U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 4655582

Date: NOV. 27, 2019

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

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

On appeal, the Petitioner submits a brief and argues that she meets three of the criteria, as required.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). 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,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (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).

II. ANALYSIS

The Petitioner is a fashion model featured in numerous advertisements, catalogs, and fashion editorials. Because she has not indicated or 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). However, upon a review of the record in its entirety, we conclude that it does not support a finding that the Petitioner fulfills the requirements of at least three criteria.

A. Regulatory 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).

The Petitioner contends that she meets this criterion based upon her receipt of first prize "in the nationwide Brazilian modeling competition [redacted] sponsored by [redacted] modeling agency." Here the record reflects that the Petitioner won the [redacted] competition in 2004. Specifically, it includes a [redacted] 2006 article from *Radar Magazine* confirming that "[i]n 2004, [the Petitioner] won the prize [redacted] run by [redacted] which it identifies as a modeling agency located in [redacted], photographs of her wearing a '[redacted]' sash, and letters from [redacted] of [redacted] which indicate that she was also signed to a modeling contract as a result of this award. However, the Petitioner does not submit evidence, such as media, correspondence, or other materials, demonstrating that her selection as the [redacted] is a nationally or internationally recognized award for excellence in the field of modeling.

The Petitioner further contends she meets this criterion as she was "selected in 2006 to join the [redacted]' group of models and "walk the stages of [redacted] Fashion Week [redacted]" as part of [redacted] Brasil's "fourth edition of its national [redacted] model search competition." She provides a brief article about [redacted] and [redacted] as well as her "official [redacted] flyer with headshot and short

biography," which confirm her selection to this team. However, these documents do not demonstrate that her selection to the [redacted] modeling group in and of itself is an award or prize. Rather, as noted in an undated and untitled article provided by the Petitioner, selection to this team is a requirement for participation in the [redacted] model search competition that occurs during [redacted] and "chooses the preferred new face of the event."[1] The Petitioner, therefore, has not provided evidence demonstrating that she was granted an award or prize based upon her participation in this competition, as required.

For the abovementioned reasons, the Petitioner has not shown that she meets 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 previously determined that the Petitioner had not submitted sufficient evidence to satisfy this criterion. Upon review of the record in its entirety, we note that it contains a 2008 article published in *Vogue Brasil* about the Petitioner and her work as a model, as well as evidence demonstrating that *Vogue Brasil* is a major medium. Accordingly, we disagree with the Director's decision and find evidence in the record sufficient to demonstrate that the Petitioner meets 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).

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.[2] 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.[3] In addition, this criterion requires that the organizations or establishments must be recognized as having a distinguished reputation, which is marked by eminence, distinction, or excellence.[4]

The Petitioner contends that she meets this criterion through her roles as "principal catalog model and brand ambassador" for Brazilian fashion brands [redacted], and [redacted] and submits several letters of recommendation in support of this assertion. While this correspondence describes the Petitioner's work as a model as outstanding, it does not contain detailed information specifically

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[1] The Petitioner provided an untitled, undated document noting her selection as a member of the [redacted] modeling team and describing the competition in this manner as part of her response to the Director's September 2018 request for evidence (RFE).

[2] *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* 10 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

[3] See USCIS Policy Memorandum PM-602-0005.1, *supra,* at 10.

[4] *Id.*, at 10-11.

addressing how her role was critical to the outcome of these entities' activities.[5] For example, in discussing the Petitioner's "key role" for their respective brands, both [redacted] producer at [redacted] and [redacted] marketing coordinator at [redacted] note that her performance was "absolutely noteworthy in all fashion photos and catalogues she worked on." They further assert that the Petitioner has "left traces in every brand she worked for" including for their respective organizations. However, this correspondence lacks specific examples of how her modeling performance was of significant importance to the outcome of each organization. Further, the Petitioner does not provide additional evidence to support these assertions. 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.[6]

Moreover, we note that the Petitioner has not submitted evidence sufficient to establish that [redacted] or [redacted] are organizations having a distinguished reputation, as required. Here the record includes a memo from [redacted] discussing each brand's reputation in Brazil,[7] as well as printouts documenting the number of followers each organization has on Instagram.[8] In her memo, [redacted] opines that these brands are distinguished as they "have powerful presences in the Brazilian fashion industry and provide customers with the latest trends for consumers." She references the number of stores located in Brazil and number of followers on Instagram in support of this assertion. However, the relative size of an organization is not in and of itself a determining factor of whether it has a distinguished reputation. Rather, it must be recognized for having such a reputation.[9]

[redacted] further argues that coverage of "the stores' and brands' fashion shows and new clothing lines" by "major Brazilian news outlets and fashion blogs" demonstrates their distinguished reputations. She provides summaries of this coverage, but does not otherwise explain how it establishes their reputations. For example, with regard to [redacted] she notes that in 2008, Brazil's newspaper *Diario Do Grande ABC* reported that it "hosts fashion shows on a regular basis." As it relates to [redacted]'s distinguished reputation, [redacted] indicates, "distinguished Brazilian fashion editor [redacted] featured the winter line of clothes for [redacted] remarking that the new line brings together the rush of modern society and the values of slow fashion." The Petitioner does not provide corroborative evidence of this media coverage, such as the referenced blogs or media articles themselves, or other materials that demonstrate these firms' distinguished reputations. Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Here [redacted] states that this media coverage demonstrates each entity's distinguished reputation, but does not explain how it does so. Absent this explanation, her memo does not establish that each organization has a distinguished reputation, as required.

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[5] While we discuss only a sampling of these letters, we have reviewed the record in its entirety.

[6] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 9.

