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FILE: [REDACTED]
EAC 05 113 53718

Office: VERMONT SERVICE CENTER

Date: **NOV 16 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.

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 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 10, 2005, 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 December 2000. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than 4 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 certificate signed by Geoff Zhang of the World Culture Alliance of Flushing, New York stating that he received a "Lifelong Award for Outstanding Achievements in Cuisine" (2004). This award constitutes local or institutional recognition rather than national or international recognition.

On appeal, the petitioner submits an April 21, 2005 letter from [REDACTED] stating:

In the competition of photographers contest hold [sic] each year in New York, normally more than 500 cuisine masters participated in the cuisine competition. . . . After carefully [sic] and strict selection, only 20 winner [sic] are chosen for 2nd advanced competition.

Finally in the second turn, 6 masters are chosen for outstanding achievement prize. only [sic]

It is unclear as to why the word "photographers" is included in the first sentence cited above. Further, we note that the petitioner's award from the World Culture Alliance was a "Lifelong Award for Outstanding Achievements in Cuisine." [REDACTED] April 25, 2005 letter, however, describes a two-phase "cuisine competition" which is not entirely consistent with conferring a "lifelong" achievement award. Nevertheless, the petitioner's evidence fails to demonstrate that the 500-contestant competition described in [REDACTED] letter actually took place in New York in 2004. 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 this 2004 competition. Nor has the petitioner submitted contemporaneous evidence of publicity or media coverage surrounding the event.

The petitioner also submits a certificate (dated July 10, 2002) stating that he won a "2nd grade prize in the cuisine match held by Jiangsu cuisine committee." This award constitutes local recognition rather than national or international recognition. Furthermore, the translation accompanying this award was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). We cannot ignore that the petitioner was residing in Flushing, New York at the time this award certificate was issued. The petitioner fails to explain how he was able to attend a "cuisine match" in Jiangsu, China in 2002 while simultaneously residing in Flushing, New York.¹ The petitioner has not resolved this discrepancy. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the

¹ According to the information provided on the petitioner's Form I-140 and Form I-485, he last entered the U.S. on December 10, 2000. There is no evidence of the petitioner's departure and subsequent U.S. reentry showing that he actually attended the Jiangsu cuisine competition in China in 2002.

petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

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 a certificate of membership for the World Culture Alliance of Flushing, New York. On appeal, the petitioner submits a document entitled "Badge of the World Culture Alliance" which lists what appear to be the organization's bylaws. Under the heading "Part V. MEMBERS" the document states: "2. Individual Members: All individual members who have some culture, art unit and organization technology influence can apply to enroll." Thus, there is no indication that admission to membership in the World Culture Alliance requires outstanding achievement or that individuals are evaluated by national or international experts in consideration of their admission to membership.

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

The petitioner submitted various captioned photographs of what are alleged to be his culinary creations. Without proper translations accompanying these captioned photographs, it cannot be determined 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 submitted various letters of support. These letters state that the petitioner is a talented cook, but they fall short of demonstrating his sustained national or international acclaim in the United States or China.

The petitioner's appeal was filed on May 16, 2005. The appellate submission was accompanied by supporting evidence (which has been addressed throughout 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 six 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.