



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

MATTER OF N-F-N-C-

DATE: MAR. 11, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a model scout, seeks classification as an individual 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 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 he must meet at least three.

On appeal, the Petitioner submits a brief, arguing that he meets at least three of the ten 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). 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to 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 (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 scout and agent who has developed and worked with many high profile models. Because he has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner met two of the initial evidentiary criteria. The record contains evidence that the Petitioner has commanded a high salary in relation to others in the field. Accordingly, we agree with the Director that the Petitioner meets the high salary criterion. We have, however, reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner fulfills the requirements of at least three criteria.

### A. 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 asserts that he meets this criterion based on his appearance on MTV’s [REDACTED] in a television interview on [REDACTED] and articles appearing in *The Portugal News* (TPN), on models.com, and on the “M.I.T. ME” blog. The record, however, does not demonstrate that the

submitted materials constitute published material about the Petitioner in professional or major trade publications or other major media, which included the title, date, and author.<sup>1</sup>

As it relates to MTV's [REDACTED] the Petitioner submits screenshots of his appearance as a talent scout on Season 1, Episode 14, along with an IMDb printout dated February 6, 2018 containing a synopsis of this episode.<sup>2</sup> According to the Petitioner, his appearance is in a professional role evaluating a cast member's modeling potential. The screenshots provided by the Petitioner identify him as an "executive model manager." While the record establishes that this program qualifies as major media, the Petitioner does not submit evidence documenting that the episode was about him, as required.<sup>3</sup> The synopsis he provided from IMDb does not mention the Petitioner. In addition, although the Petitioner provided a screenshot from IMDb regarding the episode, it did not contain the title and author of the material as required by this regulatory criterion.

Regarding [REDACTED] the Petitioner provides screenshots of his appearance on this talk show. However, the Petitioner does not submit evidence, such as a transcript, demonstrating that this interview related to his work as a model scout or agent.<sup>4</sup> The Petitioner also fails to include documentation of the title, date, and author for the episode on which he appeared. Further, the Petitioner does not submit sufficient evidence that [REDACTED] is a major medium. He provides a printout from the website IMDb titled "[REDACTED]" which lists [REDACTED] as 19<sup>th</sup> of 19 programs. This document alone is not sufficient to show that this ranking elevates it to major media relative to other television programs.

The Petitioner also references articles appearing on models.com and in TPN. The article on models.com, [REDACTED] is an interview with the model [REDACTED] and not about the Petitioner. The article in TPN, [REDACTED] includes a quote from the Petitioner about the subject of the article, [REDACTED] but is not about him. Further, the Petitioner does not provide sufficient evidence demonstrating that TPN is a major medium. He includes a screenshot from TPN asserting that it is "the No. 1 English newspaper in Portugal." However, USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9<sup>th</sup> Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine's status is not reliable evidence of major media). The Petitioner also provides a printout titled "Top Newspapers in Portugal" for 2016

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<sup>1</sup> See 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 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>, at 7 (indicating that the published material should be about the petitioner relating to his or her work in the field).

<sup>2</sup> The record also contains a news article about the television show [REDACTED] but this material is not about the Petitioner. Articles that are not about a petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*1, \*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).

<sup>3</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

<sup>4</sup> *Id.*

showing that TPN is ranked 26<sup>th</sup> as well as a June 2018 article from Portugal Property Guides titled “A guide to newspapers in Portugal” describing TPN as “a weekly newspaper printed in English.” However, this article does not discuss TPN’s ranking relative to other newspapers in Portugal. These materials are not sufficient to show that this ranking elevates it to major media relative to other newspapers.

Finally, the Petitioner provides a certified translation of an article titled [REDACTED] published on the blog “M.I.T. ME” at mitmebymayte.blogspot.com as evidence that he fulfills this criterion. While he is the subject of the article, the Petitioner does not provide sufficient evidence demonstrating that this blog is a major medium. He submits a biography of Carmen Garcia Huerta, the article’s author, as evidence of this. However, this biography does not provide the circulation of this blog relative to other blogs, its intended audience, or other information that might demonstrate that the blog rises to the level of major medium.

