

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

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

BA



FILE: [REDACTED]
EAC 05 060 50367

Office: VERMONT SERVICE CENTER

Date: **DEC 21 2005**

IN RE: Petitioner: [REDACTED]
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)

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.

Mai 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 (AAO) 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.

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 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 December 20, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a cook. The statute and regulations require the petitioner's acclaim to be sustained. The record reflects that the petitioner has been residing in the United States since October 1996. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than eight years), it is reasonable to expect him to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as a cook in this country.

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 pertaining to 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 a prize certificate allegedly issued by the "China Cook Association" stating that he "was awarded the Second Prize in the 4th Chinese Cook Festival National Competition" (1994).

Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to Citizenship and Immigration Services (CIS) 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. The translation accompanying the petitioner's prize certificate was not certified as required by the regulation.

In response to the director's request for evidence, the petitioner submitted an undated document entitled "CHINA CUISINE ASSOCIATION." This document, which contains numerous grammatical errors, does not bear the seal of this organization nor a signature from an official representative. Nor does it identify the petitioner by name. The document states:

Our association has high standard in the member chefs competition in the cuisine festival each year [sic]:

APPLICANT WON NATIONAL COMPETITION PRIZE

Our standards are high in choosing the members of association [sic] with the following procedure.

In the competition of cuisine festival hold [sic] each year in Beijing, normally more than 500 chefs participated in the cuisine festival competition. . . . After carefully [sic] and strict selection, only 30 chefs are chosen for 2nd advanced cuisine competition.

In the second turn, in the chefs [sic] 6 chefs are chosen for 2nd prize.

It has not been established that this information relates to the "4th Chinese Cook Festival National Competition" for which the petitioner submitted a second prize certificate. The record includes no information specific to this 1994 competition. For example, large-scale competitions typically issue event programs listing the order of events and the names of the participating contestants. At a competition's conclusion, results are usually provided indicating how each participant performed in relation to the other competitors in his or her events. The petitioner, however, has provided no evidence of the official comprehensive results for the preceding competition. Furthermore, there is no evidence of contemporaneous publicity surrounding the petitioner's prize or evidence showing that it commands a substantial level of recognition. Because the statute requires "extensive documentation" of sustained national or international acclaim, the petitioner must submit evidence showing that his award enjoys significant national or international stature. In this case, there is no substantive documentation from the awarding entity or the print media to establish that the petitioner's prize is a nationally or internationally recognized culinary award.

In addition to the preceding deficiencies, the record includes no evidence showing that the petitioner has won any significant culinary arts awards in China or the United States subsequent to 1994. The absence of such awards indicates that the petitioner has not sustained whatever acclaim he may have earned in China during the early 1990's.

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, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. 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 certificates of membership for the World Culture Alliance of Flushing, New York and the "China Cook Association."¹ There is no evidence of the bylaws or the official membership requirements for these organizations demonstrating that admission to membership requires outstanding achievement or that individuals are evaluated by national or international experts in consideration of their admission to membership.

In response to the director's request for evidence, the petitioner argues that the undated document entitled "CHINA CUISINE ASSOCIATION" (discussed under the preceding criterion) reflects that organization's membership standards. It has not been established, however, that the China Cuisine Association and the "China Cook Association" are one in the same. The record includes no first-hand evidence of the petitioner's active membership status in the "China Cuisine Association." Furthermore, as noted previously, the "CHINA CUISINE ASSOCIATION" document does not bear the seal of this organization nor a signature from an official representative. The document also contains multiple grammatical errors, offers incomplete information, and lacks coherency.

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.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a

¹ The membership certificate for the "China Cook Association" was issued in 1990.

judge must be evaluated in terms of these requirements. For example, serving as a judge for a national competition involving professional chefs is of far greater probative value than serving as a judge for a local competition involving amateurs.

In response to the director's request for evidence, the petitioner submitted a certificate allegedly issued by the China Cuisine Association in 1995. The certificate (in its entirety) states: "[The petitioner] is invited as the member of the judge committee in the 5th cuisine competition." The plain wording of this criterion, however, requires "[e]vidence of the alien's participation . . . as a judge of the work of others." An invitation is not tantamount to "participation." In this instance, there is no evidence of the petitioner's activities as a judge at the "5th cuisine competition" in 1995. For example, the record lacks information regarding the nature of the petitioner's duties in this capacity, the competitive categories for which he served as a judge, the names of individuals he evaluated, and their level of expertise. We cannot ignore that the statute and regulations require "extensive documentation" of sustained national or international acclaim. Without evidence showing that the petitioner's activities involved evaluating established culinary professionals at the national or international level, we cannot conclude he meets this criterion.

In addition to the preceding deficiencies, there is no evidence showing that the petitioner has served as a culinary judge in China or the United States subsequent to 1995. The limited nature of petitioner's activity as a judge is not adequate to demonstrate his sustained acclaim subsequent to his arrival in the U.S. in 1996.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

In response to the director's request for evidence, the petitioner submitted what he alleges is evidence of his authorship of a book entitled *Famous Dishes of Qing Palace, Kong House, Tang Family*. The translation accompanying this book was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). There is no evidence of the field's reaction to this book, nor any indication that it is widely viewed as significantly influential. Furthermore, there is no evidence showing that this publication enjoyed substantial national or international readership.

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

The petitioner submitted four photographs of what are alleged to be his culinary creations. We are not persuaded that the petitioner's culinary creations are among those pictured. Nevertheless, the plain language of this criterion requires the petitioner to provide evidence demonstrating that his creations have been "displayed" at culinary "exhibitions or showcases." In this case, the specific venues where the petitioner's culinary creations were displayed have not been identified. In fact, there is no contemporaneous evidence (such as an event program or brochure) demonstrating the petitioner's involvement at specific culinary exhibitions or showcases in the U.S. or China.

It must be stressed that a cook does not satisfy this criterion simply by arranging for his or her work to be displayed or evaluated. We find no evidence demonstrating that the petitioner's creations have regularly been displayed at exclusive national venues. Nor is there any indication that the petitioner's dishes have been featured along side those of culinary artists who enjoy national or international reputations. Furthermore, the

petitioner has not demonstrated his regular participation in shows or exhibitions at exclusive venues devoted largely to the display of his culinary creations alone. The evidence presented by the petitioner is not sufficient to show that his exhibitions enjoy a national reputation or that participation in his exhibitions was a privilege extended to only top national or international culinary experts.

In this case, the petitioner has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Beyond the regulatory criteria, the petitioner's appellate submission includes letters allegedly issued by [REDACTED] "Manager of [REDACTED] Restaurant," Professor [REDACTED] of Tianjin University, and [REDACTED] Director of the China Cuisine Association. These letters include no address, phone number, or any other information regarding how these individuals may be contacted. Such letters are not adequate to demonstrate the petitioner's sustained national acclaim in the culinary field.

The petitioner's appeal was filed on July 14, 2005. The appellate submission was accompanied by supporting evidence (which has been addressed in this decision). On the Form I-290B, Notice of Appeal to the AAO, however, the petitioner indicated that a brief and/or evidence would be submitted to the AAO within 30 days. As of this date, more than four months later, the AAO has received nothing further.

Review of the record does not establish that the petitioner has distinguished himself 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 the 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.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence 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." The record contains no such evidence.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.