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FILE: EAC 04 002 52446 Office: VERMONT SERVICE CENTER Date: NOV 07 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:



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.

Maia 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. 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 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 October 1, 2003, seeks to classify the petitioner as an alien with extraordinary ability in Chinese culinary art. 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 November 25, 2000. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than 34 months), 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 culinary artist 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.

In a September 29, 2003 letter accompanying the petition, counsel states that in "1988, [the petitioner] was honored with the title of 'National First Class Cook.'" This statement contradicts a partial translation of a 2001 article in *World Cuisine* stating: "[The petitioner's] award winning record is very impressive including National First class cook (1987)." Nevertheless, the record includes no first-hand evidence of this award.

Counsel also states that in "1988, [the petitioner] won grand award at Huai Yen Cup Food Craving [sic] Championship." The record, however, includes no evidence of this award. Without documentary evidence to support his claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner submitted a Certificate of Award issued by the "Organizational Committee of the First Chinese Cuisine Championship 1992" stating that he won a "Silver Award at the First World Chinese Cuisine Competition, Section Food-Craving [sic]."

The petitioner also submitted a Certificate of Award issued by the "Chinese Association of Culinary Arts (CACA) Beijing Wuzhou Hotel July 1994" stating that he won a "Gold Award at Five Continentals Cup Culinary Art competition, Section of Food Crafting & Design."

The record includes no information about the preceding competitions (such as the award criteria, the number of entrants, or the percentage of entrants who earned some type of recognition). Further, there is no evidence of contemporaneous publicity surrounding the petitioner's awards or evidence showing that they enjoy 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 awards enjoy significant national or international stature. 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 competitions in which he received awards. In this case, the record contains no documentation from the awarding entities to establish that the petitioner's awards are nationally or internationally recognized awards.

In addition to the above deficiencies, the record contains 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 1980's and 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 September 29, 2003 letter from counsel states: “[The petitioner] is a member in good standing of Chinese Association of Culinary Art (CACA). CACA is a national highest [sic] association in the field. Only an individual with national reputation is eligible for admission.” The record, however, includes no first-hand evidence of the petitioner's active membership status in this association. Furthermore, there is no evidence of the bylaws or the official membership requirements for the CACA 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. As previously noted, the unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena* at 533, 534; *Matter of Laureano* at 1; and *Matter of Ramirez-Sanchez* at 503, 506.

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 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 or international distribution. An alien would not earn acclaim at the national or international level from a local publication or from a publication in a language that most of the population cannot comprehend. 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.¹

The petitioner submitted an incomplete translation of an article appearing in the June 2001 issue of *World Cuisine*. The petitioner also submitted an incomplete translation of an article appearing in *Eateat*. Pursuant to 8 C.F.R. § 103.2(b)(3), however, any document containing foreign language submitted to Citizenship and

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

Immigration Services (CIS) shall be accompanied by a full English language translation that the translator has certified as complete and accurate. The two articles submitted by the petitioner were not accompanied by full English language translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). Furthermore, the partial translation of the *Easteat* article does not identify the date or author of the material as required by this criterion. Finally, there is no evidence showing that these publications have substantial national readership. In this case, there is no indication that the petitioner has earned sustained acclaim in the national media of the United States or China.

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 judge must be evaluated in terms of these requirements.

The petitioner submitted a certificate issued in 1998 from the CACA stating: “You are cordially invited to serve as a judge at the First Chinese Food Festival on Lu Style. Thank you.” The record, however, includes no information about this festival or evidence of the petitioner’s activities as a judge at this event. We note here that the plain wording of this criterion requires “[e]vidence of the alien’s participation . . . as a judge of the work of others.” An invitation is not tantamount to participation.

The petitioner also submitted a letter from the “Organizational Committee of The First National Chuang-Hua Cup Food-Craving [sic] Championship Oct. 1999” stating: “[The petitioner], at our invitation, sat on the evaluation panel for the First National Chuang-Hua Cup Food-Craving [sic] Competition. [The petitioner] has made substantial contributions.”

The petitioner also submitted a May 8, 2002 letter from “Mr. [REDACTED]” Principal of the QingDao Business School, who states: “In 1997, [the petitioner] . . . served as Chairman of evaluation committee of QingDao Chinese Cooking Competition with over 300 participants from 16 cities in China.” We note here that the petitioner was working as an instructor at the QingDao Business School at the time of this competition.

The September 29, 2003 letter from counsel states that in “2000, [the petitioner] was invited to serve as advisor and award-giving judge at National Chinese Cuisine Championship hosted by Chinese Central Television Station (CCTV). . . . To serve as a judge at this nationwide televised festival represents [the petitioner’s] unsurpassed national attainment.”

In regard to the petitioner’s participation in the CCTV event, the partial translation of the June 2001 article in *World Cuisine* states: “. . . in 2000, China Central TV Station hosted a national Cuisine Championship in which [the petitioner] was invited to serve as a special advisor and hand [sic] the awards to winners.” The article in *World Cuisine* indicates that the petitioner served as an “advisor” to the event and handed out awards, but it does not state that the petitioner participated as a judge. Therefore, counsel’s claim that the petitioner served as a “judge” at this event is not supported by the evidence. As previously noted, the

unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena* at 533, 534; *Matter of Laureano* at 1; and *Matter of Ramirez-Sanchez* at 503, 506.

In the preceding instances, there is no evidence showing the level of expertise of the contestants evaluated by the petitioner (i.e.- novice, amateur, or professional). Further, we note the absence of contemporaneous published material or national publicity surrounding the petitioner's involvement at the events. 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 at these competitions involved evaluating professional culinary artists at the national level, we cannot conclude he meets this criterion.

In addition to the above deficiencies, we note that the statute and regulations require the petitioner's acclaim to be sustained. Subsequent to 2000, there is no evidence showing that the petitioner has served as a culinary arts judge in the United States or China.

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

The petitioner submitted evidence of his authorship of articles entitled "The Demands for Food-Carving Study" in *Oriental Gourmet* and "Eat" in *Chinese Cuisine*. There is no evidence of the culinary field's reaction to these published articles, nor any indication that they are widely viewed as significantly influential. Furthermore, there is no evidence showing that the publications in which the articles appeared have substantial national or international readership. We further note that these articles were not accompanied by full English language translations as required by the regulation at 8 C.F.R. § 103.2(b)(3).

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

The September 29, 2003 letter from counsel states: "[The petitioner's] master pieces have been exhibited at the cover page of a number of professional journals/trade publications . . ." Without proper translations accompanying the cover pages, it cannot be determined that the petitioner's culinary creations are among those pictured. Nevertheless, published material relating to the petitioner's work has already been addressed. The plain language of this criterion requires the petitioner to provide evidence demonstrating that his creations have been "displayed" at culinary "exhibitions and 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 culinary artist 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 works 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 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 submitted three letters of support. These letters indicate that the petitioner is a talented culinary artist, but they fall short of demonstrating his sustained national or international acclaim in the United States or China.

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.²

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.

² On appeal, counsel states: "Attached please find a letter from Taipei, Tokyo restaurant, offering the beneficiary the position of chef at the monthly salary of \$3,000 as soon as he receives employment authorization document from your office." This letter, however, was not included among the documentation submitted on appeal.