



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

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

In Re: 17202685

Date: AUG. 30, 2021

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

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 Petitioner did not meet the initial evidentiary requirements for the requested classification through evidence of either a major, internationally recognized award or meeting at least three of the evidentiary criteria under 8 C.F.R. § 204.5(h)(3). We dismissed the Petitioner's appeal<sup>1</sup> as well as three subsequent motions.<sup>2</sup> The matter is now before us on a fourth motion to reopen and reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion to reconsider. Because the Petitioner has established that she meets a third criterion, the motion to reopen is granted in part and dismissed in part. The petition remains denied.

## I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability 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

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<sup>1</sup> *See Matter of O-S-*, ID# 1291424 (AAO Jul. 5, 2018)

<sup>2</sup> *See Matter of O-S-*, ID # 2000787 (AAO Feb. 15, 2019); *In Re 5303295* (AAO Jan. 16, 2020); *In Re 10599841* (AAO Sep. 24, 2020). In February 2019 decision, we concluded that the Petitioner met a second criterion, leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii).

- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she 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 (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 Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

## II. MOTION REQUIREMENTS

A motion to reconsider is based on an *incorrect application of law or policy*, and a motion to reopen is based on documentary evidence of *new facts*. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and 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.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). Therefore, the filing before us is not a motion to reopen and reconsider the denial of the petition or the initial dismissal of the appeal, but to reopen and reconsider our most recent decision.

## II. ANALYSIS

The Petitioner is an artisan, photographer, and fashion designer who uses  as the focus of her work. In his decision, the Director determined that the Petitioner met only the criterion relating to the display of her work under 8 C.F.R. § 204.5(h)(3)(vii). After review of her first motion, we concluded

that she also met a second criterion for her leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii). In her last two motions, the Petitioner submitted new evidence in support of her qualification under the criteria relating to published material about her and a high salary in relation to others in her field, but in both cases we concluded that the new evidence was insufficient to show that she met either criteria.

Here, in her fourth motion, she submits additional evidence in support of those two criteria as well the criterion at 8 C.F.R. § 204.5(h)(3)(v), relating to original contributions of major significance. However, our previous decision did not consider her qualification under this criterion, as she did not submit new evidence relating to this criterion with her third motion or state any reasons for reconsideration of her qualification under this criterion.<sup>3</sup> We will therefore not consider the new evidence or her assertions of error at prior stages of the proceeding with regard to this criterion.

#### A. Motion to Reconsider

The Petitioner checked box 1.f in Part 2 of Form I-290B to indicate that she is filing a combined motion to reopen and reconsider. However, in her brief the Petitioner only includes a section titled “Basis for Motion to Reopen,” and does not assert that our previous decision was incorrect based on the evidence of record at the time of that decision. See 8 C.F.R. § 103.5(a)(3). Therefore, she has not met the requirements for a motion to reconsider.

#### B. Motion to Reopen

The Petitioner first addresses her claim to the criterion at 8 C.F.R. § 204.5(h)(3)(iii), published material about her and her work in professional or major trade publications or other major media. With this motion, she submits new evidence relating to a previously submitted article published in the magazine *Photographer* in [redacted] 2014. We concluded in our previous decision that although this article was about her and her work as a photographer, the record did not establish that the magazine qualifies as a professional or major trade publication or other major media. The new evidence includes an article indicating that the author of the *Photographer* article received the top prize in a photography contest, as well as a letter in which [redacted] a fashion and beauty photographer, describes *Photographer* as a “professional magazine.” However, she also submits the same presentation about the magazine which was submitted with her previous motion, in which its target audience is described as “amateur photographers.” This contradictory evidence therefore does not establish that it qualifies as a professional or major trade publication or other major media.

In addition, the Petitioner points to the index page of *Photographer*, which states that it is an “Official magazine [redacted] in [redacted]” and submits webpages with short descriptions of both organizations. The evidence regarding [redacted] does not explain any relationship with the magazine, or how any such relationship would show it to be a professional magazine. Similarly, the evidence about [redacted] indicates that it is a federation of national photographic associations, but does not verify or explain any relationship with *Photographer*.

