



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF O-S-

DATE: FEB. 15, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an artisan, photographer and fashion designer, seeks classification as an alien 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, as required, that the Petitioner has a one-time achievement (a major, internationally recognized award) or met at least three of the required evidentiary criteria. The Petitioner appealed the matter to us, and we dismissed her appeal.

On motion, the Petitioner submits additional evidence and asserts that she meets two criteria in addition to the two criteria we found that she meets in our previous decision.

Upon review, we will deny the motion.

I. LAW

A motion to reopen is based on documentary evidence of *new facts*. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

In her decision, the Director found that the Petitioner met only one of the requisite three criteria, regarding display of her work at artistic exhibitions or showcases. On appeal, we determined that she also met the criterion relating to playing a leading or critical role for an organization with a distinguished reputation, but that she fell short of establishing several others. The Petitioner now submits a motion to reopen with new evidence, and claims to meet the criteria for published material about her in professional or major trade publications or other major media, and for a high salary or other significantly high remuneration. As the evidence meets the requirements for a motion to reopen, we will analyze it under the appropriate criteria below.

A. Published Material About the Alien in Professional or Major Trade Publications or Other Major Media

With her motion, the Petitioner submits a copy of an article which appeared in the [REDACTED] 2018 edition of *Vogue UA*, the Ukrainian edition of the popular fashion magazine. The one-page article is accompanied by pictures of the Petitioner and her work; and discusses a display of her work in [REDACTED] in December 2017. However, we note that both the display of her work and publication of the article occurred well after this petition was filed on August 7, 2017. Eligibility for an immigration benefit must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), further provides that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, this evidence does not establish the Petitioner's qualification under this criterion.

The Petitioner also resubmits two articles which were published in the magazine *domus design* in [REDACTED] 2006 and [REDACTED] 2007. Both articles feature descriptions and photographs of the interior of apartments, including pictures that the Petitioner asserts are her creations. She is credited as one of two designers in the [REDACTED] 2006 article, and for "photographs in the interior" in the [REDACTED] 2007 article. The text of the [REDACTED] 2006 article repeats the mention of the Petitioner as a designer of the apartment, but the text of the [REDACTED] 2007 article is not translated from Ukrainian to English. The [REDACTED] 2006 article is not about the Petitioner, but is a description of the apartment, and the subject of the [REDACTED] 2007 article cannot be discerned without translations. In addition, the Petitioner submits new evidence relating to the publication in support of her assertion that it should be considered as major media. A "Website Analysis Overview Report" on the domusweb.it website provides figures on the number of visitors, but it is not apparent that these figures relate to the Ukrainian edition of the magazine in which the submitted articles appear. Also submitted on motion is an advertising guide to the magazine which indicates that it has a circulation of 10,000 copies distributed throughout Ukraine. However, these claims are not supported by evidence from independent sources, nor has comparative evidence been submitted to establish that the circulation of the Ukrainian edition of *domus design* sufficiently establishes that it is major media.

In our previous decision, we determined that while some television broadcasts were about the Petitioner and her work as an artist, she had not submitted sufficient evidence to demonstrate that these broadcasts appeared in major media. On motion, the Petitioner resubmits evidence of a short program covering her exhibition in [REDACTED] in [REDACTED] 2017, as well as new evidence regarding UA TV, the government-run satellite television company which aired the program. A "Website Analysis Overview Report" about the company's website indicates that it is ranked number 4,562 in Ukraine, with 284,447 monthly visits, nearly all from visitors within Ukraine. Without further information regarding the size of UA TV's viewership or other evidence of its status as a major media outlet, this evidence is insufficient to meet the requirements of this criterion.

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B. Evidence That the Alien has Commanded a High Salary or Other Significantly High Remuneration for Services, in Relation to Others in the Field

On motion, the Petitioner submits a copy of a 2017 IRS Form 1099 from a client for whom she completed an interior design project, as well as a copy of the design proposal. The Form 1099 indicates that she received \$9,800 from this client. However, the Petitioner has not submitted evidence of how her remuneration compares to that of other artists in her field. Therefore, she has not established that it is significantly high.

III. CONCLUSION

We have reviewed the new evidence submitted by the Petitioner on motion, and find that it does not meet the claimed evidentiary criteria or establish her eligibility as an alien of extraordinary ability.

ORDER: The motion to reopen is denied.

Cite as *Matter of O-S-*, ID# 2000787 (AAO Feb. 15, 2019)