For these reasons the Petitioner has not demonstrated that he meets 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 asserts that he meets this criterion based on his work as a judge for the 2011 [REDACTED] contest in Spain and the selection of [REDACTED] for the 2012 [REDACTED] contest.<sup>5</sup> He also argues that he meets this criterion as a judge of an aspiring model on MTV’s [REDACTED] as discussed above. The Petitioner provides a letter from [REDACTED] former president of [REDACTED] confirming the Petitioner’s selection as a judge in the 2011 [REDACTED] competition in Spain, along with screenshots of video demonstrating his participation in that role. We find this evidence sufficient to fulfill this 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).

In determining that the Petitioner did not meet this criterion, the Director found that the Petitioner’s achievements did not “amount to original contributions of major significance in the field.” On appeal, the Petitioner argues that the Director erred in disregarding “the press around the [REDACTED] that [the Petitioner] helped draft.” He further asserts that the Director did not consider the

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<sup>5</sup> While the Petitioner additionally asserts eligibility based on his service as a judge in the 2004 [REDACTED] competition, he has not sufficiently documented this role. Specifically, the Petitioner provides a letter from the director of [REDACTED] confirming his participation in the 2006 [REDACTED] competition. However, this does not corroborate the Petitioner’s assertion that he served as a judge in the 2004 competition of the same name. The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

testimonial letters “that demonstrate the significant impact of [the Petitioner]’s original contributions on the field as a whole.”

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field. The Petitioner asserts that he meets this criterion based upon his advocacy for racial and gender diversity in the modeling industry, his efforts to “introduce fair work standards and a healthy diet for models,” and by “raising awareness of mental health issues in the fashion industry.” He provides letters of reference in support of this assertion, as well as media coverage of the [REDACTED]

As evidence of his advocacy for racial and gender diversity in the modeling industry, the Petitioner includes a letter from [REDACTED] a transgender model. [REDACTED] states “... while transgender people have started to become more recognized in society to varying degrees, transgender people were barely present (or welcome) in the fashion industry...[B]y backing my career ... [the Petitioner] is clearly leading the way toward more acceptance in the fashion and advertising arenas.” In another letter submitted by the Petitioner, [REDACTED] director of [REDACTED] [REDACTED] states that the Petitioner has been “clearly pushing for gender diversity in the modeling industry, most notably in his management of Israeli model, [REDACTED]...In his management of [REDACTED] modeling career in the United States, [the Petitioner] is in fact redefining ‘beauty’ to include transgender models.” While these letters demonstrate that the Petitioner is promoting the inclusion of [REDACTED] within the industry, they do not demonstrate that this is an original contribution that has influenced the field of modeling as a whole.<sup>6</sup> Letters that specifically articulate how the alien’s contributions are of major significance to the field and its impact on subsequent work add value. Letters that lack specifics and make broad, unsupported assertions do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.<sup>7</sup>

Regarding the Petitioner’s assertion that he is raising mental health awareness, the Petitioner provides a letter from [REDACTED] managing editor of [REDACTED] stating that he is “a significant figure in the modeling and fashion industries as an agent who is raising awareness about mental health.” [REDACTED] notes that the Petitioner arranged for a model to appear on Vogue.com to discuss mental health issues just after opening a show for [REDACTED] in [REDACTED]. She asserts that this shows the Petitioner’s “commitment and leadership in bringing attention to mental health issues within the fashion industry” and “confirms that [the Petitioner]’s contributions have been significant.” As noted above, letters that specifically articulate how the alien’s contributions are of major significance to the field and its impact on subsequent work add value. While this letter mentions the Petitioner’s role in providing a forum for a model to discuss mental

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<sup>6</sup> While we only address a sampling here, we have reviewed all letters in the file.

<sup>7</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 9.

health issues, it does not specifically state how his role in doing so has been of major significance to the field of modeling.