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<sup>3</sup> The Petitioner’s most recent mention of the criterion at 8 C.F.R. § 204.5(h)(3)(v) occurred in her first combined motion, in which she specifically stated that she was not submitting additional evidence to meet this criterion.

The Petitioner also submits evidence about the circulation of several fashion magazines, which appears to have been taken from a *Vogue Ukraine* presskit, and asserts that since it shows that *Marie Claire* has a circulation less than that of *Photographer* and “is a major media and a competitor,” then *Photographer* should be considered as major media.” However, these figures do not support either magazine’s status as a major medium in the Ukraine market, since *Marie Claire*’s are by far the lowest of the magazines shown. Further, these circulation figures are for fashion magazines only, and any comparison between their circulation figures does not lead to the conclusion that *Photographer* should be considered to be a professional magazine.

The Petitioner also submits for the first time copies of two articles from *Vogue Ukraine*, published in [redacted] 2013 and [redacted] 2014. The latter article, titled [redacted] reports on the opening of a perfume store in [redacted] Ukraine, but focuses mainly on the Petitioner and her photos, one of which is used in the décor of the store. The interviewer asks her about her connection with [redacted] and her photography of them. The earlier article mentions the Petitioner as a member of a jury for a [redacted] competition, but the article is about the competition.

As mentioned above, the Petitioner also submits print readership figures from a *Vogue Ukraine* presskit, which compares the readership of *Vogue Ukraine* to three other fashion magazines in Ukraine from 2013 to 2019 and cites to an outside source for these figures. According to this information, the readership of this magazine was well ahead of the other well-known fashion titles at the time of the [redacted] 2014 publication and at the time of the filing of this petition. Therefore, we conclude that based upon the [redacted] 2014 article in *Vogue Ukraine*, the Petitioner has established that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

Further, the Petitioner has included additional evidence with her motion, including an interview of her on the website [photoindustria.ru](http://photoindustria.ru), and a contract and invoices related to the Petitioner’s design of [redacted] [redacted] for a customer. Although the Petitioner also asserts that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(ix) relating to a high salary or very high remuneration compared to others in her field, she has now met the requisite three criteria to meet the initial evidentiary requirements of this classification. Therefore, we will consider this evidence together with the balance of the record when conducting a final merits determination.

### C. Final Merits Determination

In a final merits determination, we examine and weigh the totality of the evidence to determine whether the Petitioner has sustained national or international acclaim and is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. Here, the Petitioner has not offered sufficient evidence that she meets that standard.

As noted at the outset, the Petitioner describes herself as a photographer, artisan, and fashion designer, and has submitted some evidence relevant to each of these pursuits. Because the bulk of the evidence concerns her work as a photographer, we will primarily focus on this aspect of her endeavor in our analysis. We note that over the course of these proceedings, the Petitioner has submitted several documents relating to events which took place after the initial filing of her petition on August 7, 2017. However, a petitioner must establish that all eligibility requirements for the immigration benefit have

been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). We will therefore not consider such evidence in our analysis.

The evidence relating to the Petitioner's work as a photographer shows that it has been exhibited on two occasions in Ukraine. The first exhibition, titled [redacted] occurred on [redacted] and [redacted] 2007 in [redacted] Ukraine (known at the time as [redacted]). The evidence regarding this exhibition includes announcements naming the Petitioner and another artist, photographs of the event, and still images of two interviews, together with transcripts of these short interviews by provided by the Petitioner. We first note that it is not apparent that the first interview was broadcast on television channel [redacted] despite the Petitioner's statement and the logo that can be seen on the interviewer's microphone, as the source of the images is not apparent. More importantly, even if it was broadcast or posted online, the information from Private TV [redacted] indicates that it broadcasts only in that local area.

Similarly, still images submitted from a second video interview of the Petitioner at this event indicate that it was done for a program named [redacted], which the record shows is broadcast on television channel [redacted] another local or regional channel in [redacted]. However, the video images were taken from the Petitioner's YouTube account, not channel [redacted]'s. This evidence does not show that this interview was either broadcast or distributed in any other way by channel [redacted].

The record shows that print media discussion of this exhibition was also local in nature, as shown by a paragraph published in the [redacted] 2008 issue of *Afisha* magazine. The magazine's cover indicates that it focuses on events and entertainment in [redacted] and no further information regarding its circulation was provided. Considered together with the video interviews, this evidence does not show that the Petitioner gained acclaim beyond [redacted] to the national or international level as a result of this exhibition of her photographs.

