "[m]any of the original products that [the Beneficiary] has designed for our company have, in turn, become our number one sellers." While the aforementioned letters demonstrate that the Beneficiary's role was critical, the record does not show that the company has a distinguished reputation. The Petitioner provided its company profile, but USCIS need not rely on self-promotional material. *See Braga v. Poulos*, No. CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9) (concluding that USCIS did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). Without further supporting evidence, we cannot conclude that the Petitioner has a distinguished reputation in the fashion industry.

[REDACTED] former vice president of design for the [REDACTED] brand at [REDACTED] indicated that the Beneficiary worked for that company as a designer for its [REDACTED] brand product line. [REDACTED] explained that the Beneficiary's duties included finding vintage inspiration pieces for designs, working with vendors to duplicate vintage buttons and other trim accessories, and overseeing various aspects of production. In general, a leading role is evidenced from the role itself. In this instance, the Beneficiary served as a designer for one of [REDACTED] multiple product lines. [REDACTED] letter, however, does not indicate whether the Beneficiary served in a leading role for the organization or where her position fit in the overall hierarchy of [REDACTED] Based on the lack of details contained [REDACTED] letter, the Petitioner has not shown that the Beneficiary performed in a leading role for the company.

Furthermore, a critical role is one in which a beneficiary was responsible for the success or standing of the organization or establishment. Although [REDACTED] stated that the Beneficiary "was an

² [REDACTED] is the Petitioner's parent company in the Dominican Republic.

(b)(6)

Matter of M-C-E- Corp.

essential member of our product development team” and briefly discussed her duties, she did not show how the Beneficiary’s accomplishments impacted [REDACTED] standing in the field. For instance, the Petitioner did not provide evidence reflecting that the company garnered attention based on the Beneficiary’s work for the [REDACTED] brand product line. Accordingly, the Petitioner has not established that Beneficiary performed in a critical role for [REDACTED]

With respect to [REDACTED] reputation, the Petitioner provided general information about the company from [REDACTED] a marketing solutions provider. The information included details about the company’s export sourcing, distribution, and retailing business entities. While the business details reflect that [REDACTED] is a large multinational corporation, the evidence offered is not sufficient to demonstrate that the company has a distinguished reputation in the fashion industry.

Regarding the Beneficiary’s role for [REDACTED] indicated that the Beneficiary “quickly became an intrinsic part of the team” at [REDACTED] and that many of her “ideas were critical to our success.” Furthermore, [REDACTED] pointed to the Petitioner’s work on apparel for [REDACTED] as well as “in other lines such as [REDACTED] and [REDACTED] and [REDACTED] . . .” The Petitioner did not provide an organizational chart or other similar evidence to establish where the Beneficiary’s role fit within the overall hierarchy of [REDACTED]. While the Beneficiary worked on various clothing lines for [REDACTED] the Petitioner did not provide sufficient documentary evidence to show that her duties and responsibilities were leading or critical for the company as a whole. The submitted documentation does not differentiate the Beneficiary from the company’s executives and senior designers so as to demonstrate her leading role, and does not establish that her work on the design team contributed to the company in a way that was of substantial importance to its success or standing in the industry. Furthermore, although the Petitioner provided [REDACTED] company profile from its website, this self-promotional material is not sufficient to establish that [REDACTED] has a distinguished reputation.

For the above reasons, the Petitioner has not met its burden of demonstrating that the Beneficiary meets 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).

The Petitioner acknowledges that the Beneficiary’s field is not “in the performing arts” as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(x), but contends that “the commercial success of her designs for numerous national clothing lines” meets this criterion as comparable evidence. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of “comparable evidence” if the ten categories of evidence “do not readily apply to the beneficiary’s occupation.” The Petitioner submitted cut ticket requests showing manufacturing of her clothing and screenshots of her fashion designs available on the websites of [REDACTED] and [REDACTED]

Here, the record does not establish that the cut ticket requests for the Beneficiary’s designs and screenshots from various retail websites are comparable to the regulation at

8 C.F.R. § 204.5(h)(3)(x) that requires evidence of commercial successes as shown by “receipts” or “sales.” Although the Beneficiary’s designs were manufactured and offered by multiple retailers, the Petitioner did not offer sales figures for her apparel designs or other documentary evidence of their commercial success relative to other retail fashions. The Petitioner has not shown the evidence it claims as comparable to the regulation at 8 C.F.R. § 204.5(h)(3)(x) is of the same caliber as that required by the regulation. Accordingly, the Petitioner has not established that the Beneficiary meets this regulatory criterion through the submission of comparable evidence.

B. Summary

As explained above, the evidence provided satisfies only one of the regulatory criteria. Had the Petitioner included the requisite material under at least three evidentiary categories, our next step would be a final merits determination that considers all of the submissions in the context of whether the Beneficiary has achieved: (1) a “level of expertise indicating that [she] is one of that small percentage who have risen to the very top of the field of endeavor,” and (2) “that the [beneficiary] has sustained national or international acclaim” and that 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. As the Petitioner has not done so, the proper conclusion is that the Beneficiary has not satisfied the antecedent regulatory requirement of presenting initial evidence set forth at 8 C.F.R. §§ 204.5(h)(3)(i)-(x). *See Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate does not support a finding that the Beneficiary has achieved the level of expertise required for this classification.

C. O-1 Nonimmigrant Status

We note the record of proceedings reflects that the Beneficiary received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Beneficiary, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd.*, 724 F. Supp. at 1103. Furthermore, our authority over a USCIS service center, the office responsible for adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785 (E.D. La.), *aff’d*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Matter of M-C-E- Corp.

III. CONCLUSION

The Petitioner has not demonstrated by a preponderance of the evidence that the Beneficiary qualifies for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of M-C-E- Corp.*, ID# 254439 (AAO Mar. 8, 2017)