Finally, on appeal, the Petitioner argues that the Director did not consider the press around the [REDACTED] “that [he] helped draft.” The record contains an article published on models.com about the launch of this charter. However, the article does not reference the Petitioner, and the record does not otherwise establish his role in the development of this document such that it rises to the level of an original contribution to the field of modeling. He provides a testimonial letter from [REDACTED] who states that the Petitioner has “made contributions to the modeling and fashion industry through his input regarding the historic [REDACTED] discusses in particular a February meeting where the Petitioner “proposed that agents should have structured training programs and an official, written code of conduct for working with models.” [REDACTED] continues, “[A]s the [REDACTED] is scheduled to be updated, these are the types of comments ... that will continue to pave the way for a better working environment for fashion models.” While this letter demonstrates that the Petitioner agreed with and supported the development of this charter, it does not discuss the contributions the Petitioner made directly to the creation or success of the Charter. Further, although the aforementioned article indicates that the launch of the Charter gained attention, the record lacks evidence establishing its impact on the field of modeling as a whole. For these reasons, the Petitioner has not established that he fulfills this 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 record includes documentation of the work of models that the Petitioner has developed, as displayed “in advertising campaigns, fashion publications, catalogs, and the catwalk.” However, the Petitioner has not established that it is his work being displayed in advertising campaigns, fashion publications, catalogs and on the catwalk. Rather he explains that “[T]hese are the venues in which [the Petitioner]’s models display their work...” While the Petitioner may be responsible for selection and promotion of these models, it is their work which is displayed in these campaigns, catalogs, and the catwalk, by his own description. In order to demonstrate eligibility for this criterion, a petitioner must show that his work was on display, and the venues were artistic exhibitions or showcases.<sup>8</sup> Accordingly, he has not demonstrated that he meets this criterion.

The Petitioner alternately asserts that the above-noted evidence should be considered as comparable evidence under 8 C.F.R. § 204.5(h)(4). The regulation at 8 C.F.R. § 204.5(h)(4) allows for comparable evidence if the listed criteria do not readily apply to his occupation.<sup>9</sup> A petitioner should explain why he has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3) as well as why the evidence he has included is “comparable” to that required under 8 C.F.R. § 204.5(h)(3). Here, the Petitioner has not shown why he cannot offer

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<sup>8</sup> *Id.*, at 9.

<sup>9</sup> *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 12.

evidence that meets at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3).<sup>10</sup> General assertions that any of the ten objective criteria do not readily apply to an occupation are not probative and should be discounted.<sup>11</sup> The fact that the Petitioner did not submit documentation that fulfills at least three is not evidence that a model scout or agent could not do so. For these reasons, the Petitioner did not show that he is eligible to meet the initial evidentiary requirements through the submission of comparable evidence.

*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).

Although the Director determined that the Petitioner fulfilled this criterion, the record does not support that finding. As it relates to a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.<sup>12</sup> Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.<sup>13</sup>

The Petitioner contends that he has played a leading role for "top international modeling agencies." [REDACTED] president of [REDACTED], explains that as a senior agent and scout for [REDACTED] the Petitioner "clearly plays a senior role within the hierarchy of our New York agency" and is "the representative of [REDACTED] who establishes partnerships with worldwide agencies." The record lacks evidence, such as the organizational structure for [REDACTED], which might establish the leading nature of the Petitioner's role within this agency including how his position relates, for instance, to any other senior agents and to executives such as [REDACTED]

The Petitioner also states that he held the position of "Scout and Senior Image Agent" with [REDACTED] [REDACTED]. Here, the Petitioner did not substantiate this claim with independent evidence. Specifically, he did not offer corroboration that he held this position or the leading nature of this position within [REDACTED]. Further, the Petitioner did not submit sufficient evidence to establish [REDACTED]'s distinguished reputation.<sup>14</sup> He provides a printout from models.com stating [REDACTED] is respected worldwide as an industry leader in diverse beauty and we represent high fashion, curve and men." We note, however, that this screenshot contains a statement that "Models.com does not endorse or guarantee the accuracy of agency supplied biographies or content." Moreover, the documentation does not explain or provide examples supporting its assertion that [REDACTED] gained such worldwide respect. He also includes printouts from

