



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

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

In Re: 25052697

Date: MAR. 31, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner meets the initial eligibility requirements for this classification, either through receipt of a major, internationally recognized award or by satisfying at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility as an individual of extraordinary ability, a petitioner (or anyone on the petitioner's behalf) must establish that they:

- Have extraordinary ability in the sciences, arts, education, business, or athletics;
- Seek to enter the United States to continue work in their area of extraordinary ability; and
- Their entry will prospectively substantially benefit the United States.

Extraordinary ability must be demonstrated by evidence of sustained national or international acclaim as well as extensive documentation that the individual's achievements have been recognized in the field. Section 203(b)(1)(A) of the Act. The implementing regulation further states that 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). It also sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of their achievements in the field through a one-

time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten criteria 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, 1121 (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 Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

The record reflects that the Petitioner, a native of Australia, has been working as a model since 2012 and is currently represented by agencies in Australia, New Zealand, and New York. Her modeling experience includes runway, print and commercial work, most notably Fashion Week appearances in New York, London, Milan and Paris, magazine covers and editorial shoots, and commercial and promotional work.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must show that she satisfies at least three of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims that she can meet all ten of the initial evidentiary criteria. The Director determined that she met only the criterion at 8 C.F.R. § 204.5(h)(3)(vii), relating to the display of her work at artistic exhibitions or showcases.

After reviewing all the evidence in the record, and for the reasons discussed below, we conclude the Petitioner has not satisfied at least three regulatory criteria and therefore does not meet the initial evidence requirements for this classification.

Documentation of the individual'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 provided evidence that she received the “STM [redacted] Award”¹ at the Western Australian (WA) Fashion Awards in 2016, an event held as part of the [redacted] Fashion Festival. The Director acknowledged the Petitioner’s receipt of this award but determined that she did not provide sufficient evidence to establish that the award is a nationally or internationally recognized prize or award for excellence. In reaching this conclusion, the Director observed that the media coverage of the award ceremony appeared to be only local or regional in nature.

¹ The record reflects that “STM” refers to *Sunday Times Magazine*, a publication of *The Sunday Times*, a newspaper published in the state of Western Australia.

Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors. *See generally*, 6 USCIS Policy Manual F.2 Appendix, <https://www.uscis.gov/policy-manual> (providing guidance for evaluating evidence in support of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x)). Prior to denying the petition, the Director issued a request for evidence (RFE), advised the Petitioner that these factors would be considered, and allowed her an opportunity to submit evidence such as the criteria used to grant the awards, national or international media coverage of the awards, information regarding the pool of nominees or competitors for the award, and any other relevant information.

Although the Petitioner characterizes her STM [redacted] Award as a “national award” we agree with the Director that the record contains insufficient evidence to establish that it satisfies this criterion. The record reflects that the media coverage of the WA Fashion Awards including the Petitioner’s receipt of the STM [redacted] Award, appeared in Western Australian publications *The West Australian*, *The Sunday Times* and *STM Magazine*, as well as a few fashion blogs for which readership information was not provided. The Petitioner has not contested the Director’s determination that media coverage of the award was local or regional in nature.

We have also considered other relevant information pertaining to the Petitioner’s award. The WA Fashion Awards event is described in the record as Western Australia’s “only fashion industry awards night, run for the local industry by the local industry.” While we do not question the prestige associated with the award, this description of the awards program as a “local industry” event does not offer support for the Petitioner’s claim that the award is a nationally recognized award for excellence in Australia.

