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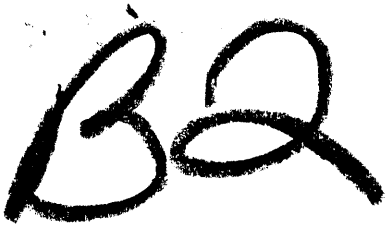

APR 13 2004

[redacted]

FILE: EAC 01 141 51885 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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 of the Administrative Appeals Office 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.

for Marie Johnson
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 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 that he qualifies 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.

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 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 he has earned sustained national or international acclaim at the very top level.

This petition, filed on March 26, 2001, seeks to classify the petitioner as an alien with extraordinary ability as a "Food Consultant offering advice on food and food industry matters." The petitioner states that his area of expertise is Chinese cuisine. 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, he 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.*

The petitioner submitted an award certificate from a training course offered by the Nanjing Tourism Company (1980). The translation of the certificate states: "This is to certify that [the petitioner] has been conferred upon the title of 'Three-Excellence' Student during the first semester..." Vocational study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. Awards based on student achievement are local or institutional in nature and do not constitute nationally or internationally recognized awards for excellence in the field of endeavor.

The petitioner also provided translations of two certificates from the "Nanjing Youth Elite Skills Contest" (1987) showing that he won "First Place in Cuisine" and was conferred the title of "New Long March Path Blazer of Nanjing." These awards are local, rather than national or international, in scope. Moreover, we note that older, more established chefs are ineligible for consideration for such "youth" awards. While this type of award may place the petitioner among the top chefs in a particular age group, it offers no meaningful comparison between the petitioner and more senior culinary professionals. For this reason, we cannot conclude that winning a "youth" award elevates an individual to the very top of his field of endeavor.

Also submitted was a translation of a certificate from the "Department of Political Administration of [the] Jingling Hotel" naming the petitioner "Employee of the Year" in 1983. This award is institutional, rather than national or international, in scope.

Also provided was a translation of a certificate from the Department of Commerce of the Jiangsu Province stating that the petitioner "won the 'Best Dish Award' at the First 'Gourmet Cup' Cuisine Technique and Art Tournament of Jiangsu Province" (1984). This award is provincial, rather than national or international, in scope.

The petitioner also submitted evidence of four award certificates presented by "The Organizing Committee of the Second National Cuisine Technique Contest" (1988). Translations of these certificates from the "Second National Cuisine Contest" indicate that the petitioner won a "Silver Medal for Cold Cut Arrangement for his 'Star-Shaped Floral Arrangement Dish,'" a "Bronze Medal for Cold Cut Arrangement for his 'Harmonious Combination of Eight Flavors,'" a "Bronze Medal for Hot Dish for his "White Jade Shrimp Balls'" and a "Bronze Medal for Hot Dish for his 'Mandarin Fish with Orange Juice'" at this event. It should be emphasized, however, that the petitioner must submit documentary evidence showing the degree of recognition accorded to his individual awards. Having his name cited briefly in a newspaper article, which lists scores of other winners and primarily discusses the overall contest rather than focusing on the petitioner himself, does not adequately support the claim that the above awards enjoy national recognition throughout China.[1] The evidence presented here does not indicate the total number of gold, silver and bronze awards presented at this event, how many other individuals received awards in the "Cold Cut" and "Hot Dish" categories, the criteria used in determining recipients, or the level of media coverage associated with the petitioner's individual awards. Large-scale competitions at the national level typically issue event programs listing the award categories, the names of all of those participating, and the number of awards to be presented for each particular category. At a competition's conclusion, results are usually provided naming all of the winners under the various competitive categories. The petitioner, however, has not provided such information in regard to his competitions.

We note here that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide sufficient evidence to establish that the

[1] The newspaper articles presented by the petitioner will be further addressed under a separate criterion.

awards presented under this criterion enjoy significant national or international stature. Simply receiving an award with the word "national" in its title would not satisfy this very restrictive criterion. In this case, the petitioner has not shown that his awards were significant beyond the context of the events where they were presented.

Finally, we note that the record contains no evidence of any awards received by the petitioner subsequent to 1988. Therefore, whatever reputation he might have enjoyed as an award-winning chef in China has not been sustained.

> *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. In addition, 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.

