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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass., 3/F
Washington, D.C. 20536

[redacted]

File: WAC 01 283 50669 Office: California Service Center Date: JUL 18 2003

IN RE: Petitioner:
Beneficiary: [redacted]

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:

[redacted]

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, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary 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 culinary arts. The director determined the petitioner had not established that that the beneficiary has earned the sustained national or international acclaim 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):
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> (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,
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> (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 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 the beneficiary has sustained national or international acclaim at the very top level.

This petition, filed on September 18, 2001, seeks to classify the beneficiary as an alien with extraordinary ability as a pastry chef. At the time of filing, the beneficiary was employed as an [redacted] The statute and regulations require the beneficiary's acclaim to be sustained. A letter from Bellagio (a Las Vegas hotel and casino and a former employer of the beneficiary) indicates that he has been working in the United States since 1995. Given the length of time between the beneficiary's arrival in the United States and the petition's filing date, it is reasonable to expect the beneficiary to have earned national acclaim in the United States

during that time. The beneficiary has had ample time to establish a reputation as a pastry chef in the United States.

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 sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, it 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.*

In response to the director's request for evidence, the petitioner submitted an award from Paris Las Vegas naming him "Supervisor of the Quarter" for the first quarter of 2000. This award from his employer is reflective of local, rather than national or international, recognition.

Also submitted was a letter from the beneficiary's supervisor, [redacted] stating that the beneficiary's contribution "assisted" [redacted] team "in bringing home the Championship" at the U.S. National Pastry Championship in Beaver Creek, Colorado (June 2001). The record, however, contains no first-hand evidence showing that the beneficiary officially participated in the competition as one of Mr. Canestrier's fellow team members. In fact, documentation pertaining to the 2001 U.S. National Pastry Championship (an article appearing in the online edition of the *Las Vegas Review Journal*) states: [redacted] teamed up with [redacted] Atlanta to win the top prize in the National Pastry Team Championship held in Colorado... Team [redacted] out 11 other three-man squads for a gold medal and the $50,000 top prize..."

Another article, entitled "Team USA Tastes Sweet Success at the First-Ever World Pastry Team Championship at Rio All-Suite Hotel in Las Vegas," reflects that the same three-person team (which did not include the beneficiary) also won at the World Pastry Team Championship in July 2002. It states:

> Considered the most prestigious event in the pastry world, the 2002 World Pastry Championship drew an unparalleled gathering of world-renowned pastry chefs. Competing for team USA were team captain [redacted] executive pastry chef for the Bellagio Hotel in Las Vegas, Laurent Branlard, pastry chef of the Ritz-Carlton Buckhead in Atlanta, and [redacted] executive pastry chef of Paris Las Vegas and Casino restaurants.

Clearly, the beneficiary did not participate as an official team member in either pastry competition. In this case, the petitioner has not shown that the beneficiary has received any awards comparable to those described above. Thus, we find that the evidence offered by the petitioner fails to meet this criterion.

> *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, a membership in an association that evaluates its 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 has provided no documentary evidence of the beneficiary's individual membership in any culinary associations.

Nevertheless, counsel argues that the beneficiary meets this criterion, stating:

> [The beneficiary's] association with the best respected and work for the top pastry chefs in the world is a testament of his outstanding achievements in the field. [The beneficiary's] excellent skills in French pastry and dessert combined with his management skills have made him highly sought after in the industry.

Reputation by association "with top pastry chefs" would not suffice to establish that the beneficiary himself enjoys national or international acclaim. The plain wording of this criterion requires documentation establishing the beneficiary's membership status in a distinguished culinary association. For example, [redacted] who offers a witness letter in support of the petition, indicates that he was "inducted into the prestigious Master Chefs of France Society, which numbers only 200 chefs." There is no indication that the beneficiary, himself a French chef, has been admitted into this distinguished culinary association. As another example, if it were shown that the beneficiary officially competed as a member of the three-man team representing the U.S. in the World Pastry Team Championship, we would find this criterion to have been met.[1]

In sum, it has not been shown that the beneficiary holds membership in an association requiring outstanding achievement of its individual members or that he was evaluated by national or international experts in consideration of his membership.