As noted, both limitations on competitors and the criteria used to grant a prize or award are relevant considerations when evaluating the national significance of an award and whether a given award is a nationally recognized prize or award for excellence. Here, the evidence reflects that the pool of potential nominees for the STM [redacted] Award was limited to models who were signed with three modeling agencies based in Western Australia; this restriction further undermines the claimed national recognition and significance of the award in the field. The evidence indicates that these three agencies chose their own nominees based on unspecified criteria and that eight models nominated as finalists were then subjected to an online public vote by readers of the sponsoring publication, with the [redacted] being designated as a [redacted] award. A submitted screenshot from the voting page indicates that the winner was selected by [redacted]

After considering evidence regarding the nature of the WA Fashion Awards event, the scope of the media coverage, the limitations on candidates or nominees for the award, and the method of selecting winners, we agree with the Director that the Petitioner’s evidence does not establish that her STM [redacted] Award qualifies as a lesser nationally or internationally recognized prize or award

for excellence in her field.² Accordingly, we conclude that she did not meet the criterion at 8 C.F.R. 204.5(h)(3)(i).

Documentation of the individual'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)

To demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership, and that such achievements are judged by recognized experts in the field. Membership requirements based on employment in a certain occupation, minimum education or experience, or payment of dues or fees do not satisfy this criterion as such requirements do not constitute outstanding achievements. *See generally, 6 USCIS Policy Manual, supra at F.2, Appendix.*

At the time of filing, the Petitioner stated that she could satisfy this criterion, but did not provide evidence of her membership in an association. In the RFE, the Director provided the Petitioner an opportunity to submit evidence of her membership in an association in her field and advised that such evidence should be accompanied by evidence of the criteria for membership (such as the association's constitution or bylaws) and evidence to establish that the individuals who review prospective members' applications are recognized as national or international experts in the field.

In response, the Petitioner indicated that she was submitting "material from Models.com" to satisfy this criterion and provided a screenshot of her main profile page on this website. In an accompanying letter, the Petitioner described Models.com as "a defining fashion industry news resource that highlights the models and the creative stars of the industry," and as a "daily must-read for fashion insiders, photographers, casting directors, agents, art directors, editors, models and model fanatics to stay up to date."

The Director acknowledged this evidence but determined that the record did not establish that her membership or presence on Models.com satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(ii). Specifically, the Director emphasized that the Petitioner did not provide evidence that membership is based on outstanding achievements as judged by recognized national or international experts in the field.

On appeal, the Petitioner provides letters from four individuals who maintain Models.com profiles, including a model, a makeup artist, and two casting directors. These individuals explain how the Models.com community significantly benefits their careers in the fashion and entertainment industry. In response to the Director's determination that the previously submitted evidence did not address membership criteria or requirements for Models.com, the Petitioner states that the website "is joining pretty much everyone who is anyone," noting that the Models.com community includes over 25,000

² The Petitioner's response to the RFE also included evidence that she received a [redacted] award and an [redacted] award in 2013, both awarded by Alpha Models. The Petitioner's appeal contains no reference to these awards. Further, the record contains no further information or evidence relating to the awards and therefore does not establish that they satisfy all elements of the criterion at 8 C.F.R. § 204.5(h)(3)(i).

professionals, as well as 600 modeling and artist agencies and over 3000 members from verified brands or magazines searching for creative talent.

The record does not establish that the Petitioner's membership in the Models.com community satisfies the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(ii). It is the Petitioner's burden to establish that she is a member in an association in her field that requires outstanding achievements as a condition for membership and that the persons who judge the achievements of prospective members are recognized national or international experts in the field. While the evidence submitted on appeal establishes that Models.com is a valued community in the Petitioner's field that offers benefits to both models and those looking to cast models in their creative and commercial endeavors, it does not establish that membership in the community requires outstanding achievements or that eligibility for membership is judged by recognized national experts in the field. The record lacks evidence of the specific requirements for joining the Models.com community and therefore does not establish that it can be considered a qualifying association in the Petitioner's field.

Accordingly, we agree with the Director's determination that the Petitioner did not submit evidence that satisfies this criterion.