A translation of a March 11, 2002 letter from the Jiangsu Culinary Association states: "[The petitioner] was a founding member of our association at its inception in 1987. He was elected a council member at its second congress in 1992, reelected at the third congress in 1998, and has held that position since." This association appears to be local, rather than national or international, in scope. The petitioner has presented no evidence showing that this association requires outstanding achievement as an essential condition for admission to membership or that his admission to membership was evaluated by recognized national or international culinary 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 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. 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.

The petitioner submitted unattested, summary translations of two articles appearing in the *Xinhua Daily* in 1984, three articles appearing in the *Nanjing Daily* (a local publication) in 1987, and selected portions from A Collection of Celebrated Dishes: Special Issue of the First "Gourmet Cup" Cuisine Technique and Art Tournament of Jiangsu Province (1984) and Selected Works of Outstanding Cuisine: A Collection of Award-Winning Works at the Second National Cuisine Techniques Contest (1988). By regulation, any document containing foreign language submitted to Citizenship and Immigration Services shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). The incomplete, unattested translations presented by the petitioner are not in compliance with this regulation and therefore are not adequate to satisfy this criterion. Without complete

translations, it cannot be determined if the petitioner is the primary subject of the published pieces, or that he was featured because of his achievements as an extraordinary chef. We further note that the petitioner has failed to provide evidence regarding the circulation of the publications that feature his work. Without evidence of their significant national or international distribution, the petitioner has failed to show that the above publications qualify as major media. Furthermore, an occasional blurb about the petitioner or a photograph of one of the petitioner's dishes appearing in a voluminous publication does not convincingly elevate his accomplishments above the scores of other chefs featured in that same publication.

Finally, we cannot ignore the statutory and regulatory requirement that the petitioner's acclaim be sustained. The evidence presented here fails to show that the petitioner has garnered sustained media attention (or any media attention) subsequent to 1990.

> *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 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 should demonstrate that his sustained national or international acclaim resulted in his selection to serve as a judge of the work of others. Similarly, the competition or contest should be on a national or international level and involve accomplished professionals in the petitioner's field. For example, judging a national cooking contest would carry far greater weight than judging a citywide competition.

The petitioner submitted a translated "Certificate of Employment" issued by the Tianma National Professional Skills Appraisal Institute stating that he "has been employed as a Senior Appraiser in the Chinese Cuisine" at that institute. The record, however, contains no further evidence about this institution or the capacity in which the petitioner served as a judge of the work of others. It is reasonable to conclude that evaluating others was an inherent duty of the petitioner's Senior Appraiser position. The certificate presented here offers no details of the petitioner's work as a judge and cannot satisfy the statutory demand for "extensive documentation" set forth in Section 203(b)(1)(A)(i) of the Act. No other documentary evidence regarding the petitioner's participation as a judge was provided, nor is it apparent that he has ever served as a judge in a culinary competition at the national or international level. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has judged an unusually large number of well-known contests or presided over national or international level competitions, we cannot conclude that he meets this criterion.

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

The petitioner cites published materials and awards as evidence of his contributions. Publications and awards fall under separate criteria; to satisfy this criterion, the petitioner must show not only that his work has appeared in print or resulted in an award, but that it has major significance in the field. In this case, the record contains no evidence showing that that the petitioner's work has had a lasting major impact on the culinary field at the national or international level. If the petitioner's culinary achievements are not widely praised outside of his province in China, 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 alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

Again the petitioner provides an incomplete, unattested translation that is not in compliance with the regulation at 8 C.F.R. § 103.2(b)(3). Documentation contained in the record indicates that the petitioner has authored what appears to be a half-page description of his work in A Collection of Celebrated Dishes: Special Issue of the First "Gourmet Cup" Cuisine Technique and Art Tournament of Jiangsu Province (1984). The very existence of published work by the petitioner, however, is not dispositive. In order to demonstrate that his published work is nationally or internationally acclaimed, the petitioner must provide evidence to establish that the greater field regards the petitioner's published work as especially significant. The petitioner maintains that the lone passage he authored for this voluminous publication would satisfy this criterion. The plain wording of the regulation, however, calls for the alien's authorship of "scholarly" articles and we find that the petitioner's brief commentary does not meet this requirement. Furthermore, independent evidence showing the circulation of the publication featuring the petitioner's work has not been provided. Without evidence of its significant national or international distribution (from independent sources such as a media guide), the petitioner has failed to show that the above publication would qualify under this criterion.