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[1] While a team is not an "association," we could consider such evidence as comparable under 8 C.F.R. § 204.5(h)(4) because membership on the U.S. national pastry team is the result of a national competition, supervised by national experts.

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 beneficiary 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. Some newspapers, such as the *New York Times*, nominally serve a particular locality but they qualify as major media because of significant national distribution, unlike small local community papers.

The articles submitted in this case relate to awards won by the beneficiary's supervisors, [redacted] The petitioner has offered no evidence showing that the beneficiary himself has been the subject of sustained major media coverage.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

In an occupation where "judging" the work of others is an inherent duty of the occupation, such as a supervisor, coach, instructor, teacher, professor or editor, simply performing one's job related duties demonstrates competency, and is not evidence of national or international acclaim. Instead, the petitioner must demonstrate that the beneficiary's sustained national or international acclaim resulted in his selection to serve as a judge of the work of others. Similarly, the competition or contest must be on a national or international level and involve other accomplished professionals in the beneficiary's field. For example, judging the U.S. National Pastry Team Championship would carry far greater weight than judging a citywide culinary competition.

The petitioner submitted a letter on appeal from Jean-Philippe Maury, the beneficiary's former supervisor at the Bellagio Hotel and Resort. In a paragraph under the heading "Peer Review" [redacted] states: "[The beneficiary] has provided guidance to peers and new members of his profession, as well as to the associated community of pastry chefs." Evaluating other pastry chefs would be an inherent duty of the beneficiary's position as an Assistant Executive Pastry Chef at Paris Las Vegas and the Bellagio and therefore it would not constitute judging the work of others in the beneficiary's field at the national or international level. The record contains no evidence that the beneficiary has ever judged pastry competitions involving "the associated community of pastry chefs." Vague assertions regarding the beneficiary's activities carry far less weight in this matter than would contemporaneous first-hand documentation demonstrating that the beneficiary actually served as a judge.

In sum, the petitioner has offered no documentary evidence showing that the beneficiary judged the work of others in his field at the national or international level or that he was selected as a judge based on his national or international acclaim.

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

The petitioner submitted witness letters from the beneficiary's current and former supervisors.

[redacted] Executive Pastry Chef, Paris Las Vegas, indicates that he is "one of France's top pastry chefs and the recipient of numerous awards." He states:

> I strongly support the petition that would allow [the beneficiary] to assume duties as a Culinary Pastry Chef in the United States. [The beneficiary] will work directly for me and will be in charge of the large pastry department in my absence. He will assist and manage the department. [The beneficiary] has similar experience as a Pastry Chef at the world class Hotel Bellagio as well as experience at New York's finest patisserie, Payard Patisserie, which received New York's top dessert award. Moreover, [the beneficiary's] sixteen years of experience, which includes the world famous culinary establishment in France, Fachon, has made him recognized for his culinary artistry.

[redacted] Executive Chef, Paris Las Vegas, states:

> I have been inducted into the prestigious Master Chefs of France Society, which numbers only 200 chefs. In addition, I am the only Master Chef in the city of Las Vegas...
>
> * * *
>
> It is my duty as Executive Chef that I hire only the best and most renown Pastry Chefs to head our newly established casino resort. [The beneficiary's] experience as a world class pastry chef was a requirement in choosing an Assistant Pastry Chef to help manage and direct our large pastry department. With six French restaurants serving the finest French cuisine, the position of Assistant Pastry Chef required the culinary talents of someone with recognition in France and the United States.... [The beneficiary's] extraordinary abilities as a French pastry chef is what landed him the prestigious position of Assistant Pastry Chef at the world class Bellagio Hotel.

In a letter provided on appeal, [redacted] Executive Pastry Chef the Bellagio Hotel and Resort and one of the beneficiary's former supervisors, states:

> [The beneficiary] has made unprecedented advancements in the area of management of large resorts, particularly in the area of French Pastries. He is internationally recognized as one of the nation's top pastry chefs given his experience in working for the world's finest establishments and his role as Executive Pastry Chef at the world famous Paris Las Vegas Resort in Las Vegas, Nevada.

