



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

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

MATTER OF D-, LLC

DATE: FEB. 7, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a model management agency, seeks to represent the Beneficiary during her temporary employment in the United States as a model. To do so, the Petitioner seeks to classify her as an O-1 nonimmigrant, a visa classification available to foreign nationals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i).

The Director of the California Service Center denied the petition, concluding that the Petitioner did not satisfy, as required, the evidentiary criteria applicable to individuals of extraordinary ability in the arts: a significant national or international award, at least three of six possible forms of documentation, or comparable evidence. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(C).

On appeal, the Petitioner maintains that sufficient evidence was presented attesting to the Beneficiary's distinction in the field and, thus, she is eligible for O-1 classification.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

As relevant here, section 101(a)(15)(O)(i) of the Act establishes O-1 classification for an individual who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability. Department of Homeland Security (DHS) regulations define "extraordinary ability in the field of arts" as "distinction," and "distinction" as "a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts." 8 C.F.R. § 214.2(o)(3)(ii).

Next, DHS regulations set forth the evidentiary criteria for establishing a beneficiary's sustained acclaim and the recognition of achievements. A petitioner must submit evidence either of "significant national or international awards or prizes" such as "an Academy Award, an Emmy, a

Grammy, or a Director's Guild Award," or of at least three of six listed categories of documents. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B). If the petitioner demonstrates that the listed criteria do not readily apply to the beneficiary's occupation, it may submit comparable evidence to establish eligibility. 8 C.F.R. § 214.2(o)(iv)(C).¹

The submission of documents satisfying the initial evidentiary criteria does not, in and of itself, establish eligibility for O-1 classification. *See* 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994) ("The evidence submitted by the petitioner is not the standard for the classification, but merely the mechanism to establish whether the standard has been met."). Accordingly, where a petitioner provides qualifying evidence satisfying the initial evidentiary criteria, we will determine whether the totality of the record and the quality of the evidence shows extraordinary ability in the arts. *See* section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (iv).²

II. ANALYSIS

A. Introduction

The evidence indicates that the Beneficiary launched her modeling career after she won the 2008 [REDACTED] beauty competition, and represented Brazil in the 2008 [REDACTED] pageant. The record shows that she has appeared and been featured in fashion magazines and advertising campaigns for several fashion brands, and has been represented by model management companies including [REDACTED] and [REDACTED].³ The Petitioner describes her as an internationally renowned fashion model with extraordinary ability. The record contains the Petitioner's signed agent agreement with the Beneficiary, and an itinerary for the period from April 2018 to April 2021, showing that her modeling services will include representing designers and fashion brands for e-commerce, print advertising, and fashion show presentations.

B. Evidentiary Criteria

Absent evidence of a significant national or international award or prize like the Academy Award, the Petitioner seeks to demonstrate the Beneficiary's sustained acclaim and recognition of achievements through evidence corresponding to the six regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B).⁴ The

¹ While not at issue here, the regulations contain additional evidentiary requirements for O foreign nationals, including documentation relating to the terms of the proposed employment and the nature of the activities and events in which the beneficiary will participate. 8 C.F.R. § 214.2(o)(2)(ii).

² *See also Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010), in which we held that, "truth is to be determined not by the quantity of evidence alone but by its quality."

³ The signed agent agreement between the parties also indicates that the Beneficiary's "Mother Agency" is [REDACTED] although the record does not contain information pertaining to this model management company.

⁴ The Director's decision noted that although the Petitioner "in some ways" indicated that the criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1), (2), and (3) do not readily apply to models, it did not establish what alternative evidence it was offering that was comparable to the caliber of evidence described in those criteria. As a result, the Director concluded that the Petitioner did not establish eligibility for the "comparable evidence" regulation at 8 C.F.R. § 214.2(o)(3)(iv)(C). On

Director determined that the Petitioner satisfied only one of the evidentiary criteria: 8 C.F.R. § 214.2(o)(3)(iv)(B)(5) (significant recognition for achievements from experts in the field), and we agree with the Director that the Petitioner fulfilled that criterion.⁵ On appeal, the Petitioner maintains that it has also met the criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1) (performing as a lead or starring participant in distinguished productions or events), 8 C.F.R. § 214.2(o)(3)(iv)(B)(2) (published material), 8 C.F.R. § 214.2(o)(3)(iv)(B)(3) (performing in a lead, starring, or critical role for distinguished organizations or establishments), and 8 C.F.R. § 214.2(o)(3)(iv)(B)(6) (high salary).⁶ We have considered the record in its entirety in reaching this decision. As discussed below, we conclude that the record does not satisfy at least three of the six listed categories of documents at 8 C.F.R. § 214.2(o)(3)(iv)(B).

Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements. 8 C.F.R. § 214.2(o)(3)(iv)(B)(1).

To satisfy this criterion, the Petitioner has submitted evidence pertaining to the Beneficiary's past and proposed work as a fashion model. It maintains on appeal that she played a critical role as a featured model on covers and in editorials for fashion magazines, in advertising campaigns for fashion brands, and as the winner of the [REDACTED] 2008 beauty competition. Upon review, we find that the Beneficiary's role in the [REDACTED] 2008 beauty pageant satisfies the past component of this criterion. The evidence submitted in the form of magazine covers and editorials featuring her on the covers and in the editorials of fashion magazines, including [REDACTED] and [REDACTED] confirm that the Beneficiary performed as a starring participant in the pageant, and that the production has a distinguished reputation.

We note that the Petitioner provided additional evidence that the Beneficiary has been featured in print and online advertising campaigns for fashion brands and magazines consistent with a lead or starring level of participation, including testimonial letters from [REDACTED] with the German fashion retailer [REDACTED] and [REDACTED] of the Brazilian beachwear company [REDACTED].⁷ However, even if the record contained evidence that these companies enjoy a distinguished

appeal, the Petitioner states that although "evidence available to fashion models necessarily differs from the evidence available to [other] individuals in the performing arts" it is "unnecessary to argue each criterion under the comparable evidence standard." The Petitioner also does not assert that it is submitting qualifying comparable evidence. Accordingly, we will not consider this issue in our decision.

⁵ The Petitioner's documentary evidence indicates that the Beneficiary won the [REDACTED] 2008 beauty competition, and she competed in the 2008 [REDACTED] pageant.

⁶ The Petitioner does not contest the decision of the Director that it has not claimed that it satisfies the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4). Accordingly, we will not address this criterion in the decision.

⁷ The record shows that the Beneficiary has also been featured in advertisements for the fashion brands [REDACTED]

reputation, it would not automatically follow that their advertising campaigns are a “production or event” with a distinguished reputation. The record does not contain critical reviews, advertisements, publicity releases, publications, or other evidence showing that the covers, editorials or advertising campaigns that featured the Beneficiary have a distinguished reputation in the field. Further, regarding the letters, the regulation requires evidence in the form of critical reviews, advertisements, publicity releases, publications, contracts, or endorsements. We will consider the letters below in our discussion of the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3).

Although the Petitioner provided evidence satisfying the past component of this criterion, in order to meet this criterion, it must also establish that the Beneficiary *will* perform services as a lead or starring participant in productions or events that have a distinguished reputation upon approval of the petition. The Petitioner maintains that it satisfies this criterion based upon her proposed model placements representing designers and fashion brands for e-commerce, print advertising, and fashion show presentations. The itinerary indicates that the Beneficiary will be a featured model for some of those productions, consistent with a lead or starring level of participation.⁸

While we are satisfied that the Beneficiary will play a lead or starring in her proposed model placements, the record does not include information establishing that those upcoming productions and events enjoy a distinguished reputation in the field, as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements. On appeal the Petitioner emphasizes that the Beneficiary’s work on the proposed projects will be for distinguished companies such as [REDACTED] and [REDACTED] and provides information from the website www.bloomberg.com pertaining to the companies’ reputations. As stated previously, however, even if it were established that those designers and fashion brands enjoy a distinguished reputation, it would not automatically follow that their advertising campaigns are a “production or event” with a distinguished reputation, absent evidence, in the form required, demonstrating its distinguished reputation in the field. Based on the foregoing, the evidence submitted does not satisfy this criterion.

Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications.
8 C.F.R. § 214.2(o)(3)(iv)(B)(2).