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<sup>10</sup> *Id.*, at 12.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*, at 10.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 10-11 (indicating that the organization or establishment must be recognized as having a distinguished reputation).

blogs identifying [REDACTED] as one of many agencies in New York. In the case here, the Petitioner did not demonstrate how this evidence sets [REDACTED] apart from the other modeling agencies in the field or otherwise demonstrates its distinguished reputation.<sup>15</sup>

The Petitioner also asserts that he has played a leading or critical role for “magazines and publications of distinguished reputation.” He contends that “the advertising campaigns in which [his] models have been featured have generated major sales revenue... for the publications who display them.”<sup>16</sup> The Petitioner includes a letter of reference from [REDACTED] bookings director of [REDACTED] who states “[It] is the work of top fashion personnel like [the Petitioner] that has enabled [REDACTED] to remain the most elite fashion publication in the world.” However, this letter does not provide sufficient information to support the Petitioner’s contention regarding the impact of his work on [REDACTED] revenue, nor does it otherwise demonstrate how his role in providing models for advertising campaigns has had significant importance to the outcome of the organization’s activities. Furthermore, the Petitioner provides no corroborative evidence to support or explain [REDACTED] assertion.

The Petitioner also asserts that he has played a critical role for [REDACTED] and [REDACTED]. The record contains letters of reference provided by the Petitioner as evidence that he meets this criterion.<sup>17</sup> [REDACTED] vice president of communications for [REDACTED] notes that “[B]y providing us with the best modeling talent who are also able to convey the ideals of the [REDACTED] label, [the Petitioner] absolutely plays an essential and critical role for our label by generating industry interest and ultimately boosting consumer sales.” [REDACTED] director of creative services for [REDACTED] similarly states “[B]y providing us with the industry’s top talent, [the Petitioner] absolutely plays a critical role in the success of our runway shows and to the bottom line revenue of [REDACTED].” However, the letters do not offer sufficiently detailed information, nor does the record contain adequate corroborating evidence to support these assertions. Repeating the language of the statute or regulations does not satisfy the 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.).

[REDACTED] of [REDACTED] also notes that the Petitioner “brings close to a million dollars in revenue for the agency... The agency receives commission through these jobs alone, and therefore, [REDACTED] work is critical to [REDACTED] overall revenue.” The record includes a print-out of what appears to be the Petitioner’s bookings from January through December, showing invoices totaling \$872,855.96, but this document does not indicate the year, or for which organization, these bookings were made. Further, the Petitioner does not submit evidence

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<sup>15</sup> *Id.* at 11 (citing *Merriam-Webster’s Dictionary* definition of “distinguished” as marked by eminence, distinction, or excellence).

<sup>16</sup> As evidence of these campaigns, the Petitioner submits “tear sheets” for magazine covers and editorials, advertising campaigns, catalog/e-commerce/lookbooks, and runway work that he has booked.

<sup>17</sup> Although we discuss a sampling of letters, we have reviewed and considered each one.



demonstrating the amount the agency receives in commissions from his bookings, or the significance of such amount to the overall revenue of [REDACTED] to show that these revenues are critical to the agency's performance. Accordingly, the Petitioner has not established that he performs in a critical role for [REDACTED]

For the reasons discussed above, the Petitioner has not demonstrated that he meets this criterion. Accordingly, we will withdraw the Director's finding to the contrary.

#### B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner 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 Petitioner, 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 Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office 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, at \*2 (E.D. La. 2000).

### 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 need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought. For the foregoing reasons, the Petitioner has not shown that the Beneficiary qualifies for classification 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. 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 Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

*Matter of N-F-N-C-*

**ORDER:** The appeal is dismissed.

Cite as *Matter of N-F-N-C-*, ID# 2198666 (AAO Mar. 11, 2019)