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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 Eye Street, N.W.  
Washington, DC 20536



File: WAC-01-243-55497

Office: California Service Center

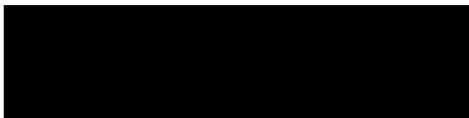
Date: **DEC 24 2003**

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)

ON BEHALF OF PETITIONER:



**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 Citizenship and Immigration Services (CIS) 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, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel asserts that the director erred in failing to consider a letter submitted in response to the director's final request for additional documentation. On December 16, 2002, the director stated that while an advisory opinion was not required, it might bolster the petitioner's case. The petitioner was given until March 10, 2003 to respond. On March 4, 2003, counsel requested an additional 15 days to respond. On March 19, 2003, the petitioner submitted an advisory opinion from Sylvain Rivet, Executive Chef at the Art Institute of California. On April 1, 2003, the director denied the petition on its merits, also stating that the petitioner had not submitted anything after counsel's request for an extension.

On appeal, counsel notes that a response was submitted. As stated by the director in his decision, 8 C.F.R. § 103.2(b)(8) precludes CIS from granting requests for an extension of time to respond to requests for additional documentation. Thus, the director was not obligated to consider the advisory opinion. Regardless, we will consider the letter on appeal.

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

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(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.

As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the CIS regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an “entrepreneur/culinary.” The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien’s receipt of such an award, the regulation 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 petitioner has submitted evidence that, she claims, meets the following criteria.

*Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

Initially, the petitioner submitted numerous magazine articles about two restaurants co-managed by herself and her former husband, Gilles Epie. Some of the articles reference a single star rating from the *Michelin Guide* and a 15/20 rating from *Gault Millau*. The director requested additional information regarding the significance of these “awards.” In response, the petitioner submitted Internet materials on the *Michelin Guide* that did not indicate the top number of stars that can be awarded. An accompanying article in the *Los Angeles Times* indicates that the guide awards at least three stars, referencing another chef’s demotion from three to two.<sup>1</sup> This article also suggests that the ratings are more of a reflection on the chef than the person heading up the dining room.<sup>2</sup> The petitioner also submitted other restaurants rated by *Gault Millau* with no evidence relating to the significance of the rating. We note that one restaurant received a 19/20 rating.

In his final decision, the director did not specifically address this criterion other than to note that the petitioner’s accomplishments relate to her work as co-manager with Mr. Epie. On appeal, counsel reiterates the above claims. Executive Chef Rivet refers to the Michelin star as a “prestigious

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<sup>1</sup> According to Michelin’s website, [www.viamichelin.com](http://www.viamichelin.com), a three star rating is defined as “Exceptional cuisine, worth a special trip.” A two star rating is defined as “Excellent cooking, worth a detour.” A single star rating is defined as “A very good restaurant in its category.”

<sup>2</sup> An Internet article published in *The Citizen Online* at [www.thecitizennews.com](http://www.thecitizennews.com), provides that while no one other than the inspectors know the criteria, “[g]eneral agreement is that the first star is based on a restaurant’s food quality, with additional stars awarded for incremental increases in quality of service; dining room decoration; linen, cutlery and china; expense of ingredients; a more extensive selection of cheese, and the size and quality of the wine cellar.” (Emphasis added.)

award” and asserts that the 15/20 rating is “astonishing.” These claims are repeated verbatim by counsel and nearly verbatim in three of the reference letters submitted on appeal.

A ranking for one’s restaurant is not an award or prize. Moreover, despite the general claims of the petitioner’s references, the petitioner has not established the primary factors used in issuing the rankings. Obviously, the ambiance of the restaurant must be acceptable. If the rankings primarily recognize the cuisine, however, the petitioner cannot take credit for the rankings. Moreover, the petitioner has not established when the last star was issued. Neither the petitioner nor counsel have addressed the director’s valid concern that the record contains no evidence relating to the ten criteria reflecting recent, and thus sustained, acclaim.

*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.*

The petitioner submitted several short articles about Miravile, a Paris restaurant managed by the petitioner and her former husband, Gilles Epie. An article in the January 1989 issue of Food & Wine mentions the petitioner only to identify her as the Chef’s “wife and collaborator.” The discussion of the food credits Mr. Epie with the dishes. An article in the February 1988 issue of *Gault Millau* mentions the renovations made by the petitioner, but focuses on the food prepared by Mr. Epie. An article in the *Grandes Tables a Prix Doux* from an unspecified date merely comments on the wealth of Mr. Epie and his choice to keep his “unbelievable” menu priced at 150 francs. A three-sentence article in *Le Figaro* remarks on the success of the petitioner and Mr. Epie at moving their restaurant across the Seine. A longer article in *Mes Etapes Gourmandes* mentions the petitioner as a co-manager with Mr. Epie, but credits him with the menu. A brief blurb in *Le Figaro* declares that Miravile “is the restaurant of the moment established by one of the future [P]arisian greatest Chef[s]: Gilles Epie.” An October 1988 article in *Plaisirs Gastronomie Magazine* discusses the décor and the food at Miravile but mentions only Mr. Epie by name. An article in an unidentified publication credits the petitioner with the décor and Mr. Epie with the menu. Another article in *Le Figaro* acknowledges that the petitioner chose the decorations for the restaurant and concludes that she is “perfect to welcome the customers,” but concludes that it is Mr. Epie who is ascending to the top of the field as a chef. The record contains other similar articles, some focusing entirely on Mr. Epie.