To meet this criterion, the Petitioner cites published material pertaining to the Beneficiary. The Director determined, and we agree, that the submitted materials do not satisfy this criterion. The Petitioner

⁸ We note that the Petitioner also provided a letter from [REDACTED] a casting director with [REDACTED] regarding another anticipated project at the time of filing. He states that the company intends to utilize the Beneficiary’s services for catalogue, lookbook and e-commerce work for clients including [REDACTED] and [REDACTED]. While [REDACTED] states that the Beneficiary will play an “essential” role in the marketing efforts of those companies, he does not detail how her role will be lead or starring. In addition, as stated previously, the regulation requires evidence in the form of critical reviews, advertisements, publicity releases, publications, contracts, or endorsements. We will consider this letter below in our discussion of the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3).

provided a screenshot of an item pertaining to the Beneficiary, which it asserts was published in the English edition of [REDACTED]. However, this document is not from [REDACTED], but appears to be a screenshot from the Portuguese language website [REDACTED].com that includes a two-page photograph of the Beneficiary, an illegible English language caption, and an English translation of [REDACTED] translation of the caption. Without a copy of the source material, we cannot determine that this image constitutes published material about the Beneficiary showing recognition of her achievements in the field.

In addition, it provided articles containing photographs of the Beneficiary on the websites [REDACTED] and [REDACTED] which mention her attendance at the [REDACTED] opening gala, and fundraising events for the [REDACTED] and [REDACTED]. These items do not appear to be specifically “about” her, but about those events, nor does the record demonstrate the “major” status of the publications in which they appeared.

In addition, the Petitioner provided a link to an interview with the Beneficiary on [REDACTED] in which she discusses winning [REDACTED] 2008, and becoming a successful entrepreneur. Further, the record shows that the online beauty pageant magazines [REDACTED] and [REDACTED] published her biographic information and a photo of her. The record does not contain, however, evidence of circulation or distribution figures, or similar statistics such as viewership information, demonstrating that these websites are qualifying publications under the criterion.⁹

Finally, the Petitioner provided two Portuguese-language interviews with the Beneficiary. While not addressed by the Director, the Petitioner has not submitted translations of those items, as required by the relevant regulation. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a certified English language translation of the interviews, we cannot meaningfully determine whether they support its claims. Regardless, as noted by the Director, the record does not contain evidence identifying the magazines that published the interviews and showing they are qualifying publications under the criterion. In light of the above, the Petitioner has not established that the evidence satisfies this evidentiary criterion.

Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials.
8 C.F.R. § 214.2(o)(3)(iv)(B)(3).

To meet this criterion, the Petitioner cites to evidence pertaining to the Beneficiary’s past and proposed work as a fashion model, such as the above-referenced tear sheets, copies of magazine covers and editorials that show that she has been featured on the covers and in editorials of fashion magazines, and in print and online advertising campaigns for fashion brands. The record also contains evidence

⁹ To qualify as major media, a publication should have significant national or international distribution.

that she has been represented by several model management companies, including [REDACTED] and [REDACTED]. The Director concluded, and we agree, that those materials do not satisfy this criterion. Specifically, the Director determined that the Beneficiary's performances were consistent with those of a professional model, but did not establish that she performed in a lead, starring, or critical role for those organizations.

A leading or starring role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. A critical role should be apparent from the beneficiary's impact on the organization or the establishment's activities. The beneficiary's performance in this role should establish whether the role was critical for the organization or establishment as a whole.

The record contains several letters in support of this criterion. [REDACTED] a creative director with [REDACTED] indicates that the Beneficiary appeared in the company's "e-commerce and other imagery 10 times in 2017." He asserts that she "was one of our top models in 2017 for our e-commerce," and claims her "outstanding modeling work was central to the continued success of our business." The Petitioner also submits the above-referenced letter from [REDACTED] president of [REDACTED] a Brazilian company, who asserts that the Beneficiary has played "a critical role" for the company "as a featured model in [the] [REDACTED] page," which she indicates "reaches 200 consumers per day." The Director concluded that [REDACTED] letter establishes that the Beneficiary performed a critical role for [REDACTED]. We do not agree with this determination.

