

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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Washington, D.C. 20536



File: WAC 98 197 51231 Office: California Service Center

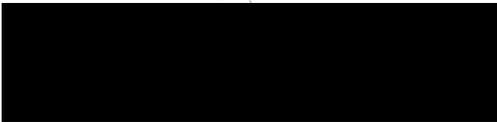
Date: **AUG 18 2003**

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)

IN BEHALF OF PETITIONER:



**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

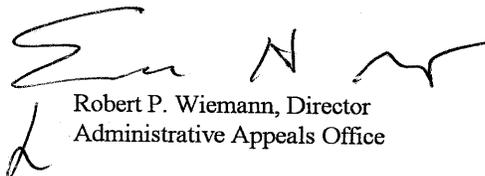
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, California Service Center. On appeal, the Administrative Appeals Office ("AAO") withdrew the director's decision and remanded the case for further action and consideration. The director again denied the petition, and the matter is now before the AAO on certification. The director's decision will be affirmed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined the petitioner had not established the sustained national or international acclaim and substantial prospective national benefit necessary to qualify for classification as an alien of extraordinary ability.

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 to the United States will substantially benefit prospectively the United States.

The regulation at 8 C.F.R. § 204.5(h)(3) outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The AAO's appellate review found that the petitioner had met two of the criteria: (1) national prizes for excellence in the field; and (2) serving as a judge of the work of others.

On August 1, 2002, in compliance with the AAO's appellate review, the director issued a notice of intent to deny informing the petitioner of the deficiencies in the record and requesting that he submit further evidence addressing the ten regulatory criteria and his prospective benefit to the United States.

In response, the petitioner submitted evidence that, counsel claims, meets the following criteria.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, a fixed minimum of education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, test scores and recommendations do not constitute outstanding achievements. In addition, memberships in associations that evaluate membership applications at the local chapter level would not qualify. It is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted a "Certificate of Membership" in the China Cuisine Association verifying his membership since 1995. Also submitted was a letter prepared by an unidentified individual from the China Cuisine Association, stating:

China Cuisine Association is a national organization of catering and culinary professions. It represents the highest echelon of the national culinary community and is the most authoritative organization in China's culinary profession. For a long time, the Association has recruited the elite and core members of each major cuisine style and renowned local restaurants. To be considered for membership in the Association, candidates must possess at least the qualification of national advanced cook (including pastry cook) accredited by national occupational skill assessment organization. In addition, they must also possess a certain degree of renown and have made substantial contributions to the culinary industry of China. In the alternative, they must have either served on the evaluation committee of national cooking contests or won medals (gold, silver or bronze) in provincial cooking skill contests or above.

Rather than providing first-hand evidence of the association's bylaws governing membership, the petitioner has offered an unsubstantiated statement from an unknown individual. Furthermore, based on the above information, it has not been demonstrated that the petitioner was evaluated by recognized national or international experts in consideration of his membership. Passing a general "occupational skill assessment" administered by a national organization would not be evidence of outstanding achievement.

The petitioner also submitted evidence of his membership in the Guangdong Cuisine Society (which is a provincial membership) and the National Railroad Culinary Committee.¹ In addition, the petitioner

¹ It is noted that the petitioner's employer is the Guangzhou Railroad Corporation.

provided the bylaws of the Guangdong Cuisine Association. The evidence presented, however, does not establish that membership in either organization requires outstanding achievement of its members or that the petitioner was evaluated by national or international culinary experts in consideration of his membership.

Published materials 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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. An alien would not earn acclaim at the national level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.

Counsel states that the petitioner's work "has been featured in Who's Who-type publications in the culinary field in China." The petitioner submitted evidence of a half-page profile of himself appearing on page 441 of Chinese Culinary Archive: Encyclopedia of Famous Chinese Chefs. Also submitted were captioned photographs of the petitioner's culinary creations appearing on pages 202 and 203 of Culinary Treasures: The Work of Judges for National Culinary Competitions. The profile appearing in this publication devotes three sentences to the petitioner.

The editors of these publications do not single out the petitioner as superior to the hundreds of other chefs featured in those same volumes. Books of this size, with such a limited portion devoted to the petitioner, appear to be more of a comprehensive directory than a special form of recognition limited to an elite few. We cannot conclude that the petitioner's limited entry into such sizable tomes would constitute qualifying published material about the petitioner and his work.