Evidence of the individual's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

At the time of filing, the Petitioner claimed that she could satisfy this criterion but did not submit evidence in support of her claim. In response to the RFE, she provided:

- Undated correspondence, addressed to the Petitioner and attributed to the proprietor of [redacted] Studio, inviting the Petitioner to participate as a judge and model for the 2016 [redacted] Search to be held in August 2016;
- An unsigned letter dated May 26, 2020, also attributed to the proprietor of [redacted] Studio. The letter states the Petitioner had been booked for several catwalk shows during the annual [redacted] Search events and that she "has been a judge at our model search in 2016."
- An article titled "[redacted] Search Launch" published by *The West Australian* newspaper in [redacted] 2016, which covered the launch of the 2016 [redacted] Search competition. The article mentions the Petitioner as one of the "local beauties" who participated in a previous edition of the competition.
- Captioned photographs of the Petitioner taken at the 2015 [redacted] Search event which identify her as a "special guest" and "former winner."

The record on appeal contains some additional evidence regarding the Petitioner's relationship with [redacted] Studio. The evidence indicates that she was one of the winners the model search in 2013, that she had a [redacted] with this business, and that she performed work for them in the past. However, the record does not include additional evidence confirming her participation as a judge of the work of others in her field at the 2016 [redacted] Search event or in any other capacity. As noted, the only evidence indicating her actual participation as a judge is a brief statement in a letter that does not bear the signature of the person to whom its attributed. If

testimonial evidence lacks specificity, detail, or credibility, there is a greater need for a petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). Here, there is no additional evidence corroborating the Petitioner's participation as a judge.

In addition, we note that the Petitioner's description of the [] Search competition indicates that competitors "must have had no prior modeling experience." Therefore, even if the Petitioner had sufficiently documented that she participated as a judge at this event, the record does not establish that she was required to judge the work of others "in the same field" or "in an allied field of specialization." Rather, the record reflects that the persons who participate in the competition are not models. The record also lacks evidence as to what the model search competition entailed and what criteria were considered by judges in selecting winners. Without this information, we cannot determine whether judging this event required judging "work" in the field.

For all the reasons discussed, the Petitioner did not submit sufficient evidence to establish that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(iv).

Evidence of the individual'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).

To satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must not only identify and demonstrate their original contributions, but also establish their major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have demonstrably impacted or influenced the field, or have otherwise risen to a level of major significance.

The Petitioner stated in her initial cover letter that she could meet this criterion but did not identify her original contributions in her field or indicate any specific evidence she was submitting to demonstrate her eligibility. The Petitioner's response to the RFE did not address this criterion, and therefore, the Director concluded that she did not establish that she meets it.

On appeal, the Petitioner states that she is submitting evidence of her "scholarly, artistic and athletic" achievements which have contributed to her success as a model. The newly submitted evidence documents her athletic achievements in martial arts and netball, her completion of a primary school course in first aid awareness, and various achievements she recorded during secondary school including certificates of French Language competence, certificates recognizing her participation in the arts, a certificate of completion for a peer support leadership course, and a Western Australian Certificate of Education which appears to be comparable to a high school diploma.

Here, the Director reviewed the initial evidence, notified the Petitioner of deficiencies in an RFE, and advised her of what type of evidence she could submit in support of this criterion. As noted, the Petitioner did not address this criterion when responding to the RFE and now requests that we review additional evidence submitted on appeal. Where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, we will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

The Petitioner also maintains that she previously provided “letters from companies showing her major significance in the field with her contributions,” but does not elaborate or reference any specific evidence that she intended to be considered under this criterion. We have considered the reference letters in the record but conclude that they do not demonstrate how the Petitioner has made original contributions of major significance in her field. Specifically, the record contains reference letters from modeling agencies, brand managers, photographers and designers. Letters that specifically articulate how the person's contributions are of major significance to the field and their impact on subsequent work add value. Letters that lack specifics do not add value and are not considered to be probative evidence that may form the basis for meeting this criterion. *See generally*, 6 USCIS Policy Manual, *supra*, at F.2 Appendix.