Although the submitted letters speak highly of the Beneficiary's performance for the companies with which she has worked, they do not establish that she was responsible for their success or standing to a degree consistent with the meaning of having performed in a "lead" or "critical" role for them. The letters show that her work was consistent with that of a professional model, and they describe her as having achieved results that met or exceeded those companies' expectations. While a company's staff may consider the Beneficiary's achievements to be of great benefit to the company, the focus of this criterion, based on the plain language of the regulation, is the Beneficiary's role itself. The letters do not establish that her role as a model has been a lead or critical role for either company. For example, while [REDACTED] asserts that the Beneficiary was one of [REDACTED] "top models in 2017," and [REDACTED] indicates that she has been "a featured model" for [REDACTED] their letters do not distinguish her position from those of the companies' other models, or demonstrate that she was responsible for their success or standing to a degree consistent with the meaning of a "critical role." In addition, as noted by the Director, the fact that she may have played a lead role in several magazine editions or advertising campaigns is not sufficient to satisfy this criterion's requirements. Further, the evidence submitted does not include documentation demonstrating that [REDACTED] has a distinguished reputation.

The Petitioner also maintains that revenue the Beneficiary contributed to her previous modeling agencies and clients establishes that her role was critical to their success. On appeal, it provides the

Beneficiary's fee statement from [REDACTED] listing fees she earned in 2017, predominantly from [REDACTED].¹⁰ The record does not contain, however, evidence pertaining to the fee statement from any individual who appears to be in a position to represent [REDACTED]. Further, the above-referenced letter from [REDACTED] of [REDACTED] did not address the information contained in that exhibit. Based on the above, the evidence submitted does not establish that the Beneficiary's past roles or responsibilities for those establishments were in a lead, starring or critical capacity.

In addition, the Petitioner has not submitted evidence to establish how the Beneficiary will perform in a lead, starring or critical role, either for itself or its clients. It provided the previously mentioned letter from [REDACTED] of [REDACTED] who states that his company intends to utilize her services for catalogue, lookbook and e-commerce work for clients including [REDACTED] and [REDACTED]. He states that the Beneficiary will play a "critical role" for those clients because the model is the one the consumer sees, and the "person who drives sales." The record also includes a letter from [REDACTED], a fashion photographer, indicating that he intends to utilize the Beneficiary services for e-commerce, catalog, and lookbook work for his Italian clients, [REDACTED] and [REDACTED]. He claims that her appearance in such marketing productions will be "critical and essential in driving sales for my clients" and "will have a lasting influence in maintaining customer loyalty." The record does not document the manner in which [REDACTED] or [REDACTED] is authorized to represent or speak on behalf of those companies, nor does it contain evidence from any individual who appears to be in a position to represent them. Consequently, this evidence is not sufficient to satisfy this criterion.

Further, the Petitioner has not submitted sufficient information or evidence to establish how the Beneficiary's prospective role as a fashion model rises to the level of a lead, starring or critical role for its company. Within the Petitioner's response to the Director's request for further evidence, it emphasized that the Beneficiary "will absolutely play a leading and critical role" for the company, based upon what it describes as "her history as a leading model and a driving force behind agencies' bottom-line revenue." The Petitioner has not indicated, however, how she will serve in a lead, starring or critical role that would set her apart from the models it already represents. Finally, the Petitioner has not submitted evidence to establish that it enjoys a distinguished reputation in the field. In light of the above, the Petitioner has not established that the evidence satisfies this criterion.

Evidence that alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence. 8 C.F.R. § 214.2(o)(3)(iv)(B)(6).

The Director concluded that the evidence submitted did not satisfy this criterion. The Petitioner has not documented the Beneficiary's future salary or remuneration. Rather, it claims that her previous salary should be considered a "high salary."

¹⁰ In the fee statement, the Beneficiary's name is listed as [REDACTED]

In its initial submission, the Petitioner provided a foreign-language document that appears to be a pay report from [REDACTED] for work performed in 2011. This document does not comport with the regulation at 8 C.F.R. § 103.2(b)(3) since, as discussed previously, it is not accompanied by a certified translation. Thus, we cannot meaningfully determine whether the pay report supports the Petitioner's claims.