We further note that the dates of publication and evidence showing the extent of the distribution of the publications were not provided. Without evidence of significant national or international distribution, the petitioner has failed to show that the publications mentioned above would qualify as major media. And finally, because the statute and regulations demand *sustained* national or international acclaim, the petitioner must establish that he has been the subject of regular coverage in major national or international publications. The petitioner, however, has presented no such evidence.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

Counsel states that the petitioner's participation as a judge at a national competition, national awards, and profile appearing in Chinese Culinary Archive: Encyclopedia of Famous Chinese Chefs

would satisfy this criterion. This evidence has already been addressed under previous criteria (two of which have already been satisfied). It should be noted that the ten criteria are intended to be separate and distinct from one another. Rather than addressing the petitioner's specific contributions that have had a major impact in the culinary field, counsel simply cites letters describing the petitioner's skill level as chef, his employment activities, and his awards. The issue here is not the experience or skill level of the petitioner, but, rather, whether any of his past accomplishments would qualify as a contribution of major significance in the culinary field.²

The testimonial letters from various individuals and associations simply catalogue the petitioner's achievements as a chef rather than offering a detailed explanation as to how the petitioner's culinary creations and cooking techniques have influenced the greater field. It has not been shown, for example, that the petitioner's recipes and culinary techniques are widely utilized by other chefs on a national scale or are in great demand among the Chinese populace. Nor has it been shown that the petitioner was regularly singled out by published food critics in columns praising his work (as opposed to being profiled along with hundreds of other chefs). Vague, unsubstantiated claims that the petitioner "has made significant contributions in passing on and promoting the history-rich Chinese culinary art" do not satisfy the restrictive nature of this criterion. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim. If the petitioner's culinary achievements are not widely praised outside of the organizations and individuals to which he has direct ties, then it cannot be concluded that he enjoys sustained national or international acclaim as one who has reached the very top of the field.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

Counsel asserts that the petitioner participation in the 1994 U.S. International Oriental Cuisine & Restaurant Supplies Exposition would satisfy this criterion. In support of this claim, the petitioner submits a letter from an unidentified individual from the Guangdong Cuisine Society, his resume, and four photographs. The photographs show the petitioner at a booth in a convention-type setting performing for several exposition attendees. Numerous other booths appear in the same row as the petitioner's booth. No documentary evidence has been submitted to show that working a booth at the exposition was a privilege extended to only top chefs at the national or international level.

Allowing any chef who prepared dishes at a culinary exposition to satisfy this criterion would defeat the restrictive nature of Section 203(b)(1)(A) of the Act, thus rendering this criterion meaningless. Instead, the petitioner must show that his culinary exhibitions elevate him to the very top of his field at the national or international level. In this case, the record indicates that the petitioner has always displayed his dishes among other chefs, and it has not been shown that those other chefs enjoyed national or international reputations. Nor has it been shown that the petitioner was ever featured at an exhibition devoted solely or largely to the display of his culinary creations alone.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

² It is noted that several of the letters were written by unidentified authors.

In order to establish that he performed in a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment. Where an alien has a leading or critical role for a department of a distinguished organization or establishment, the petitioner must establish the reputation of that department independent of the organization as a whole.

Counsel states: “[The petitioner] was promoted to Manager of Culinary Training by Guangzhou Railroad Group Corporation in 1994, and later to his current position of Director of Culinary Training in 1997.” In support of counsel’s claim, the petitioner submits two letters from the Livelihood Services Company, a “direct subsidiary of the Guangzhou Railroad Group Corporation.”

The first letter, dated May 3, 1994, states: “[The petitioner], Manager of Culinary Training Center, Livelihood Management Department, has been found qualified for his position after appraisal exam. He is confirmed the rank of Deputy Section Officer...”

The second letter, dated December 17, 1997, states: “This is to promote [the petitioner] to the position of Director of Culinary Training (remaining in the rank of Deputy Section Officer).”

The record, however, contains no documentary evidence to establish that the Culinary Training Center of the Livelihood Services Company enjoys a distinguished reputation throughout China or that holding the rank of Deputy Section Officer constitutes a leading or critical role for the company.

