



U.S. Citizenship
and Immigration
Services

(b)(6)



JUN 01 2015

DATE:

FILE#:

PETITION RECEIPT #:

IN RE:

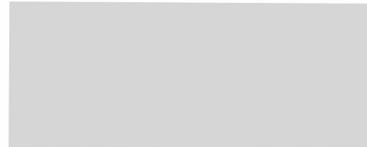
Petitioner:

Beneficiary:

PETITION:

Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an alien of extraordinary ability as a makeup artist and stylist, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), which makes visas available to petitioners who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. Section 203(b)(1)(A)(i) of the Act limits this classification to petitioners with extraordinary ability in the sciences, arts, education, business, or athletics. In response to the director's request for evidence (RFE), the petitioner asserted that he is "in the field in the Arts and Entertainment industry, particularly as a Make Up Artist/Stylist." The director determined that the petitioner had not satisfied the initial evidentiary requirements set forth at 8 C.F.R § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria.

On appeal, the petitioner asserts that he meets the criteria under the regulations at 8 C.F.R. § 204.5(h)(3)(iii), (viii) and (x). For the reasons discussed below, we agree with the director that the petitioner has not established his eligibility for the classification. Specifically, the petitioner has not submitted qualifying evidence of a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), or evidence that satisfies at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x), or comparable evidence under the regulation at 8 C.F.R. § 204.5(h)(4). As such, the petitioner has not demonstrated that he is one of the small percentage who is at the very top in the field of endeavor, and that he has sustained national or international acclaim. See 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner's appeal.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

- (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
 - (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph 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.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). 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. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate his sustained acclaim and the recognition of his achievements in the field through evidence of a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then he must submit sufficient qualifying evidence that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) or comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4).

The submission of evidence relating to at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination); *see also Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) (affirming USCIS' proper application of *Kazarian*), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "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").

II. ANALYSIS

A. English Translations of Foreign Language Documents

The record includes a number of foreign language documents. The petitioner has not submitted English translations for the foreign language documents that meet the regulatory requirements under 8 C.F.R. § 103.2(b)(3). The regulation provides, "Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." In his initial filing and on appeal, the petitioner has submitted a Certification of Translator Competence. The version the petitioner

submits on appeal is a photocopy of the initial certificate. The certificate, however, does not affirm that the English translations provided are “complete,” as required under the regulation. A review of the English translations in the record indicates that the translations are not full English translations or complete translations. For example, the English translation entitled “Advertisement,” relating to a [REDACTED] product called [REDACTED], does not include multiple sentences that appear in the foreign language document. Similarly, a review of the English translation entitled “Advertisement,” relating to [REDACTED]’s foundation color wheel, shows that the translation lacks information – including a quote – that appears in the foreign language document.

Moreover, as part of his initial filing, the petitioner submitted translations of materials that he asserted have appeared in [REDACTED]. A comparison between the foreign language documents and the English translations show that the translations are not complete. For example, the translation entitled “[REDACTED]” provides only the petitioner’s biographic information, while the foreign language document appears to include five other individuals’ biographic information. The English translation of the document also appears to include content that does not appear in the foreign language document. Specifically, the English translation includes two paragraphs discussing the individuals serving on the jury of a competition. The foreign language document does not include these paragraphs. In addition, the English translations of the photographic materials that also appeared in [REDACTED] omit credits that appear in the foreign language documents. The translations for these materials are all entitled, “Translation Excerpt,” indicating that the translations are not complete. Similarly, the English translation for a [REDACTED] article entitled “[REDACTED],” is also an incomplete translation of the original foreign language material. Specifically, the foreign language document contains one-page of text with multiple paragraphs. The English translation, however, contains two full sentences. The petitioner has included an English translation entitled “[REDACTED]” The foreign language document includes five paragraphs. The English translation, however, has three paragraphs. This English translation also includes a “Translation Excerpt” notation.

As noted, the regulation requires the petitioner to submit full English translations and a translator certificate affirming that the translations are complete and accurate. The petitioner has not submitted full English translations or a translator’s affirmation that meet the regulatory criterion. In addition, while the single blanket certificate names the petitioner, it does not list the translations it certifies and the translations themselves bear no indicia of who completed them. As such, the certificate is not probative evidence that the translator of each of the translations in the record has certified the translation. Accordingly, the foreign language documents in the record, and the accompanying English translations, do not have any evidentiary weight and they do not constitute evidence establishing the petitioner’s eligibility. In the alternative, as discussed below, even if we are to consider the deficient English translations, they do not establish the petitioner’s eligibility for the classification.

B. Evidentiary Criteria¹

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner, as initial evidence, may present evidence of a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through his evidence that he is the recipient of a major, internationally recognized award at a level similar to that of the Nobel Prize. As such, as initial evidence, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

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 concluded that the petitioner met this criterion. Had we considered the uncertified translations in the record, we would agree with the director that the petitioner has met this criterion. The petitioner has submitted uncertified translations for a number of published materials. For most of the submitted materials, the petitioner has not shown that they are about him, relating to his work, or that they are published in professional or major trade publications or other major media. The record does include uncertified translations for two [redacted] articles entitled "[redacted]" and "[redacted]" that are about the petitioner, relating to his work as a makeup artist and stylist. In his initial filing, the petitioner asserted that [redacted] is the Sunday [redacted] of the newspaper [redacted], which according to [redacted].htm and [http://www.\[redacted\].com/](http://www.[redacted].com/) is one of the major [redacted] in [redacted]. As discussed, however, as the petitioner has not submitted English translations that meet the regulatory requirements under 8 C.F.R. § 103.2(b)(3); the uncertified translations in the record do not have probative value.