[7] The Petitioner asserts on appeal that the Director did not consider [redacted]'s memo and curriculum vitae in his 2018 RFE when concluding that the record lacked "independent objective evidence" supporting "the distinguished reputation" of these organizations. Upon review of the record, we note that the Petitioner does not provide [redacted]'s curriculum vitae.

[8] These printouts corroborate the number of Instagram followers for each brand asserted by [redacted] in her memo. However, the Petitioner does not establish how these statistics show that these brands have been recognized for having a distinguished reputation. *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10-11 (noting that the organization must be recognized as having a distinguished reputation, and defining distinguished as marked by eminence, distinction, or excellence.)

[9] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10.

For the reasons discussed above, the Petitioner has not provided evidence establishing her eligibility for this criterion.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix).

The Director concluded that the Petitioner did not establish her eligibility for this criterion. Specifically, he determined that, as she is claiming to be "among those in the top of her field," she must "submit documentary evidence of the earnings of those performing similar work *at the top level of the field*." (emphasis in original.)

On appeal, the Petitioner argues that she must demonstrate that she commands "a high salary or significantly high remuneration for services, *in relation to others in the field*...." (emphasis in original.) We agree, and note that a comparison of the Petitioner's remuneration with top fashion models is more appropriate within the context of a final merits determination.

The Petitioner further asserts on appeal that the record establishes "her rate of pay as $6,000 daily (or $750 per hour), significantly higher than the average model." She notes that this amount is "*more than 42 times higher than the Los Angeles level two hourly wage that the AAO found in 2005 to be significantly high remuneration*." (emphasis in original.) Here she references a 2005 nonprecedent Administrative Appeals Office decision in which we determined that the petitioner, a fashion model in Los Angeles, met this criterion as the record established that she had commanded a salary that was significantly higher than others in her field.[10] Specifically, in that case we noted that the record contained evidence establishing both the petitioner's "gross wages for an eight-hour day as a fashion model" and the level two wage earned by models in Los Angeles. We determined that she met this criterion as, while "we normally require evidence comparing the petitioner's wage to a national wage," the evidence here showed that she commanded an hourly wage that was "so much higher than the level two wage (28 times)." As we discuss below, in the instant case the Petitioner does not establish the amount of her daily rate, nor does the record contain appropriate evidence of comparable remuneration. Furthermore, this decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

As it relates to her remuneration, the Petitioner provides translations of executed modeling contracts, translated job summary extracts from [redacted] showing payment to the Petitioner, her modeling management contract with [redacted] and an itinerary of her fashion clients and engagements from [redacted] She also includes letters from [redacted] booker and model agent at [redacted] and [redacted] a professional model and production and booking agent.

[10] The Petitioner provides the decision *In re Petitioner [Identifying Information Redacted by Agency]*, File WAC 03 005 53414, 2005 (AAO Apr. 05, 2005) in her November 2018 RFE response.

The majority of the contracts document the Petitioner's remuneration as paid in Brazilian Real, as do all of the extracts from [redacted] For example, an October 2017 contract between herself and [redacted] provides that she will be paid R$ 42,000.00 for two photo shoots, while the extracts from [redacted] confirm a disbursement of R$42,000 to the Petitioner for the shoots. However, the Petitioner does not submit wage statistics or comparable evidence of remuneration received by models in Brazil. Instead, she converts the remuneration to U.S. dollars, and asserts that this demonstrates that she has commanded significantly high remuneration compared to other models. Petitioners working in different countries should be evaluated based on the wage statistics or comparable evidence in that country, rather than by simply converting the remuneration to U.S. dollars and then viewing whether that remuneration would be considered high in the United States.[11] As the Petitioner does not provide wage statistics or comparable evidence for Brazil, she has not shown that her remuneration in Brazil is significantly high relative to other models there.

As additional evidence of remuneration received, the Petitioner submits a November 2014 contract between the Petitioner and [redacted], indicating that she was to "pose for [redacted]... to perform photos of the catalogs of [redacted]" and to receive $30,000 for "photos and licenses granted." The contract does not specify the hours or number of days that she will work, or otherwise establish an hourly or daily rate, or corroborate statements regarding her daily rate made by [redacted] or [redacted] in their letters.[12] Moreover, the Petitioner did not submit sufficient comparative evidence demonstrating that the contracted amount is significantly higher than the remuneration of other models. Instead, she provided documentation showing the hourly rates earned by models in the United States, including a screenshot from the U.S. Department of Labor's Foreign Labor Certification Data Center listing average hourly wages for models in the Miami-Miami Beach-Kendall, FL Metropolitan Area. She also submits a printout titled "What Models Do" noting that the "median hourly wage for models was $11.01 in May 2017" and that "the highest percent [of models] earned more than $23.78," as well as other evidence.[13] As the contract does not show the Petitioner's hourly rate for modelling work in the United States, the evidence regarding median and high hourly wages in the industry does not demonstrate that the pay she received for work under the contract can be considered significantly high remuneration compared with other models. Accordingly, the Petitioner has not established that she meets this criterion.

For the foregoing reasons, the Petitioner has not demonstrated that she meets this criterion.

B. O-1 Nonimmigrant Status

We note that the record 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,

[11] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 11.

[12] [redacted] states that the Petitioner "is quoted only for superior jobs at USD $ 6k per day," while [redacted] indicates, "a model earning $6,000 a day is not common and quite exceptional."

[13] The Petitioner also submits a summary report from O-Net OnLine, and articles titled "Pay Scale for Fashion Modeling" and "What Models Really Get Paid for Fashion Week (Spoiler: Not What You'd Guess)" which provide hourly rate estimates. While we have reviewed this material, we do not discuss it here as it only provides the hourly rates, which as we discuss, are not probative in the instant case.

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.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated her eligibility 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.

ORDER: The appeal is dismissed.