

U.S.

Did Melania Trump Merit an 'Einstein Visa'? Probably, Immigration Lawyers Say

By MIRIAM JORDAN MARCH 4, 2018

It is known as the “Einstein visa.” Nuclear scientists, Nobel laureates and doctors get it. But so do acrobats, stunt men, event planners — and plenty of models.

Each year, thousands of foreigners try to persuade government officials that they are among the best in their field. The prize if they succeed: a green card, and with it, the right to live permanently in the United States.

Reports that the first lady, Melania Trump, received an immigrant visa reserved for “individuals with extraordinary ability” in 2001, when she was a model, have thrust the EB-1 visa program into the spotlight. The news, first reported by The Washington Post, raised questions about whether Mrs. Trump had truly qualified for the visa.

But several immigration lawyers rebuffed those questions, saying the requirements for the EB-1 immigrant visa leave far more room for interpretation than its nickname and its best-and-brightest reputation suggest.

While the program may be the pinnacle of the merit-based immigration policies supported by critics of the visa lottery and family-based migration — indeed, by President Trump himself — the decision of what constitutes merit, while based on established criteria, is ultimately subjective and often surprising.

“Recipients are supposed to be the best of the best,” said Rita Sostrin, a Los Angeles-based lawyer who has written extensively about EB-1s, “but meeting the criteria is no

guarantee. An adjudication officer makes a judgment call.”

The “extraordinary ability” immigrant visa category is one of the few visas for which an applicant does not require an employer or family sponsor. Only 5,530 people received a green card through that program in the fiscal year that ended in September 2016, the latest for which data is available, out of some one million issued. In 2001, when Mrs. Trump got hers, even fewer were granted.

Marshall Cohen, a lawyer in Atlanta who specializes in EB-1s for world-ranked track and field athletes, said that he would not have hesitated to represent Mrs. Trump.

“I am assuming she made a lot of money, got a lot of press and was on the cover of magazines,” he said. “She was probably a pretty easy case.”

Mrs. Trump, then Melania Knauss, appeared on the cover of British GQ in 2000, the year she petitioned for the EB-1, and was featured in Sports Illustrated and other magazines later that year.

“Do we need more foreign fashion models? Some might say no,” said Mr. Cohen, who led a panel titled “Proving Extraordinary Ability is Extraordinarily Challenging” at a recent immigration lawyers’ conference. “We might need more chemical engineers. But if there is a fashion model at the top of her field, she could qualify.”

Petitioners for the EB-1, which was created as part of the Immigration Act of 1990, face a two-part test. The United States Citizenship and Immigration Services first must determine whether a candidate has presented evidence to satisfy three out of 10 criteria, such as publishing material in professional publications or other major media, appearing in artistic exhibitions or commanding a high salary.

Once those are met, the decision comes down to a vague and undefined “final merits determination” by the immigration agency.

“That is the mystery; nobody knows what it is,” said Ms. Sostrin, the lawyer in Los Angeles, who recently secured EB-1s for an award-winning stunt performer and a high-end events planner.

What is clear is that extraordinary intelligence is not necessary — nor sufficient on its own — to get one. Indeed, even Albert Einstein might have not qualified for an EB-1 before winning the Nobel Prize.

A few years ago, Ms. Sostrin distributed a résumé to immigration lawyers at a conference without revealing that it was Einstein's, or at least one devised from his career accomplishments. Ms. Sostrin asked them to assess the likelihood that he would be approved for an extraordinary ability visa.

The consensus was that it would be very challenging: A tutor and patent examiner before becoming a professor, Einstein had published only a handful of scientific articles by 1920, over a decade into his academic career.

“The notion that you somehow have to be a genius or Einstein is utter fiction,” said Chris Wright, a lawyer based in Los Angeles. “We have succeeded with models no more accomplished than Melania Trump.”

While the majority of applicants and recipients have titles like “space scientist,” “cancer researcher” and “software engineer,” many have less scholarly pursuits. In 2012, Mr. Wright represented Shera Béchard, a Canadian model and Playboy Playmate who successfully petitioned for an EB-1. In her petition, Mr. Wright included scantily clad photographs of Ms. Bechard.

“When it's a glamorous model and pictures show cleavage rather than research, people assume there is something underhanded going on,” said Mr. Wright, who said that he had also obtained the visas for a racecar driver, a hair dresser and a tennis player.

For Glenn Boswell, a stunt performer and director used to jumping out of buildings and moving vehicles, getting the EB-1 was a relative cake walk.

His lawyer filed a 439-page petition in 2016 detailing Mr. Boswell's achievements, which include credits in “Unbroken,” “The Matrix” and “The Hobbit,” and he received approval within a week. “I was really excited when it came,” said Mr. Boswell, 60, in a phone interview from his native Australia, who had no idea he had joined an exclusive club.

Daniel Riffner, 35, an acrobat for Cirque du Soleil in Las Vegas, compiled a dossier in 2009 about his 25-year career, packed with medals, pictures of his high-wire acts and recommendations from coaches. Kinan Azmeh, 41, a Syrian clarinetist in Brooklyn who is a member of Yo-Yo Ma's Silk Road Ensemble, applied in 2012. Both received green cards.

Mr. Trump has championed an immigration overhaul that would replace the current family-based system, which he derides as "chain migration," with one based on merit, emphasizing skill and educational level. His proposal would have made it impossible for the first lady to sponsor her parents for a green card, which she did after obtaining permanent legal residency and becoming a citizen herself. Meanwhile, highly skilled people, whether scientists or entrepreneurs, often get turned down when they apply to work and live in the country.

Especially under the Trump administration, immigration lawyers said, U.S.C.I.S. has made a habit of making requests for further evidence before deciding the fate of an applicant. The lawyers also said that scholars and scientists have a tougher time winning approval than models, actors and athletes.

Elissa Taub, a lawyer in Memphis who secured the EB-1 for the German gymnast, said that some of her denials "burn me to this day," like that of a nuclear astrophysicist who had produced groundbreaking research. SEE MY OPTIONS 1 lab. Subscriber login
Immigration officials said his title on the job was not senior enough to merit the EB-1. 4 ARTICLES REMAINING

"We lost a great scientific mind due to this crazy decision," she said of the scholar, who returned to India.

In another case, U.S.C.I.S. acknowledged that a Chinese researcher had fulfilled three criteria to qualify, but that "scientists who have risen to the very top of the field have garnered citations numbered in the thousands," not in the hundreds, as he had shown. He was denied.

Despite ample documentation and detailed letters from world-renowned experts supporting the petition of a molecular oncologist who studies drug-resistant cancer,

U.S.C.I.S. questioned whether her scholarship was significant. After her lawyer submitted further evidence, she was approved.

“These are people we should be rolling out the red carpet for,” said David Soloway, the lawyer who handled the case.

“Most people would readily say that it makes sense for someone who is extraordinarily skilled in the sciences to be admitted to this country,” Mr. Soloway added. “But in modeling? Really?”

You can follow Miriam Jordan on Twitter: @mirjordan

© 2018 The New York Times Company