Accordingly, the petitioner has not submitted published material about him in professional or major trade publications or other major media, relating to his work in the field for which classification is sought. The petitioner has not met this criterion with probative evidence. See 8 C.F.R. § 204.5(h)(3)(iii).

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).

The director concluded that the petitioner met this criterion. The evidence in the record does not support this conclusion. As noted, we may deny an application or petition that does not comply with the technical requirements of the law even if the director does not identify all of the grounds for

¹ We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner claims to meet or for which the petitioner has submitted relevant and probative evidence.

denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. Dep't of Justice*, 381 F.3d 143, 145-46 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

The petitioner asserts that he has performed a leading or critical role for [REDACTED] which is part of [REDACTED]. In support of this assertion he has submitted two letters from [REDACTED] Manager Cosmetic Division for [REDACTED]. Both letters are dated December 20, 2013. The letters, however, provide conflicting information on what position the petitioner held with the organization. According to the letter initially submitted in support of the petition and appearing on [REDACTED] letterhead, Ms. [REDACTED] states:

[The petitioner] served as the Director of our Training Department in 2009 and continues to work with our company through his various endeavors. As our Director of Training, [the petitioner] helped develop and create new makeup as well as drive sales for our brand. His work was placed in the largest and most important pharmacy chains in [REDACTED] and [REDACTED].

According Ms. [REDACTED] letter submitted on appeal and which is not on letterhead but bears a [REDACTED] stamp:

[The petitioner] served as the Director of our Entertainment Department in 2009 and continues to work with our company through his various endeavors. As our Director of Entertainment, [the petitioner] helped develop and create new makeup as well as drive sales for our brand. His work was placed in the largest and most important pharmacy chains in [REDACTED] and [REDACTED].

According to the petitioner's resume, initially submitted in support of his petition, in 2009, he was an Entertainment Manager, "[a] Manager & Creator of the Entertainment Department of the [REDACTED] in the area of Makeup and Sales for the biggest pharmacy chains in [REDACTED] & [REDACTED]"

The petitioner has provided inconsistent evidence from two letters bearing the same date on what position he held with [REDACTED] and/or its parent company [REDACTED] in 2009. "[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts [or evidence], absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has provided no such evidence to explain or reconcile the inconsistent evidence. As the petitioner has submitted inconsistent evidence on the position he held, he has not shown that he has performed a leading or critical role for either [REDACTED] or [REDACTED].

Moreover, the petitioner has not submitted sufficient evidence showing that [REDACTED] and [REDACTED] the petitioner's company, constitute organizations or establishments that have

a distinguished reputation. Specifically, the evidence submitted to show the reputation of [REDACTED] is from the publication itself or individuals associated with the publication. Such self-promotional evidence has minimal evidentiary value. *See Braga v. Poulos*, No. CV 06-5105 SJO 10, 2007 WL 9229758, at *1, 6-7 (C.D. Cal. July 6, 2007), *aff'd*, 317 F. App'x 680 (9th Cir. 2009) (concluding that we did not have to rely on the promotional assertions on the cover of a magazine as to the magazine's status as major media). The petitioner has not supported the self-promotional evidence with more independent evidence. Moreover, the petitioner has submitted evidence relating to [REDACTED], while he asserts that he performs a leading or critical role for [REDACTED], which is [REDACTED] localized edition in [REDACTED]. The petitioner has not shown that [REDACTED] founded over 70 years ago in Spain, shares the same reputation as [REDACTED], launched in 2012 in [REDACTED].

Similarly, the petitioner has not shown that his company, [REDACTED], is an organization or establishment that has a distinguished reputation. The evidence submitted to show the reputation of [REDACTED] is from the petitioner's business partner and from a handful of [REDACTED]'s clients, including [REDACTED], Editor in Chief of [REDACTED]; [REDACTED], Director of [REDACTED]; and [REDACTED], a disc jockey (DJ). Letters from a few of [REDACTED]'s clients indicate that these clients are pleased with the company's work. They are, however, insufficient to demonstrate that [REDACTED] has a distinguished reputation.

Accordingly, the petitioner has not submitted evidence that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The petitioner has not met the criterion. *See* 8 C.F.R. § 204.5(h)(3)(viii).

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).

On appeal, the petitioner asserts that he meets this criterion. The plain language of the criterion indicates that the criterion applies only to individuals who are in the performing arts. The petitioner has not shown that his occupation as a makeup artist and stylist is in the performing arts. In addition, the plain language of the criterion requires evidence relating to "box office receipts or record, cassette, compact disk, or video sales." The petitioner has not submitted any of the types of evidence listed in the criterion. Accordingly, the petitioner has not presented evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(viii).

