

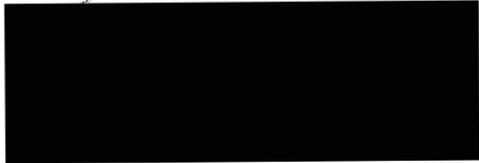


U.S. Department of Justice

Immigration and Naturalization Service

68

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



PUBLIC COPY

File: WAC-00-027-50089 Office: California Service Center

Date: MAR - 7 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:



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prevent clearly uncontracted
impression 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 Unit

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a restaurant. The beneficiary is an executive chef. The petitioner seeks O-1 classification of the beneficiary, as an alien of extraordinary ability in the arts, in order to employ him as a chef in the United States for a period of three years.

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.

On appeal, counsel for the petitioner argued, in pertinent part, that the director applied an incorrect standard for determining "extraordinary ability" in the arts under the definitions at 8 C.F.R. 214.2(o)(3)(ii) and that the beneficiary qualifies under the appropriate standard.

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.

On appeal, counsel argued, in pertinent part, that the decision incorrectly applied the definition of extraordinary ability for science *et al*, which requires evidence of being "at the very top of the field of endeavor," rather than the definition for the field of arts, which requires "distinction," a lesser standard. Counsel further noted that the director incorrectly referred to the documentary standards set forth at 8 C.F.R. 214.2(o)(3)(iii), rather than the correct standard at 8 C.F.R. 214.2(o)(3)(iv).

On review of the record of proceeding, it is noted that the director listed both definitions of extraordinary ability under 8 C.F.R. 214.2(o)(3)(ii) in her decision. It is further noted that the director did erroneously list the documentary requirements at 8 C.F.R. 214.2(o)(3)(iii), rather than the correct requirements at 8 C.F.R. 214.2(o)(3)(iv).

The record shows, however, that the director actually relied on specific factors in the documentary evidence in denying the petition and that the errors in citation did not result in irreversible harm to the petitioner.

The director noted that the beneficiary's resume indicates that he has been employed as an assistant or second chef for much of his career, rather than executive chef. The director further noted that the beneficiary had not received recognition for his ability in the form of any significant national or international awards. The director finally noted that the proffered salary of approximately \$44,000 was not the high salary contemplated by the regulations.

In this case, the petitioner submitted documentation that the beneficiary is an executive chef. The petitioner submitted testimonials from fellow executive chefs from several "five-star" restaurants in Paris, France, where the beneficiary has been employed. The petitioner also submitted a letter from a well-known food critic, Henri Gault, opining that the beneficiary is "at the top of his field." To address the consultation requirement, the

petitioner submitted a letter from [REDACTED], currently employed by the Lake Tahoe Community College, who stated that he served as director of the apprenticeship training program for cooks with the American Culinary Federation ("ACF") for seven years. Mr. [REDACTED] opined that the beneficiary is a chef of "unique prominence and ability" who would qualify for the title of certified executive chef issued by the ACF should he apply for such certification.

Counsel correctly argued that the standard that must be satisfied is that of "distinction." Pursuant to the applicable regulations, that standard is evidenced by a "high level of achievement" and recognition as "prominent" in the field. It must also be shown that the proffered position is one requiring extraordinary ability in the arts.

After careful review of the record, it must be concluded that the petitioner has failed to overcome the grounds for denial set forth in the decision. The letter from Mr. [REDACTED] is an acceptable form of consultation, but does not bear the weight of a consultation from a current authority of the ACF, or other culinary arts organization, evaluating the beneficiary's distinction and the need for extraordinary ability in the proffered position. The letter from Mr. [REDACTED] is accorded substantial weight as an internationally known food critic. However, the petitioner did not submit other supporting documentation listed in the regulations to corroborate the claim of extraordinary ability, such as critical reviews or other published material evidencing acclamation of the beneficiary's distinguished reputation, the receipt of rewards and honors, or a history of having commanded a high salary.

The record establishes that the beneficiary is a qualified executive chef with the respect of his peers. However, the record does not establish that the beneficiary has had "recognition substantially above that ordinarily encountered" required to demonstrate distinction among executive chefs. In addition, while the petitioning restaurant is described as an "up-scale jazz bistro," the petitioner has not submitted documentation establishing that the proffered position is one requiring extraordinary ability in the arts. For example, the petitioner has not shown that the proffered salary is one reserved for executive chefs of distinction.

The evidence of record must be examined as a whole. While the beneficiary is certainly recognized in the culinary arts community, the record is not persuasive in showing that he has received recognition for "extraordinary ability" as contemplated by the plain language of the Act. The record is not persuasive in establishing that the beneficiary has the necessary "sustained national or international acclaim" in the arts evidenced by "extensive documentation" that is required for O-1 classification.

Nor does the record establish that the proffered position is one requiring a chef of "extraordinary ability."

For these reasons, it is concluded that the petitioner has failed to overcome the grounds for denial stated in the decision of the director. The denial of this petition is without prejudice to the filing of a petition on behalf of the beneficiary for any other benefit for which he may be eligible.

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 not met that burden.

ORDER: The appeal is dismissed.