The individuals who provided letters praise the Petitioner’s professionalism, adaptability, work ethic, positive attitude, and her “high-end, international look,” noting that these and other attributes have made her a sought-after model who “contributes to the sales of the companies she works with.” However, general assertions that she contributed to sales of fashion or beauty products for individual companies do not demonstrate that the Petitioner has made an “original contribution” that has a broader impact or influence in her field of endeavor. While several authors note the Petitioner’s creativity and stated that she “continues to lead the modeling industry in new directions,” these letters, fall short of identifying any specific original contribution the Petitioner has made to the modeling industry or how she has made a contribution that impacted subsequent work by others in her field, such that it could be concluded that her contributions were of major significance.

For the reasons discussed, the Petitioner has not established that she satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(v).

Evidence of the individual’s authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

This criterion contains multiple evidentiary elements the Petitioner must satisfy through the submission of evidence. First, the Petitioner must establish that she has authored scholarly articles in the field in which she intends to engage if she is granted status as a lawful permanent resident. We consider these articles within two distinct areas. The first area is within the academic arena in which a scholarly article reports on original research, experimentation, or philosophical discourse. The second area lies outside of the academic arena in which a scholarly article should be written for learned persons in that field. “Learned” is defined as “having or demonstrating profound knowledge or scholarship.” Learned persons include all persons having profound knowledge of a field. *See generally* 6 USCIS Policy Manual, *supra*, at F.2 Appendix.

The second element this criterion requires is that the scholarly articles appear in one of the following: (1) a professional publication, (2) a major trade publication, or (3) in a form of major media. Regarding the medium in which the articles appear, the Petitioner should establish that the publication's circulation statistics are high relative to similar publications and should also establish the publication's intended audience. *Id.*

Although the Petitioner indicated at the time of filing that she can meet this criterion, she did not provide documentation of her authorship of scholarly articles. Her response to the RFE included

evidence that she served as a guest blogger for *Style Voyeur* magazine's website, participated in a [redacted] for *Oyster* magazine, created a backstage diary for *RUSSH* magazine's website, and prepared a list of her top 10 career highlights in connection with her STM [redacted] award. The Director determined that the Petitioner had not established that her published work consisted of scholarly articles intended for learned persons in her field or that it appeared in professional or major trade publications or other major media.

On appeal, asserts that she submitted evidence regarding the social media following of the referenced magazines and provided sufficient evidence that her work appeared in qualifying media. However, the Petitioner does not contest the Director's determination that she did not provide evidence of the scholarly nature of her published work. We agree with the Director that the evidence does not meet all elements of this criterion. For example, the Petitioner provided copies of e-mails she received from *Style Voyeur* and *Oyster* magazines inviting her to participate in a guest blogger appearance and in a [redacted] respectively. *Style Voyeur* asked her to include behind-the-scenes content from photo shoots and fashion shows, "cool pics of the city/cities you visit," candid pictures of the Petitioner with "other [redacted] girls," and photographs of "casting outfits/selfies/your apartment/whatever." *Oyster* magazine similarly asked her to film an introductory video and suggested that she provide content that included videos of her getting ready for the day, traveling to a venue where she was working, "hanging backstage," and getting her makeup done. The Petitioner has not established that the content she created constitutes "scholarly articles" or that its intended audience was "learned persons" in the field. Accordingly, the Petitioner has not demonstrated that she meets the requirements of this criterion.

Evidence that the individual 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)

To meet this criterion, the Petitioner must establish that she has performed in a leading or critical role for an organization, establishment, or a division or department of an organization or establishment. In addition, it is the Petitioner's burden to demonstrate the organization or establishment, or the department or division for which she holds or held a leading or critical role, has a distinguished reputation.