If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility. 8 C.F.R. § 204.5(h)(4).

In his initial filing, the petitioner asserted that he has presented comparable evidence. On appeal, the petitioner asserts that he meets the commercial successes in the performing arts criterion under 8 C.F.R. § 204.5(h)(3)(viii) through the submission of comparable evidence. Specifically, the petitioner asserts that his involvement in a [REDACTED] advertising campaign had resulted

in commercial success. The petitioner has not demonstrated that the criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to his occupation as a makeup artist and stylist. In his initial filing, the petitioner asserted that the commercial success in the performing arts criterion is not readily applicable to his occupation. We agree that this criterion does not readily apply to the petitioner's occupation because the criterion relates only to those who are in the performing arts, and a makeup artist and stylist is not in the performing arts field.

Even allowing that the petitioner may submit comparable evidence based on a showing that only one criterion does not readily apply to his occupation, he has not shown that he has submitted evidence comparable to evidence that would meet the commercial successes in the performing arts criterion under 8 C.F.R. § 204.5(h)(3)(x). See 8 C.F.R. § 204.5(h)(4).

According to Ms. [REDACTED]'s two letters, both dated December 20, 2013, the petitioner's name and picture were used in [REDACTED]'s advertisement campaigns and printed on product packaging and resulted in "a major success for [REDACTED]." In the letter submitted on appeal, Ms. [REDACTED] states "the actual placement of [the petitioner] on the packaging of products dramatically increased our sales for these products." Ms. [REDACTED], however, did not include this sentence in the letter initially submitted in support of the petition. Both letters further state that the petitioner "has repeatedly been [sic] helped propel our products into the top sellers." Other than the conclusory statements in Ms. [REDACTED]'s letters, the record lacks specific evidence – evidence comparable to box office receipts or record, cassette, compact disk, or video sales – showing that the petitioner's involvement with certain advertisement campaigns and/or the use of the petitioner's name and picture on product packaging have resulted in commercial successes. Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The record includes a number of charts and diagrams. They relate to the overall sales of [REDACTED] products. They do not provide specific information on the sale of products that the petitioner has promoted, endorsed or developed. [REDACTED] offers a variety of products to consumers. Evidence relating to the overall sales of the company does not constitute evidence of commercial successes that could be attributed to the petitioner, who was involved in an unspecified and limited number of products and advertisement campaigns for [REDACTED].

The petitioner has also submitted evidence relating to [REDACTED]. According to a September 18, 2014 letter from [REDACTED], the petitioner's business partner, the petitioner secured five important clients for [REDACTED] and "took [REDACTED] to the next level in terms of commercial success." The letter further provides that "[t]hanks to the dedicated and professional efforts of [the petitioner], our business surpassed expectations in terms of revenue, achieving a 40% increase year after year." Neither Ms. [REDACTED] nor the petitioner has submitted evidence comparable to box office receipts or record, cassette, compact disk, or video sales that demonstrates that the petitioner's involvement in the company resulted in commercial successes. The record lacks specific evidence relating to [REDACTED]'s revenue or profits. A 40 percent annual increase in revenue, without actual revenue or profit figures,

does not indicate that the business is a commercial success or that it is profitable. Similarly, acquiring clients, without evidence of revenue or profits derived from those clients, does not signify that the business is a commercial success.

The petitioner has submitted letters from Mr. [REDACTED] of [REDACTED]; Mr. [REDACTED] of [REDACTED], Ms. [REDACTED]; and [REDACTED] of [REDACTED], stating that the petitioner's involvement in their businesses and/or projects resulted in commercial successes. The record, however, lacks evidence, such as financial statements of the businesses or projects, that supports the conclusory statements. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *See 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*, No. 95 Civ. 10729, 1997 WL 188942 at *1, 5 (S.D.N.Y. Apr. 18, 1997). Similarly, USCIS need not accept primarily conclusory assertions. *See 1756, Inc. v. United States Att'y Gen.*, 745 F. Supp. 9, 17 (D.C. Dist. 1990).

Accordingly, the petitioner has not shown that as a makeup artist and stylist, he may submit comparable evidence to establish his eligibility for the classification. In the alternative, the evidence he submitted is not comparable to evidence that meets the commercial successes in the performing arts criterion. *See* 8 C.F.R. § 204.5(h)(4), (3)(x).

C. Summary

For the reasons discussed above, we agree with the director that the petitioner has not submitted the requisite initial evidence, in this case, evidence that satisfies three of the ten regulatory criteria.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the petitioner has achieved sustained national or international acclaim and is one of the small percentage who have risen to the very top of his or her field of endeavor.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor," and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. As the petitioner has not done so, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting evidence that satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the evidence on which the petitioner relies on appeal in the aggregate, including his employment as a makeup artist and stylist, and the work he

has done for [REDACTED] and [REDACTED], supports a finding that the petitioner has not demonstrated, through the submission of extensive evidence, the level of expertise required for the classification sought.²

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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

² We maintain *de novo* review of all questions of fact and law. See *Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); see also INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).