The second exhibition of the Petitioner's [redacted] photography, [redacted] occurred at the [redacted] Museum from [redacted] 2017. This is supported by a letter from the museum, an announcement and poster about the exhibition, and a brief video report about the exhibition posted to the YouTube channel [redacted]. The Petitioner submitted information about [redacted] but as noted in one of our previous decisions, this was not sufficient to show that it is major media and this would have suggested national acclaim. We further note that the screenshots of this video indicate that it had been viewed only 23 times at the time, which does not indicate that coverage of this exhibit drew wide interest from the public or in the field of photography. Other evidence of media coverage of this event included several brief mentions in online blogs. As with the Petitioner's first exhibition held 10 years earlier, the totality of the evidence does not show extensive media coverage which would signal acclaim for the Petitioner's work at the national or international level.

We further note that, in a second letter from the [redacted] of the [redacted] Museum, she states that the exhibition "was attended by a total of 2,690 viewers, photographers and art collectors, which highly praised the collection," and that 6 of the 17 photographs that were exhibited were purchased by private collectors. However, there is no indication of whether this was an exceptional number of visitors over a two-week period, or whether the number of photographs sold or the amount paid reflected a status for the Petitioner as one of the small percentage of photographers at the top the field.

The Petitioner also submitted evidence of the display of her photographs in non-artistic settings, including a café in [redacted] which was a finalist for a national restaurant award, and a small chain of perfume stores in five cities in Ukraine. Letters from the owners of both of these businesses confirm that her work decorates their establishments, and they are supported with photographs. In addition, the [redacted] 2014 *Vogue Ukraine* article discussed above covers the opening of one of the [redacted] [redacted] perfume stores in [redacted] Ukraine, and states that the Petitioner’s photographs “decorate almost all the boutiques of this chain.” This evidence shows that she has been able to sell her [redacted] photographs commercially, and that this work has been mentioned in major, national media on at least one occasion. But it does not demonstrate that her work was acclaimed in the field of photography.

Images of her work as a photographer have also appeared in publications, including the cover of *Oscar Millionaires Flair* magazine for issues published in [redacted] 2010, as well as in pages of those and other issues of this magazine. The editor in chief of this magazine stated in a letter that the Petitioner partnered with the magazine to provide her prints and write some articles, and the record includes information about the circulation of *Oscar Millionaires Flair* from its own website. As we noted in previous decisions in this matter, this evidence, as well as that concerning the magazine *domus design* in which images of her photographs also appeared, did not show that either magazine could be considered as a professional or major medium. While she was credited with this work in both magazines, the record does not establish that these depictions of her work were indicative of acclaim in her field, or brought her further acclaim as a photographer.

Similarly, as described above, the Petitioner’s photographic work was also featured in the [redacted] 2014 issue of the Ukrainian magazine *Photographer*. While the evidence indicates that this publication is focused on the field of photography, and the accompanying article is complementary of the Petitioner’s work, we noted above that it is not a professional magazine, and its circulation figures were not independently verified. As such, this article shows that the Petitioner’s photographs received some level of attention in her field at the amateur level.

As mentioned above, the Petitioner submitted an article for the first time with this motion which was published on the website photoindustria.ru on [redacted] 2017, one week before the filing of the instant petition. We note that this article, which is an interview of the Petitioner about her work as a photographer, does not show the name of its author, and the record does not include information about this website other than a brief report from SimilarWeb. Given this lack of supporting information, this evidence is of minimal probability.<sup>4</sup>

The Petitioner’s work as a photographer also ties in to her claim as a fashion designer. The record includes evidence showing the marketing and sale of [redacted] and other items featuring her photographs and other [redacted] designs under the [redacted]” brand, primarily on websites such as teespring.com, redbubble.com, and etsy.com. [redacted] owner of a boutique in [redacted]

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<sup>4</sup> We further note that many of the questions asked of the Petitioner in this interview include statements which mirror the language of the regulations for this classification. For instance, “You are one of a rare percentage of photographers who have extraordinary talent in photography” closely mirrors the definition of “extraordinary ability” at 8 C.F.R. § 204.5(h)(2). Repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *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, \*1, \*5 (S.D.N.Y. Apr. 18, 1997). These statements are also not supported by documentary evidence in the record.