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

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. The record adequately establishes that the Jinling Hotel and Nanjing Grand Hotel are organizations with a distinguished reputation.[2] The record further reflects that the petitioner played a leading and critical role for these hotels as a head chef. Thus, the evidence presented would appear to satisfy this criterion. The record, however, contains no evidence showing that the petitioner has actually engaged in, or positioned himself to serve in, a comparable leading or critical role as a head chef here in the United States.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h) requires the petitioner to "continue work in the area of expertise." The record contains no evidence to suggest that any major hotels in the United States are interested in employing the petitioner as a head chef. For reasons to be explained below, the petitioner's $500 per week job offers from Empire Szechuan Gourmet in New York and *United Professionals* magazine ("a Chinese and English bilingual periodical" circulated mostly in the City of New York) do not support the conclusion that the petitioner will continue working in his area of expertise here in the United States. Nor has is been shown that either organization enjoys a distinguished reputation at the national level in the same manner as the Jinling Hotel, for example.

Cathy Shen, Assistant Manager, Empire Szechuan Gourmet, states:

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[2] For example, the record contains documentation demonstrating the Jinling Hotel's status as a top hotel in China.

> I am writing to confirm that [the petitioner] has been offered the position of Food Consultant at Empire Szechuan Gourmet located at 2574 Broadway, Manhattan, in the City of New York. It is a part-time permanent position that carries a weekly salary of $500.00.
>
> * * *
>
> As a Chinese dining establishment in the City of New York, our restaurant serves customers in the Chinese and non-Chinese community as well as tourists from around the globe.

This letter, which was provided on appeal, contains no information regarding the petitioner's specific job duties as a "Food Consultant." It has not been shown through documentary evidence that the Empire Szechuan Gourmet restaurant enjoys a distinguished reputation when compared to other gourmet restaurants throughout the United States. Without further evidence as to how working as "Food Consultant" for Empire Szechuan Gourmet restaurant relates to the petitioner's area of expertise as Chinese cuisine chef, we cannot conclude that petitioner has met the requirements of 8 C.F.R. § 204.5(h). It is further noted that, as of the filing date of this appeal, the petitioner had been residing in the United States for almost three years. Given the amount of time that the petitioner has been present in this country, it is certainly reasonable to expect him to have earned acclaim as a top chef here in the United States. The petitioner, however, has offered no evidence to demonstrate that his recent $500 per week job offer from a Chinese food restaurant in New York is indicative of sustained national or international acclaim.

Mei Cheng, Editor-in-Chief, *United Professionals* magazine, states:

> As a Chinese and English bilingual periodical in the City of New York, our publication serves readers in both the Chinese and non-Chinese community as well as those in other parts of the world. [The petitioner] is expected to offer his expert advice in the review, editing and selection of all manuscripts relevant to the food industry. He is also responsible for tapping the vast resources of the dining establishments in the metropolitan areas and elsewhere to generate advertising revenues for the magazine. [The petitioner's] expertise is important to our business.

In this case, it cannot be ignored that the wealth of the petitioner's documentation relates to his work as a chef in China. None of the documentation presented by the petitioner relates to his expertise as magazine editor or as a salesman of advertisement copy. While the petitioner's position with *United Professionals* magazine may require some knowledge of food preparation, it is apparent that his prior work as a chef and his job duties as stated in the above letter rely on very different sets of basic skills. Thus, we must conclude that the jobs are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. Ziglar,* 237 F.Supp.2d 914 (N.D.Ill. 2002), the court stated:

> It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. Therefore, we find the petitioner has not established that his future plans for employment with *United Professionals* magazine are within his claimed area of expertise as a Chinese cuisine chef.

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

The petitioner submitted a letter from the Nanjing Grand Hotel stating: "Due to [the petitioner's] considerable techniques in cuisine and organizational skills, he was selected to receive the Special Stipend of Chief Head Chef (which is usually six times that of an ordinary chef)." The petitioner, however, must demonstrate that the beneficiary's salary is high when compared with the most experienced and well-known chefs from around the country, not just those from the particular hotel where he worked. The petitioner offers no basis for comparison to show that his salary amount was significantly high in relation to others in the field at the national level.

In sum, the evidence presented in this case fails to show that the petitioner has earned sustained national or international acclaim as a Chinese cuisine chef or food consultant in China or 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. 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.

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 his 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.