



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

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

MATTER OF M-K-

DATE: MAY 17, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a model, 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 of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had shown that she met only one of the ten initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits additional evidence and contends that she meets three criteria.

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 two options for satisfying this classification's initial evidence

requirements. First, a petitioner can demonstrate a one-time achievement (that is a major, internationally recognized award). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

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 model. As the Petitioner has not established that she has received a major, internationally recognized award, she must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director held that the Petitioner met the published materials at 8 C.F.R. § 204.5(h)(3)(iii). On appeal, the Petitioner asserts that she meets two additional criteria: membership at 8 C.F.R. § 204.5(h)(3)(ii) and leading role at 8 C.F.R. § 204.5(h)(3)(viii).¹ For the reasons discussed below, the record does not support a finding that the Petitioner satisfies at least three criteria.

Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner states that she is a member of [REDACTED] and asserts that this is the “epicenter of international models.” The Director held that this agency “appears to be a personal assistant, social group, and facilitator for gym memberships, language workshops, drivers, and other personal assistance.” In a request for evidence (RFE), the Director indicated that the Petitioner may submit, among other things, the section of the [REDACTED] bylaws that discuss the criteria for membership in its organization. The Petitioner provided a letter from [REDACTED], the founder of [REDACTED] stating that this organization “has high standards to accept new members” and that a candidate must be “worldwide distinguished agency signed model in [REDACTED].” The Director

¹ The Petitioner initially stated that she satisfied the high salary and commercial success in the performing arts criteria. See 8 C.F.R. § 204.5(h)(3)(ix)-(x). On appeal, she no longer asserts those claims, so we will not consider them.

concluded that evidence in the record did not establish that [REDACTED] required outstanding achievements of its members.

On appeal, the Petitioner states that bylaws are not required by French law and that the Director erred in requiring the Petitioner submit this documentation. The regulation at 8 C.F.R. § 204.5(h)(3)(ii) does not identify specific evidence to establish eligibility, and we notes that the Director's RFE did not require that bylaws be submitted, only identified them as an example. The Petitioner does not provide corroborating evidence establishing the unavailability of the bylaws, nor does she offer other evidence to show that Model Spot Paris requires outstanding achievements to become a member. See 8 C.F.R. § 103.2(b)(2).

To demonstrate that the achievements of those admitted to the organization are judged by recognized experts, the Petitioner states that those on the panel of [REDACTED] included [REDACTED] "who was responsible for discovering Top International super models such as [REDACTED]. The record lacks evidence establishing [REDACTED] association with the organization or establishing her national or international recognition as an expert in the field.

The Petitioner has not demonstrated that [REDACTED] requires outstanding achievements of its members, as judged by recognized experts in the field. Therefore, she does not meet 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 Director indicated that the Petitioner meets this criterion for being featured in [REDACTED] and [REDACTED] and in online advertisements. While we note that the Petitioner was featured in these publications, the record does not reflect that this published material is about the Petitioner or that these are professional or major trade publications, or other major media. The record contains documentation of a photo shoot by photographer [REDACTED] in which the Petitioner is portrayed as the [REDACTED] but the articles addressing this are not about the Petitioner but provide specific details about the photo shoot and what steps the producer took to produce the overall images. This does not constitute published material about the Petitioner. Therefore, we withdraw the Director's decision regarding 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).

A leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. A critical role should be apparent from the Petitioner's impact on the organization or the establishment's activities. The Petitioner's performance in this role should establish whether the role was critical for the organization or establishment as a whole.

The record contains a letter from [REDACTED], the general producer of [REDACTED] who states that the Petitioner “played a big part in participating and organizing a charity auction project [REDACTED] in the activity event [REDACTED] in December 2013. [REDACTED] does not state exactly what the Petitioner did at this event, and thus, does not establish that her role was leading or critical. Furthermore, the evidence submitted does not demonstrate that [REDACTED] has a distinguished reputation.

On appeal, the Petitioner states that she played this role yearly, but provides no evidence to support her contention. Her statement contradicts the letter submitted by [REDACTED] dated June 2017, which refers to her role in December 2013 and does not indicate subsequent performances. When the record contains inconsistencies, the Petitioner must resolve them with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, we find that the evidence in the record is insufficient to demonstrate that the Petitioner has performed a leading or critical role for an organization that has a distinguished reputation. Therefore, the Petitioner does not meet this criterion.

III. CONCLUSION

The Petitioner is not eligible because she has not submitted the required initial evidence of either a qualifying 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). Thus, we do not need to fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has the level of expertise required for the classification sought.

ORDER: The appeal is dismissed.

Cite as *Matter of M-K-*, ID# 1264856 (AAO May 17, 2018)