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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 Copy

File: WAC-01-001-53644 Office: California Service Center Date: JUL 30 2001

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

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 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 that 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 that 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 that 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 of the director was affirmed by the Associate Commissioner, in a decision made without consideration of information supplied by counsel in response to the notice of certification. That information is now contained in the record. The matter will be reopened on Service motion for entry of a new decision, and the petition will be approved.

The petitioner is a corporation operating a number of restaurants. The beneficiary is a professional chef. The petitioner seeks classification of the beneficiary under section 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 requirements for an alien of extraordinary ability in the culinary arts. The director also found that the petitioner failed to submit the required labor consultation.

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.

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 from the American Culinary Federation, Inc. which states, in pertinent part:

We have received the documents submitted in support of the application for [the beneficiary] in Las Vegas, Nevada, [and] based upon [the beneficiary's] several letters of recommendation from former employers and his extensive experience, feel that [he] possesses a high

level of achievement in the field of culinary arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered.

The letter further states that the American Culinary Federation has no objection to the issuance of an O-1 visa to the beneficiary. As the record now contains the requisite consultation, the remaining issue to be considered 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;

The beneficiary has performed and will perform services as a head chef at restaurants which have a distinguished reputation as evidenced by critical reviews. The beneficiary's employment experience has been as head chef at upscale restaurants located in

fashionable areas of London and New York City. The petitioning organization will employ the beneficiary as executive chef at one of the newest and most expensive hotels in Las Vegas. The dining room of one of the hotel restaurants, Zeffirino, seats 700 guests and was furnished with Italian flooring, tables, chairs, and artwork at a cost of millions of dollars. The dining room of the restaurant overlooks a quarter-mile replica of Venice's Grand Canal. As noted by Max Jacobson, the restaurant editor of Las Vegas Life magazine:

I am a food critic and travel writer with more than twenty years of experience, including a 17-year stint as a Los Angeles Times restaurant critic who had not one but two weekly columns.

* * *

Further, Zeffirino, [the beneficiary's] prospective employer, has a reputation to protect; the name is synonymous with gastronomy in the City of Genoa. Therefore, any notion that such a prestigious operation would undertake to hire a chef without spotless credentials is absurd. Zeffirino only hires the best.

Based on the beneficiary's past and prospective employment experience, he clearly meets this criterion.

(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;

The record contains numerous highly favorable critical reviews of the beneficiary's work as a head chef at restaurants in London and in New York City. Food critics from Italy and the United States have praised the beneficiary's work in major publications. The beneficiary has been shown to meet this criterion.

(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;

The beneficiary has served as head chef at five different restaurants. Based on articles and reviews in newspapers and other publications, it appears that they are establishments with distinguished reputations.

(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; ...

The record contains several testimonials from food and restaurant critics who praise the beneficiary's training, expertise, and skill as a chef. The Culinary Vice-President of the Italian Culinary Institute stated that the beneficiary is an internationally renowned executive chef with impressive experience, achievement, and expertise. The beneficiary clearly meets this criterion.

(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.

The beneficiary graduated from a culinary institute in Italy in March 1994 and has been employed as a professional chef since that time. The beneficiary's resume reflects that he has been employed as head chef at five different restaurants between 1994 and 1999. He graduated from a French culinary institute, the Lenotre Institute of Paris, in October 1998. Testimonials in the record refer to this institute as "world-acclaimed" and "prestigious."

The beneficiary's recipes were featured in an Italian cuisine cookbook, *Signature Pasta*. The editor of the cookbook considers the beneficiary to be one of the 26 best Italian chefs in the United States. Several letters from food critics indicate that the beneficiary is an acclaimed chef.

The record contains copies of several Italian-language diplomas awarded to the beneficiary. The significance of the diplomas cannot be determined; they are not accompanied by the translations required by 8 C.F.R. 103.2(b)(3).

A complete review of the entire record shows that the beneficiary meets at least three of the applicable criteria at 8 C.F.R. 214.2(o)(3)(iv)(B), and that he has attained the distinction in the culinary arts required for classification as an alien of extraordinary ability. The beneficiary has achieved a level of recognition that is "substantially above that ordinarily encountered" among executive chefs in the field of culinary arts.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has met that burden.

ORDER: The previous decisions of the director and the Associate Commissioner are withdrawn. The petition for O-1 classification is approved.

[REDACTED]