In addition, it submitted comparative wage information relating to average or median wages of "Models" as of May 2016, based upon the Bureau of Labor Statistics (BLS) Occupational Employment Statistics (OES) wage estimates. The OES program collects data on wage and salary workers in nonfarm establishments in order to produce employment and wage estimates for about 800 occupations. The BLS produces occupational employment and wage estimates for approximately 415 industry classifications at the national level. The employment data are benchmarked to average employment levels. Moreover, as noted by the Director, data from self-employed persons are not collected and are not included in the estimates.¹¹ The Petitioner's evidence indicates that the Beneficiary receives modeling income as an independent contractor. Thus, it has not established that the BLS statistics are representative of the modeling industry as a whole, which, as is apparent from the Beneficiary's own employment, includes self-employed models.

The evidence also included comparative wage data from the Foreign Labor Certification (FLC) Data Center's Online Wage Library, which relies on the BLS OES wage estimates.¹² The data is for models in the Los Angeles metropolitan area and the New York metropolitan area. The plain language of the regulation requires the Petitioner to establish the Beneficiary has commanded a high salary or will command a high salary when compared to others in the field. As such, the evidence, consisting of average statistics limited to two geographic areas does not meet this requirement.

On appeal, the Petitioner provides the above-referenced fee statement from [REDACTED] listing fees the Beneficiary earned in 2017, predominantly from [REDACTED] totaling "43,000."¹³ It also submits an expert letter from [REDACTED] former president of [REDACTED], who states that "even among top models which are similarly situated to [the Beneficiary] (including independent contractors), the average day rate is \$1,000 per day," while she asserts the Beneficiary "commands a rate that ranges from nearly \$2,400 to nearly \$12,000 per day." She indicates that the Beneficiary's "earning power places her squarely in the category of the world's top models."

However, [REDACTED] did not support her statement of the average day rate for self-employed top models with any corroborating reports. In addition, she did not explain which figures she used to

¹¹ http://www.bls.gov/oes/oes_emp.htm#estimates

¹² <http://www.flcdatcenter.com/faq.aspx>

¹³ As noted previously, although the Petitioner asserts that the Beneficiary's fees from [REDACTED] were paid in euros, the fee statement does not establish the currency used for payment. According to an online resource, on December 31, 2017, €43,000 was equivalent to \$51,508.10. See <http://www.oanda.com/currency/converter/>, accessed on January 16, 2019, and incorporated into record of proceeding.

derive her statement regarding the Beneficiary's average day rate in 2017. Further, as noted above, the record does not contain evidence pertaining to the fee statement from any individual who appears to be in a position to represent [REDACTED] to corroborate [REDACTED] statement regarding the Beneficiary's average day rate. Although the Petitioner submitted the above-referenced letter from [REDACTED] of [REDACTED] he did not address the information contained in the [REDACTED] fee statement regarding his company. The Petitioner has not provided reliable evidence such as the Beneficiary's tax return reflecting her total earnings in 2017, or copies of the paychecks she received as a result of her modeling assignments that year.

USCIS may in its discretion use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. However, USCIS is ultimately responsible for making the final determination regarding a beneficiary's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the beneficiary's eligibility. *See id.* USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.*; *see also Soffici*, 22 I&N Dec. at 165.

Finally, the Petitioner asserts that although USCIS policy states that some governmental statistics may be helpful in evaluating evidence under this criterion, the Director's decision not to use those sources of comparative wage data in this case, and to request alternative wage surveys is "unprecedented and not required by the regulations." As acknowledged by the Petitioner, USCIS policy does not state that its officers are to utilize the information contained on these governmental websites as the determining factor regarding whether an alien has commanded a high salary in relation to others in the field; it merely states that the information contained in the websites may be helpful. In this matter, we agree with the Director that the BLS website is not helpful as it omits self-employed models such as the Beneficiary herself. Ultimately, the plain language of the regulation requires the Petitioner to establish the Beneficiary's salary is high when compared to others in the field. As such, average statistics limited to a particular geographic area that do not include self-employed individuals in a field with a significant percentage of self-employed members do not meet this requirement.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established that the Beneficiary is eligible for the O-1 visa classification as a foreign national with extraordinary ability in the arts.

ORDER: The appeal is dismissed.

Cite as *Matter of D-, LLC*, ID# 1982108 (AAO Feb. 7, 2019)