For a leading role, we look at whether the evidence establishes that the person is (or was) a leader within the organization or establishment or a division or department thereof. A title, with appropriate matching duties, can help to establish that a role is (or was), in fact, leading. For a critical role, we determine whether the evidence establishes that the person has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities or those of a division or department of the organization or establishment. *See generally, 6 USCIS Policy Manual, supra, at F.2 Appendix.*

The Director acknowledged the Petitioner's claim that she could meet this criterion but determined that her initial submission lacked an explanation or evidence in support of that claim. The RFE instructed the Petitioner to provide relevant evidence such as letters from prior employers with detailed information explaining how her role was leading or critical to an organization or establishment.

In response to the RFE, the Petitioner submitted: (1) e-mails and promotional materials confirming that the Petitioner's agency booked her to participate in a promotional photo shoot for the [redacted] 2014 charity event for the Western Australian [redacted] (2) e-mail confirming she was booked in a runway show for the [redacted] Foundation charity gala in 2018; (3) an e-mail addressed to the Petitioner inviting her to participate in a charity event for a Youth Focus group; and (4) e-mails from [redacted] Models soliciting models from its roster to participate in its 2014 [redacted] charity event and in the [redacted] Charity event. The Petitioner provided additional documentation confirming her participation in the [redacted] events.

The Director acknowledged that the Petitioner documented her participation as a model in various charity events but determined that the record lacked the requested evidence of her leading or critical role for an organization or establishment that has a distinguished reputation.

Counsel's appellate brief emphasizes that the record contains casting and job confirmation emails, provides some additional background information regarding charity events in which the Petitioner participated, and mentions two additional events: a program launch event for the [redacted] Fashion Festival and a [redacted] Exhibition and Installation held in 2017. The brief also includes assertions that the Petitioner served as a [redacted] at most or all of these events. Assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

We agree with the Director's determination that the evidence does not establish the Petitioner satisfies this criterion. While the evidence confirms the Petitioner's participation as a model at some notable charitable and cultural events, it does not establish whether or how she served in a leading or critical role for a specific organization or establishment (or division or component thereof). Further, it is unclear whether she claims to meet this criterion based on a leading or critical role as a model for the agencies that represent her or based on her participation in a leading or critical role for the charitable organizations that held the referenced events, which makes it difficult to discern the "organization or establishment" in question. In this regard, we note that serving as a [redacted] for a one-day event would not necessarily establish a person's leading or critical role within the organization or establishment that sponsors the event.

Although specifically requested by the Director, the record lacks letters from individuals representing the Petitioner's employers or clients who have personal knowledge of the significance of her roles and who can speak specifically to such roles. Further, the Petitioner did not otherwise provide detailed and probative information that specifically addresses how her role for an organization or establishment, was leading or critical. For the reasons discussed, we conclude that the Petitioner did not provide evidence demonstrating that she meets this criterion.

Evidence that the individual 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 Petitioner initially claimed she could satisfy this criterion but did not submit evidence in support of that claim. The Director advised her in the RFE that she would need to submit documentation of her annual earnings and evidence that would allow USCIS to compare her earnings to that of others

working in the field. If a petitioner claims to meet this criterion, then the burden is on the petitioner to provide appropriate evidence of their earnings or remuneration and evidence such as geographical or position-appropriate compensation surveys. *See generally*, 6 *USCIS Policy Manual* at F.2 Appendix. The Petitioner's response to the RFE included:

- Copies of IRS Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, indicating gross income of \$14,740 in 2016 and \$3906.66 in 2017.
- Copy of her IRS Form 1040NR, U.S. Nonresident Alien Income Tax Return for 2016 showing \$3,456 in business income;
- Letters from [redacted] indicating that this U.S. agency paid the Petitioner gross modeling fees of \$18,425 in 2016 and \$4883.33 in 2017.
- Copies of year-end talent earnings statements from [redacted] Models (Australia) for the fiscal years ended in 2016 through 2019, indicating annual earnings that ranged from a low of \$1,845 (2019) to a high of \$11,061.15 (2017).

