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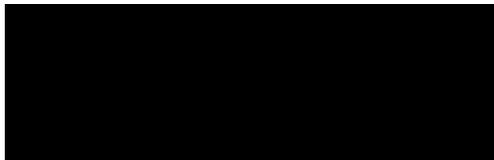
U.S. Department of Homeland Security

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



OCT 28 2003

File: EAC-01-174-51104

Office: Vermont Service Center

Date:

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: SELF-REPRESENTED

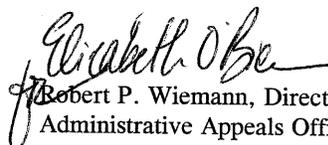
INSTRUCTIONS:

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

On appeal, the petitioner requested an additional 30 days to supplement the record. The petitioner dated the appeal November 12, 2002. As of this date, more than 10 months later, this office has received no additional information. As such, the appeal will be adjudicated on the evidence of record.

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.

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) as follows.

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) 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;

- (iii) Published material 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;
- (iv) 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 specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

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 seeks to classify the beneficiary as an alien with extraordinary ability as a chef. 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, quoted above, 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. Initially, the petitioner submitted the beneficiary's 1999 and 1998 joint tax returns reflecting total wages of \$13,808 in 1999 and \$28,641 in 1998. In addition, a "Taxpayer Information Sheet" reflects that the petitioner earned \$20,293 in 2000. The petitioner also submitted a letter from Jerry Gumbrecht, Regional Manager of the corporation that owns the petitioning restaurant, praising the beneficiary's work ethic.

On October 3, 2001, the director advised the petitioner of the ten criteria and requested evidence that the beneficiary meets at least three of those criteria. In response, the petitioner submitted a new letter

from Mr. Gumbrecht asserting that the beneficiary has received recognition as employee of the week and through the Bronze and Red Star awards for outstanding performance as lead busperson and line chef. Mr. Gumbrecht further asserts that the beneficiary, as an "expeditor," is responsible for the quality and presentation of the food. Finally, Mr. Gumbrecht asserts that, on average, the beneficiary has received "financial increases" twice annually. The petitioner submits a copy of a plaque for "RGP of the Year" issued to the beneficiary by Papa Razzi and the beneficiary's 2000 W-2 and tax return reflecting wages of \$20,292.51.

The director concluded that the petitioner had failed to submit evidence of the beneficiary's sustained national or international acclaim. On appeal, the petitioner submitted the beneficiary's job description and requirements, and another letter from Mr. Gumbrecht praising the beneficiary's abilities as a pizza chef, expeditor of the pantry station, grill chef, busperson, and food runner. The petitioner also submits a photograph of the plaque previously documented.

The petitioner has not submitted documentation that relates to any of the ten criteria. Specifically, the "RGP of the Year" plaque was presented by the beneficiary's employer. The record contains no evidence that it is a nationally recognized award for which the most experienced chefs in the country compete. Nor does the record contain any information regarding the Bronze Star or the Red Star allegedly awarded to the beneficiary. Thus, these awards cannot constitute evidence to meet the plain language requirements of 8 C.F.R. § 204.5(h)(3)(i), quoted above. In addition, the petitioner has not demonstrated that the beneficiary's position as pizza and grill chef, expeditor, busperson and food runner constitute leading or critical roles for Papa Razzi beyond the obvious necessity of employing someone competent in those positions to operate a restaurant. We note that the beneficiary's job description indicates that he reports to the Sous Chef. Nor does the record contain evidence that Papa Razzi enjoys a distinguished reputation nationally, such as a high star rating in a reputable restaurant guide. Thus, the evidence cannot establish that the beneficiary meets the plain language requirements for 8 C.F.R. § 204.5(h)(viii), quoted above. Finally, the record contains no evidence of the compensation levels for the most experienced elite chefs in the United States. Thus, the petitioner has not established that the beneficiary's income is significantly high in the field pursuant to 8 C.F.R. § 204.5(h)(ix), quoted above. The record contains no evidence relating to any other criteria.

The statute requires extensive documentation to establish eligibility for this classification. The regulations require that an alien of extraordinary ability be able to demonstrate sustained national or international acclaim. Assuming that the beneficiary is a talented chef, expeditor, busperson and food runner, the record does not reflect that he has attained any national acclaim for that talent.

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 beneficiary 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. 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.

This denial is without prejudice to the filing of a new petition by a United States employer in a lesser classification and accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.