[redacted] asserts that the beneficiary is "internationally recognized" but cites no

evidence to support that claim.

[redacted] states:

> During my food and beverage career, I have worked with many pastry chefs and none of them came close to the talent, ability and managerial skills of [the beneficiary]. He is a true professional and manages his people with respect and dignity.
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> * * *
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> During his tenure, [the beneficiary] has not only proven to be a great pastry chef but also an extremely great manager. He is well organized with good financial skills. He is well respected not only by his peers but also by all of his line employees. He is a true asset not only for the Food and Beverage Department but also to the company as a whole.

The record contains letters from other individuals who have worked with the beneficiary, but these letters are either general reference letters or letters submitted in support of his O-1 nonimmigrant petitions that predated this petition. The high opinions of the beneficiary's superiors do not establish that the beneficiary has earned national or international acclaim outside of the places where he has worked. The letters detail the beneficiary's culinary skills and employment experience, but they provide no information regarding how the beneficiary's contributions have influenced his field of endeavor. The issue here is not the skill level of the beneficiary, but, rather, whether any of his past accomplishments would qualify as a contribution of major significance in the culinary field. Simply possessing a certain level of culinary expertise or managerial experience would not satisfy this restrictive criterion.

An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim. If the beneficiary's culinary achievements are not widely praised outside of his current and former co-workers, then it cannot be concluded that he enjoys sustained national or international acclaim as one who has reached the very top of the field. In this case, the beneficiary appears to have earned a reputation only among his current and former colleagues in Las Vegas.

We note here that the beneficiary reported to both [redacted] as their "Assistant" Pastry Chef. The petitioner has not explained why it is that a nationally or internationally acclaimed pastry chef would occupy subordinate positions at Paris Las Vegas and the Bellagio Hotel, or how the beneficiary can be considered at the top of his entire field if he was not even the top pastry chef for his current employer (as of the petition's filing date).

We further note that several of the petitioner's witnesses such as [redacted] and [redacted] appear to have earned considerably more acclaim than the beneficiary. For example, [redacted] have won nationally and internationally recognized awards, but the petitioner has not established that the beneficiary has

achieved a similar level of recognition. The achievements of the beneficiary's superiors show that the top of the field appears to lie above the level that the beneficiary has reached.

The petitioner in this case has provided several letters from impressive experts whose opinions are important in the culinary field. On appeal, counsel argues that these letters from "top pastry chefs" were discounted by the director. Although the beneficiary has attracted the favorable attention of these prominent chefs, a simple comparison of their titles and achievements with those of the beneficiary shows that he has not yet amassed a record of accomplishment placing him at or near the top of his field. That these individuals have in some cases demonstrated achievements which far exceed those of the beneficiary demonstrates that, however esteemed he may be and whatever future promise his career may hold, he has not yet reached the top of his field. Even if it were unanimously agreed that the beneficiary would one day reach such a level, this visa classification is reserved for those at the top of their field, not for those who are expected eventually to reach that level.

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

We withdraw the director's finding that the beneficiary satisfies this criterion. In order to establish that the alien performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of the beneficiary's 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.

We note here that the burden is on the petitioner to establish that the pastry departments [redacted] and the Bellagio have distinguished themselves when compared to pastry departments at other major resorts and entertainment complexes. Given [redacted] did not even open until late 1999, the petitioner must establish that it enjoyed a distinguished reputation in its first two years of operation. Other than promotional material issued by Paris Las Vegas' own public relations department, the record contains no evidence to demonstrate that its pastry department enjoyed widespread acclaim as of the petition's filing date. For example, the record contains no highly favorable reviews featured in renowned culinary publications or other major media that predate the petition.

