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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date:

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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 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, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (November 29, 1991). 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 September 8, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a culinary arts expert. The statute and regulations require the petitioner's acclaim to be sustained. According to the Form I-140 petition, the petitioner has been residing in the United States since February 1997. 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 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 of Advanced Level Technical Skill" (December 21, 1995) issued by the "Tianjin City Labor Bureau" reflecting that the petitioner qualified as "Special 1st Grade Technical Expert of Culinary Arts." The plain language of this criterion, however, requires "nationally or internationally recognized prizes or awards." An occupational qualification certificate issued by one's locality does not meet this requirement.

The petitioner submitted two Certificates of Glory issued by the "Tianjin Guest House of Tianjin City" in August 1990 and October 1995. The petitioner also submitted a certificate stating that he received a "gold medal for his warm dish menu" at the "Second Tianjin City 'Treasure and Harvest' Competition of Culinary Skills" (January 1997). The preceding awards reflect local recognition rather than national or international recognition.

On September 20, 2005, the director issued a notice of intent to deny instructing the petitioner to "submit the original certificates" for the preceding awards. Pursuant to the regulation at regulation at 8 C.F.R. § 103.2(b)(5), the director may at any time require that an original document be submitted for review. This regulation further states: "If the requested original, other than one issued by the Service, is not submitted within 12 weeks, the petition or application shall be denied or revoked." The petitioner failed to submit the requested originals. Accordingly, this petition cannot be approved.

In addition to the aforementioned deficiencies, there is no evidence showing that the petitioner has received any prizes or awards since his entry into the United States in 1997. The absence of such evidence indicates that the petitioner has not sustained whatever acclaim he may have earned while in China.

In light of the above, the petitioner has not established that he meets this criterion.

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 a hand-written paper that he allegedly authored entitled "Brief measure introduction of fry prawn kernel slippery." The record, however, includes no evidence showing that this paper was published in professional or major trade publications or other major media.

On appeal, the petitioner submits an article that he allegedly published in *China Cooking* in May 1992. The record, however, includes no evidence showing that this publication had substantial national or international readership. Nor is there any evidence of the greater field's reaction to this article, or any indication that it is widely viewed as significantly influential. Thus, the petitioner has not established that he meets this criterion.

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

The petitioner submitted multiple photographs of what are alleged to be his culinary creations. Without certified English language translations of the placards appearing in the photographs, the petitioner has not established that his dishes were among those displayed. Further, the photographs of the petitioner's creations were not accompanied by contemporaneous evidence (such as an event program) indicating the specific exhibition or showcase in which they appeared. In this case, there is no evidence demonstrating that the petitioner's culinary works have been displayed at significant national or international venues. Nor is there any indication that the petitioner's dishes were featured along side those of culinary professionals with distinguished national or international reputations.

In light of the above, the petitioner has not established that he meets this criterion.

In conclusion, we concur with the director's finding that the petitioner failed to demonstrate his 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. Further, the record does not establish that whatever level of acclaim the petitioner had in China during the early to mid-1990's has been sustained subsequent to his entry into the United States in 1997.

The petitioner's appeal was filed on December 1, 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, the petitioner indicated that a brief and/or evidence would be submitted to the AAO within 30 days. As of this date, more than eleven 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 includes no such evidence relating to the petitioner's work in the culinary field. As indicated in the director's notice of intent to deny, the petitioner was the beneficiary of an approved I-129 nonimmigrant visa petition as an H-1B temporary worker filed in his behalf by American Software Technology. This approved I-129 petition, filed on January 28, 2000 and valid from May 10, 2000 to January 14, 2003, related to the petitioner's work in the computer software industry rather than in the culinary arts.

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.