



U.S. Citizenship  
and Immigration  
Services

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

MATTER OF M-D-

DATE: APR. 2, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a fashion 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 Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only two of the ten initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits additional documentation and a brief, arguing that she meets at least three of the ten criteria.

Upon *de novo* review, we will sustain 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). If that petitioner does not submit this evidence, then he or she must provide 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 currently employed as a fashion model for [REDACTED] in New York, New York. As the Petitioner has not 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).

### A. Evidentiary Criteria

The Director found that the Petitioner met the following two criteria: published material under 8 C.F.R. § 204.5(h)(3)(iii) and high salary under 8 C.F.R. § 204.5(h)(3)(ix). The record reflects that major media featured the Petitioner in their publications and she commands a high salary in her field. Accordingly, we agree with the Director that the Petitioner fulfilled the published material and high salary criteria.

In addition, the record reflects that the Petitioner has displayed her work at various fashion shows and exhibits satisfying the artistic display criterion under 8 C.F.R. § 204.5(h)(3)(vii). Therefore, the Petitioner established that she fulfills at least three regulatory criteria, and we will evaluate the totality of the evidence in the context of the final merits determination below.

## B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim and that she is one of the small percentage at the very top of the field of endeavor, and that her 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 her 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.<sup>1</sup> In this matter, we determine that the Petitioner has shown her eligibility.

The record reflects that the Petitioner has walked hundreds of runways, including the top four international fashion week events in [REDACTED] and [REDACTED] for top designers, such as [REDACTED] and [REDACTED]. Further, she has participated in advertising campaigns for prestigious brands, such as [REDACTED] and [REDACTED]. For instance, [REDACTED] casting director for [REDACTED] confirmed that the Petitioner was selected "year after year since 2013 for our runway shows." In addition, [REDACTED] image and advertising campaign manager for [REDACTED] indicated the Petitioner's modeling of the company's brands for three years. For these reasons, the record demonstrates that the Petitioner has achieved a "career of acclaimed work in the field." See H. Rep. No. 101-723, at 59 (Sept. 19, 1990).

Moreover, the Petitioner has been featured in major publications, such as *Time*, *Vogue*, *Elle*, and *Glamour*. In fact, *New York Magazine* named the Petitioner as one of the "Top Models" where she opened for [REDACTED]. In addition, the Petitioner has appeared on the covers of major magazines, such as [REDACTED] and [REDACTED]. Accordingly, the Petitioner has established the required sustained national or international acclaim. See section 203(b)(1)(A) of the Act.

The demand for the Petitioner's work has resulted in her commanding a high salary placing her among the small percentage at the very top of her field. See 8 C.F.R. § 204.5(h)(2). Indeed, *Elle* magazine wrote that the Petitioner has "conquered the catwalk" and "has been one of the most booked models ever since." As further evidence of her status in the field, the record contains recommendation letters setting her significantly apart from other fashion models. For example, Belgian fashion designer [REDACTED] stated that the Petitioner "is a 'household' name among fashion industry leaders and is known to be one of the top models in the international field," and she "enjoys the greatest level of commendation and achievement in the fashion arena."

In summary, the Petitioner has demonstrated her extraordinary ability as a fashion model. The totality of the evidence establishes that she possesses a level of expertise that is consistent with a finding that she is one of a small percentage at the very top of the field of endeavor and that she has documented sustained international acclaim. See section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (3);

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<sup>1</sup> See also 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 4* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (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).

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*Kazarian*, 596 F.3d at 1119-20. *See also Matter of Price*, 20 I&N Dec. 953, 956 (Assoc. Comm'r 1994).

### III. CONCLUSION

For the reasons discussed above, the Petitioner has established that she meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). She has also demonstrated sustained national and international acclaim and that her achievements have been recognized through extensive documentation. Lastly, the Petitioner has shown that she intends to continue working in her area of expertise and that she will substantially benefit prospectively the United States. She therefore qualifies for classification as an individual of extraordinary ability. In visa petition proceedings, the petitioner bears the burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has been met.

**ORDER:** The appeal is sustained.

Cite as *Matter of M-D-*, ID# 2590356 (AAO Apr. 2, 2019)