writes in a letter that her store sold the Petitioner's dresses and tee shirts, and that they were "top sellers at our store." The record includes a list of invoices for the sale of pictures, clothing, and other items, including some for purchases by [redacted] as well as a small number of those invoices and associated receipts, but does not include audited financial statements or tax returns for either the Petitioner or her business which might serve to verify these documents and any commercial success they may have enjoyed. Further, even if [redacted]'s statement regarding the sales success of the Petitioner's clothing was supported by documentary evidence, this evidence from a single boutique would not be sufficient to show acclaim for the Petitioner's work on a broader level.

Other letters were submitted from individual purchasers of [redacted] clothing items, including [redacted] a buyer for a boutique in [redacted] and [redacted] who states that she serves as the [redacted] for the Petitioner's brand. Although these writers and others complement the Petitioner's clothing designs and indicate that they enjoy their purchases, such statements do not show that Petitioner's status as a top fashion designer.

The Petitioner's [redacted] clothing designs were also featured in one article in the [redacted] 2012 issue of the previously mentioned *Oscar Millionaires Flair*, which introduces her [redacted] brand and includes 4 pictures of a model wearing her dresses. But as previously noted, the Petitioner has not shown that this magazine is a professional magazine in the fields of either photography or fashion, and that such an article would therefore reflect an elevated or prestigious standing in either field.

The record also includes evidence of the Petitioner's work as an interior designer, generally using her photographs to decorate interiors or as part of a design theme. An example of this includes the previously mentioned café, which the owner indicates the Petitioner also decorated with framed postcards, handmade [redacted], and a chandelier with [redacted]. Another example is the article in the [redacted] 2006 issue of *domus design*, in which she is credited as one of two designers for a small apartment. The Petitioner also submitted design proposals and a 2017 Form 1099 showing that she completed work for a bedroom design, including [redacted] incorporating her [redacted] photography. This evidence verifies that she has infrequently worked as an interior designer, but does not show national or international level acclaim for this work.

Turning to the Petitioner's work as an artisan, pages from her Etsy account show that she created and sold [redacted] and similar items as [redacted] and [redacted]'s letter indicates that these items were also sold along with her tee shirts and dresses at the [redacted] boutique. A letter from [redacted] Creative Director of the [redacted] Museum in [redacted] Korea, explains that she discovered the Petitioner's Etsy account in 2014 and purchased about 50 of these [redacted] for display. Considered together, the letters establish that the Petitioner has made and sold these [redacted] and [redacted], but does not show this activity led to acclaim for her as an artisan.

The Petitioner has also submitted evidence which she asserts show her earnings from all of the activities described above, as well as evidence which she asserts shows that her earnings are high when compared to others working in these fields, thus showing that she is one of the small percentage at the very top of these fields. As we have noted in our previous decisions, the invoices, receipts, and unaudited financial statements submitted are not verifiable evidence of the Petitioner's remuneration. In addition, the Petitioner has not established that her earnings of \$9800 for the design of a client's

bedroom, as shown on her 2017 Form 1099, is sufficient to show that her compensation is indicative of a status as one of small percentage of interior designers at the top of the field.

The record further includes a contract between the Petitioner and her current husband dated [redacted] [redacted] 2015, in which he is to provide her with “financial support,” as well as invoices indicating that the Petitioner received payments in Ukrainian hryvnia under this contract on three occasions. However, the source of these payments is not apparent, and this evidence does not demonstrate that these three invoices reflect remuneration received by the Petitioner for her work as a photographer, fashion and interior designer and artisan.

The totality of the evidence discussed above shows that the Petitioner has gained some amount of notoriety as a photographer and a fashion designer, with two artistic exhibitions of her work primarily drawing the attention of local media. She has also had some success in selling her photography for commercial settings, and in creating and selling clothing based upon her photographs. However, she seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. 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 that the significance of her 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 that she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act 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 petition will therefore remain denied.

**ORDER:** The motion to reconsider is denied.

**FURTHER ORDER:** The motion to reopen is granted in part and dismissed in part.