The Director acknowledged this and other evidence of the Petitioner's past earnings but determined that she did not provide supporting documentation to demonstrate that her salary is high, or that her total remuneration is significantly high, in relation to others.

On appeal, the Petitioner concedes that the previously submitted evidence did not include "specification that shows what is high and low salaries" for models. She provides comparative wage data for models and fashion models in the United States and Australia from sources including CareerTrend.com, SalaryExplorer.com and the U.S. Bureau of Labor Statistics. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, we will not accept evidence offered for the first time on appeal. *Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Further, even if the Petitioner had submitted this evidence in response to the RFE, we observe that it does not support her claim that her salary "has far exceed[ed] the average income of a working model in the United States." Rather, the record reflects that her documented U.S. and Australian earnings are below the average incomes reported in the newly submitted salary surveys. Accordingly, the Petitioner has not demonstrated that she satisfies 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).

This criterion focuses on volume of sales and box office receipts as a measure of a petitioner's commercial success in the performing arts. The evidence must show that the volume of sales and box office receipts reflect the person's commercial success relative to others involved in similar pursuits in the performing arts.

The Petitioner provided evidence that she appeared in an online music video for *Sly Magazine* and in promotional campaign videos/television commercials for [redacted]. This evidence included e-mails confirming booking as well as screenshots from these projects. On appeal, the Petitioner references the previously submitted evidence of these "media shoots" as well as evidence that she appeared in videos published on the websites of *Sunday Times Magazine* and *Hoture*. The Petitioner does not address the Director's determination that documenting

her appearances in promotional videos and commercials is not sufficient, in and of itself, to establish that she satisfies this criterion.

The Petitioner has not submitted the types of evidence required by the plain language of this regulatory criterion, articulated a claim that this criterion does not apply to her occupation, or indicated that she was seeking to meet the criterion through comparable evidence under 8 C.F.R. § 203.5(h)(4). While the evidence established that the Petitioner has appeared in advertisements for various companies, she has not shown, for example, that the success of the clients was attributable to her specific work as a model in their promotional campaigns or that her commercial appearances have attracted substantial audiences or generated significant sales. Further, as noted, evidence in support of this criterion must show that the volume of sales and box office receipts reflect a petitioner's commercial successes relative to others involved in similar pursuits in the performing arts. The Petitioner has not submitted evidence of such relative success.

Accordingly, the Petitioner has not established that she satisfies the plain language requirements of this evidentiary criterion or that the evidence on which she relies is comparable to the evidence required by the criterion.

B. Summary and Reserved Issue

The record does not establish that the Petitioner meets any of the eight initial evidentiary criteria discussed above. As such, the Petitioner has not met the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the two remaining criteria at 8 C.F.R. § 204.5(h)(iii) and 8 C.F.R. § 204.5(h)(vii) cannot change the outcome of the appeal. Therefore, we reserve and will not address these remaining issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of D-L-S-*, 28 I&N Dec. 568, 576-77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

C. Prior O-1 Approval

We acknowledge that the Petitioner has been the beneficiary of an approved O-1B petition, a classification reserved for nonimmigrants of extraordinary ability in the arts. 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 statute, regulations, and case law. The nonimmigrant and immigrant categories have different criteria, definitions and standards for persons working in the arts. "Extraordinary ability in the field of arts" in the nonimmigrant O-1 category means distinction. 8 C.F.R. § 214.2(o)(3)(ii). But in the immigrant context, "extraordinary ability" reflects that the individual is among the small percentage at the very top of the field.

Finally, 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 by a decision of a service center or district director. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *3 (E.D. La. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001)

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 do not need to provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119–20. Nevertheless, we advise that we have reviewed the material in the aggregate, concluding that while we acknowledge the Petitioner has achieved success as an international fashion model, the record does not support a finding that she 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 that goal. 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 the significance of their 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 they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) 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.