An article in *Paris Decouverte* discusses an earlier restaurant managed by the petitioner and her then-fiancé Mr. Epie, Au Café Saint Honoré. While the article asserts that both managers are talented, Mr. Epie is credited with the menu. A one-paragraph blurb in a 1989 issue of *Vogue* asserts that the petitioner “heads the dining room.” The record contains similar articles regarding this restaurant, mostly praising the cooking of Mr. Epie.

The record does contain two articles in *Le Chef* focusing more on the petitioner. An April 1989 article in *Le Chef* discusses the petitioner’s collaboration with Mr. Epie. The article credits the petitioner with the décor, welcoming the patrons, the wine list, and tasting her husband’s creations. A 1988 article in *Le Chef* discusses the petitioner’s choice of decorations and design for the

organization of Miravile. The article concludes that the restaurant is “nice, dainty, charming and welcoming” and expresses no surprise that the restaurant is packed.

In his request for additional documentation, the director concluded that the above evidence did not show the petitioner’s sustained acclaim. The director requested evidence of the circulation of any publications submitted as evidence of more recent acclaim. In response, the petitioner resubmitted the above articles and submitted a few undated Chinese-language articles relating to Miravile with no evidence of the circulation of the publications in which they appear.

The director concluded that the coverage was regional or local and not evidence of the petitioner’s recent acclaim. On appeal, counsel argues that “virtually every publication submitted stresses the value and significant contribution” the petitioner made to her restaurants. Counsel also references the publications as “national and international.” Counsel and three of the reference letters submitted on appeal repeat one of Executive Chef Rivet’s claims verbatim, namely: “The articles continuously attest to [the petitioner’s] restaurant savoir-faire as well as business acumen, which are instrumental in creating a successful restaurant of highest quality worthy of a Michelin ‘Star’ for half a decade.”

The record contains no evidence of the circulation of the publications or evidence that any of them are recent. While *Vogue* obviously is not local, the statement in that magazine is from 1989 and, given that it pays more attention to the cuisine than the décor, hardly constitutes published material about the petitioner such that it is indicative of her national or international acclaim.

It remains, with the exception of the *Le Chef* articles, the published material focuses significantly more on the talents of Mr. Epie as a chef than the petitioner’s skills as a decorator or manager. Clearly, the ambiance was appreciated by the authors, but more than one author asserts that while the ambiance was nice and important, the notable element of the restaurant was the talent of the chef. The articles from *Le Chef* are from 1988 and 1989 and the petitioner has not established the circulation of that publication. As such, the articles in that publication cannot serve as evidence of the petitioner’s sustained national or international acclaim as of the date of filing in 2001.

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

The petitioner claims to meet this criterion through her role at Miravile. While the reviews and rankings of Miravile and the reference letters are more persuasive as evidence for this criterion, the petitioner has not established when she left Miravile. Thus, it is not clear that the petitioner played a leading or critical role for a distinguished restaurant recently, such that we can consider those positions evidence of sustained national or international acclaim. Even if we concluded that the petitioner minimally meets this criterion, it is only one criterion. The petitioner must establish that she meets three in order to establish her eligibility for the classification sought. For the reasons discussed above and below, the petitioner falls far short of meeting any of the other regulatory criteria.

*Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

The petitioner claims to meet this criterion by submitting a financial review and menu prices. No such documents are in the record. Regardless, this criterion relates specifically to performing artists. The petitioner has not demonstrated that the success of a restaurant she co-managed and its menu prices are comparable to personal commercial success by a performing artist.

*Witness letters*

The director specifically requested an "advisory opinion." In response, the petitioner submitted a letter from Sylvain Rivet, Executive Chef at the Art Institute of California. Mr. Rivet indicates that he dined at both of the petitioner's restaurants in Paris and praises the petitioner's abilities in managing the restaurant, creating the ambiance, elegance, atmosphere and style of the restaurant, and choosing the menus.

On appeal, the petitioner submits six reference letters from individuals at California restaurants, one of which is from Gilles Epie. Three of the letters contain verbiage nearly identical to parts of Executive Chef Rivet's letter. Another letter submitted on appeal repeats Mr. Epie's comments verbatim. While the letters are all signed, indicating that the authors affirm the contents of the letters, the use of boilerplate language suggests that not all of the authors composed the letters themselves. Thus, the evidentiary value of these letters is somewhat diminished. Regardless, the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition. As discussed above, the petitioner falls far short of establishing that she meets at least three of the regulatory criteria. Thus, the general praise contained in the reference letters is insufficient evidence of the petitioner's alleged acclaim. Insofar as the letters address the regulatory criteria, they have been considered above.

*Clear evidence that the alien is coming to the United States to continue work in the area of expertise*

8 C.F.R. § 204.5(h)(5) states that evidence to meet this requirement may include "letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." Initially, the petitioner submitted a letter from Jean-Louis de Mori, a chef of French and Italian cuisine at the Locanda Veneta restaurant in Los Angeles praising the beneficiary's abilities as a restaurant manager and asserting: "I look forward to an enduring and beneficial relationship with [the beneficiary] in her capacity as restaurant manager." This letter is ambiguous and Mr. de Mori does not specifically state that he is offering the beneficiary a job as a restaurant manager. Subsequently, the petitioner submitted an offer of employment as a sales executive for

New Chef Fashion, Inc. This position would involve representing the manufacturer of chef uniforms. It is not clear that this position would be within the beneficiary's claimed area of expertise, culinary entrepreneur, supported with evidence of interior design and restaurant management experience.

On appeal, the petitioner submits a letter from Elio Cavallari, owner of the Mezzomondo restaurant. While Mr. Cavallari indicates that he would hire the petitioner if she obtains lawful permanent resident status, he does not indicate in what capacity he would hire her. We do not find that the record adequately supports the petitioner's claim that she intends to continue working in her claimed area of expertise.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as a culinary entrepreneur to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent at restaurant interior design, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field. 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.