

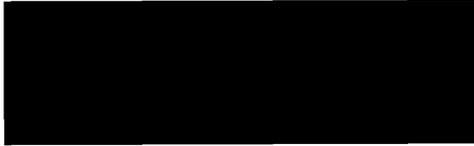


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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



PUBLIC 3041

File: WAC-01-001-53644 Office: California Service Center Date: JUL 16 2001

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to § 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(O)(i)

IN BEHALF OF PETITIONER: [Redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center. The director granted a motion to reopen the proceeding, affirmed the denial, and certified the decision to the Associate Commissioner for Examinations for review. The decision will be affirmed.

The petitioner is a corporation operating a number of restaurants. The beneficiary is a professional chef. The petitioner seeks classification of the beneficiary under § 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), as an alien with extraordinary ability in the arts, in order to employ him in the United States for a period of three years as an executive chef.

The director denied the petition finding that the petitioner failed to establish that the beneficiary satisfies the regulatory standards as an alien of extraordinary ability in the culinary arts. The director also found that the petitioner failed to submit the required labor consultation.

The Form I-129 petition was filed on October 10, 2000. It was denied in a decision dated January 17, 2001. The director granted a motion to reopen the proceeding, considered additional evidence in support of the petition, and affirmed the denial. The decision was issued April 25, 2001 and was certified to the Associate Commissioner for Examinations, by and through the Director, Administrative Appeals Office ("AAO"), pursuant to 8 C.F.R. 103.4(a)(5). The director afforded the petitioner thirty days in which to submit a brief or to supplement the record. As of this date, no additional submission has been received by the Service and the record will be considered complete as presently constituted.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

At issue in this matter is whether the petitioner has established that the beneficiary is an alien of extraordinary ability in the arts within the meaning of this provision.

8 C.F.R. 214.2(o)(3)(ii) defines, in pertinent part:

Arts includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

*Extraordinary ability in the field of arts* means distinction. Distinction means a high level of achievement in the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well known in the field of arts.

8 C.F.R. 214.2(o)(3)(iv) states that in order to qualify as an alien of extraordinary ability in the arts, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

(A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed and will perform services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;

(2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

(3) Evidence that the alien has performed in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, governmental agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials

must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence; or

(C) If the criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

8 C.F.R. 214.2(o)(5)(i)(A) requires, in pertinent part:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

The petitioner in this matter is a limited liability corporation. It operates, among others, three restaurants in the [REDACTED]. The three restaurants were identified as [REDACTED] and [REDACTED].

The petitioner seeks to employ the beneficiary as an executive chef at a salary of \$52,000 per year. The petitioner did not specify whether the beneficiary's duties would be the management of one, or of all three, of its Venetian Hotel restaurants.

The beneficiary is described as a native and citizen of Italy. He graduated from a culinary institute in Italy in March 1994 and has been employed as a professional chef since such time. The beneficiary's resume reflects that he has been employed as head chef at five different restaurants between 1994 and 1999, and once as a trainee in 1995. Documentation was also submitted that he graduated from a French culinary institute, the Lenotre Institute of Paris, in October 1998.

In support of the beneficiary's qualifications, the petitioner submitted, in pertinent part: a letter stating that Executive Chefs are not covered under the bargaining agreement of the [REDACTED] extensive documentation about the [REDACTED] food service and its founder and executive chef, [REDACTED] Belloni; documentation that the beneficiary's recipes were featured in an Italian cuisine cookbook, *Signature Pasta*; and a letter from

a Las Vegas food critic opining that the beneficiary's "credentials are most impressive."

On review of the record, the director carefully reviewed the evidence submitted in support of the petition. The director found that there was insufficient evidence that the beneficiary had achieved the level of recognition contemplated at 8 C.F.R. 214.2(o)(3)(iv) as comprising the necessary distinction to establish extraordinary ability in the arts. That decision will be affirmed.

Here, there is no evidence that the beneficiary has received an award equivalent to those listed at 8 C.F.R. 214.2(o)(3)(iv)(A) above. Nor does the record show that the beneficiary meets at least three of the applicable criteria at 8 C.F.R. 214.2(o)(3)(iv)(B). It must be noted that these provisions are only documentary requirements and merely addressing them does not establish eligibility for the benefit sought.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. In order to establish eligibility for O-1 classification as having "extraordinary ability" the statute requires proof of "sustained" national or international acclaim and a demonstration that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." The petitioner has not established that the beneficiary's abilities have been so recognized.

As noted by the director, merely possessing "impressive credentials," such as graduation from prestigious training schools, is not sufficient to establish extraordinary ability. The regulations require a demonstration that the alien has reached a high level of achievement in the field. The record does not establish that the beneficiary's achievements in the field of the culinary arts have received sustained national or international acclaim evidenced by published material in major publications or that he has commanded a high salary for his services. While the beneficiary's accomplishments have obviously received a level of recognition within the food service industry in order to be offered a managerial position with a large resort-area restaurant, the evidence is insufficient to establish that he has achieved a level of recognition that is "substantially above that ordinarily encountered" among executive chefs in the field of culinary arts.

Also raised by the director was the lack of the required labor consultation.

8 C.F.R. 214.2(o)(5)(i)(A) requires, in pertinent part:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field),

labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

To address this requirement, counsel for the petitioner submitted a letter showing that the managerial position of executive chef was not under the purview of a specific labor union representing culinary workers. Merely identifying one labor union that is not appropriate to consult regarding a proposed position is not sufficient. The American Culinary Federation, Inc. has advised the Service that it is the appropriate organization for consultation in employment-based petitions for executive chefs. Therefore, a written consultation from the organization regarding the nature of the work to be done, the alien's qualifications, and any objection to the approval of the petition is mandatory.

Upon careful a review of the record of proceeding in this matter, the director's findings are affirmed.

The burden of proof in these proceedings rests solely with the petitioner. Section [REDACTED] of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

**ORDER:** The decision dated April 25, 2001 is affirmed. The petition for O-1 classification is denied.