The petitioner also submits evidence of his board membership in the [REDACTED]

[REDACTED] We note here that the burden is on the petitioner to submit documentary evidence establishing that these organizations have distinguished reputations in the culinary industry. The record also lacks evidence detailing the specific nature of the petitioner’s duties as a board member or evidence showing that the petitioner’s role was more important than that of the other board members. For example, the petitioner has submitted a “List of Board of Directors for the Fourth-Term Governing Board of the Guandong Cuisine Society.” Aside from the issue that this is a provincial (rather than a national) society, it is noted that twenty-six other individuals also serve in a similar capacity on this board.

It must be emphasized that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. The petitioner cannot demonstrate eligibility under this criterion by submitting letters that offer only brief, vague information merely confirming the petitioner’s position (as opposed to detailing the specific nature of his duties).

For the above stated reasons, we find that the petitioner’s evidence falls short of establishing that the petitioner has performed in a leading or critical role for a distinguished organization, or that his involvement attracted sustained national or international attention.

In this case, the petitioner has failed to demonstrate receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained

acclaim necessary to qualify as an alien of extraordinary ability. The remaining issue is whether the petitioner's entry to the United States will substantially benefit prospectively the United States.

In a letter submitted on appeal, counsel stated:

In addition to employment offers and culinary creation, [the petitioner] has also received an offer to be consultant for a U.S. professional organization and trade magazine in his field. This ensures that his future pursuits will substantially benefit the culinary culture and profession in the United States. Specifically, he has been invited by the Chinese Culinary Association, U.S.A., to be a consultant to advise on its professional affairs and to judge culinary competitions and events. As a consultant, [the petitioner] will also provide editorial review, content development and original articles for the trade magazine *Oriental Gourmet* which is distributed by the association and its affiliates in the United States.

In addressing the issue of prospective national benefit, the AAO's appellate decision stated:

Certainly, if the petitioner's employment is limited to one restaurant, then any benefit arising from the petitioner's work is limited to his employers and the patrons of that one restaurant; he is unlikely to have an impact at a national level.

At the same time, the petitioner has shown on appeal that the Chinese Culinary Association, U.S.A., seeks to employ the petitioner as a consultant, which would afford the petitioner considerably greater exposure and influence than he could expect from working as a chef at one local restaurant.

Perhaps the greatest weakness of the record regarding the Chinese Culinary Association is the lack of independent evidence about this organization pertaining to its size, influence, and so on. A letter from the association's director states "[o]ur publication, *Oriental Gourmet*, is distributed by the Oriental Gourmet Group in San Francisco and other parts of ." Because this sentence is incomplete, we cannot determine whether the association is limited to parts of California, or truly national in scope. The director should request further evidence pertaining to the petitioner's planned future activities before coming to a definitive conclusion on this issue.

In response to the director's notice of intent to deny dated August 1, 2002, the petitioner submitted a job offer letter from the Shanghai Restaurant of Walnut Creek, California, but no further evidence regarding the Chinese Culinary Association. The job offer stated: "We wish to employ you with our restaurant on a full-time permanent basis in the position of Chinese-Style Chef at a monthly salary of \$3000 plus such benefits as room and food."

Also accompanying the petitioner's response was a letter from counsel, stating: "[The petitioner's] immigration will benefit our society because his unique expertise in Chinese snack cooking will enrich our culinary culture and profession." While the petitioner's culinary expertise might benefit his employing restaurant and its patrons, the impact of an individual chef working at a local restaurant would be so attenuated at the national level as to be negligible.

The director again found that the petitioner's evidence did not establish his prospective national benefit to the United States. The director's decision noted that the petitioner had failed to provide evidence demonstrating the national scope of the [REDACTED]

We concur with the director's determination. The petitioner has not shown the benefits of his future work are likely to have a substantial impact at a national level. The evidence presented by the petitioner fails to demonstrate that his full-time employment as a chef in a local California restaurant will substantially benefit prospectively the United States.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

In this matter, we concur with the director's findings that the petitioner has not established the sustained national or international acclaim and substantial prospective national benefit necessary to qualify for classification as an alien of extraordinary ability. A review of the record does not establish that the petitioner has distinguished himself as a chef to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The petition is denied.