At the time of filing, the petitioner submitted a letter from [redacted] stating that the beneficiary held the title of "Assistant Executive Pastry Chef." In this position, the beneficiary served under [redacted] While working at the Bellagio, the beneficiary held that same title and was subordinate to [redacted] It has not been shown that the beneficiary's role and contributions as a chef were more important than those of his superiors. We cannot ignore the statement from [redacted] indicating: "[The beneficiary] will work directly for me and will be in charge of the large pastry department in my absence."

Subsequent to the petition's filing date, the beneficiary was promoted to Co-executive Pasty Chef at Paris Las Vegas. In a letter dated March 29, 2002, [redacted] Executive Chef, Bally's Las Vegas (who indicates that he first met the beneficiary while working as Assistant Executive Chef at Paris Las Vegas) states:

> Because of his experience, endless commitment, dependability, and loyalty, [the beneficiary] was promoted to Executive Pastry Chef at Paris/Bally's Las Vegas. During [the beneficiary's] tenure here at Bally's, he has completely revamped and upgraded the department to reach the standards set at Paris. He has developed a productive and highly efficient work force that have all grown in knowledge due to his efforts.

A simple review of the qualifications and job titles of the individuals who submitted letters in the beneficiary's behalf shows that their roles and responsibilities have far exceeded those of the beneficiary. The petitioner has provided no evidence of the beneficiary's role as the top pastry chef at Paris Las Vegas prior to the petition's filing date. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Bureau held that beneficiaries seeking employment based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. New circumstances that did not exist as of the filing date cannot retroactively establish eligibility as of that date.

In sum, we find that the petitioner's evidence falls short of establishing that the beneficiary has performed in a leading or critical role for a distinguished organization, or that his involvement attracted sustained national or international attention.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

We withdraw the director's finding that the beneficiary satisfies this criterion. The petitioner submitted a letter from [redacted] Assistant Vice-President, Human Resources, Paris Las Vegas, dated May 29, 2001. His letter states: "[The beneficiary] is currently our Assistant Executive Pastry Chef.... His current salary is $60,923.20/per annum." Also submitted was online wage information showing that the "average prevailing wage for a Head Chef in Las Vegas is $35,651." The petitioner, however, must demonstrate that the beneficiary's salary is high when compared with the most experienced and well-known pastry chefs around the country.[2] Local prevailing wage figures do not meet this standard.

Beyond the above criteria, the petitioner submits copies of the approval notices for the beneficiary's prior O-1 nonimmigrant visa petitions. Throughout this proceeding and again on appeal, counsel has cited the approval of an O-1 nonimmigrant visa petition as evidence that the beneficiary has already been found to be an alien of extraordinary ability in the arts. Extraordinary ability in the arts in the nonimmigrant context means distinction, which is not the same as

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[2] The record contains no evidence of the salaries earned by Chefs Jean-Claude Canestrier, Jean-Philippe Maury, or Laurent Branlard.

sustained national or international acclaim. Section 101(a)(46) of the Act explicitly modifies the criteria for the O-1 extraordinary ability classification in such a way that makes nonimmigrant O-1 criteria less restrictive for a beneficiary in the arts, and thus less restrictive than the criteria for immigrant classification pursuant to section 203(b)(1)(A) of the Act.

It is further noted that there is no statute, regulation, or case law that requires the approval of an immigrant visa petition under section 203(b)(1)(A) of the Act when the alien already holds an O-1 nonimmigrant visa. Each petition must be adjudicated on its own merits based on the evidence submitted to support that petition.

In this matter, we find that the evidence offered by the petitioner does not establish that the beneficiary has earned international acclaim, or national acclaim in the United States or France. The fundamental nature of this highly restrictive visa classification demands comparison between the beneficiary and others in his field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every capable chef who has enjoyed success as a supervisor at a large resort or hotel, or who has earned the respect of his superiors, is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from well-known figures in the field, without reaching the top of that field.

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. The petitioner in this case has failed to demonstrate that the beneficiary 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.

Review of the record does not establish that the beneficiary has distinguished himself as a pastry 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 her field. The evidence is not persuasive that the beneficiary's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established the beneficiary's 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.