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U.S. Department of Justice  
Immigration and Naturalization Service

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



File: WAC-93-168-50373 Office: California Service Center Date: **AUG 03 2002**

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]

**Public Copy**

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, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Associate Commissioner for Examinations on appeal.<sup>1</sup> The appeal will be sustained.

The petitioner is a restaurant. The beneficiary is the owner/operator of the restaurant and a chef. The petitioner seeks O-1 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 culinary arts, in order to serve at the new restaurant as executive chef for a period of three years.

The director denied the petition finding that the petitioner failed to adequately establish that the beneficiary satisfies the regulatory standards as an alien who has extraordinary ability in the culinary arts. The director noted that the petitioner submitted restaurant reviews and testimonials from patrons of the restaurant, but had not furnished sufficient documentation addressing the regulatory requirements of 8 C.F.R. 214.2(o)(3)(iv)(B). The director further noted that nonimmigrant O-1 classification is available for a culinary artist to be admitted to the United States for a specific event. As the beneficiary is the owner/operator of the restaurant, no temporary event was established.

On appeal, counsel for the petitioner argued, in pertinent part, that the director failed to consider the evidence supporting the claim of extraordinary ability, including reviews of the beneficiary's London restaurant in distinguished publications such as the *Times of London* and *Gourmet* magazine. Counsel further explained that the beneficiary is developing restaurants around the world and that she seeks temporary admission as executive chef in the start-up of the new United States restaurant. Counsel argued that this satisfies the definition of event in the controlling regulations.

The first issue in this matter is whether the petitioner has established that the beneficiary qualifies as an alien with extraordinary ability in the arts within the meaning of this provision.

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

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<sup>1</sup> The record of proceeding in this matter was apparently not routed to the appellate authority for an extended period. There is no indication that the Service received any inquiries into the status of the case from the petitioner or its legal representative in the intervening period. This decision is issued based on the record as constituted.

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.

Here, contrary to the director's conclusion, the evidence of record consisting of industry reviews, critical reviews, testimonials of celebrities and business leaders, and a favorable consultation from the American Culinary Federation, is sufficient to establish that the alien is a chef with distinction in the culinary arts. The evidence is also sufficient to satisfy at least three of the requirements at 8 C.F.R. 214.2(o)(3)(iv)(B), that is, numbers 2, 3, 4, and 5 of subsection B. Accordingly, the petitioner has overcome this issue as a basis for denial of the visa petition.

The next issue is whether the beneficiary seeks to enter the United States in relation to a specific event.

O-1 nonimmigrant visa classification is available to a qualified alien to come to the United States to perform services relating to an event or events if petitioned for by an employer. 8 C.F.R. 214.2(o)(1)(i). An approved O-1 petition shall be valid for a period of time determined by the Director to be necessary to accomplish the event or activity, not to exceed 3 years. 8 C.F.R. 214.2(o)(6)(iii)(A). *Event* means an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or engagement. Such activity may include short vacations, promotional

appearances, and stopovers which are incidental and/or related to the event. A group of related activities may also be considered to be an event. 8 C.F.R. 214.2(o)(3)(ii).

In this case, it may be concluded that the opening of a new restaurant, as part of a series of restaurants around the world, may be considered a business project satisfying the temporary intent of entering the United States for a specific event. Therefore, the petitioner has overcome the director's concerns on this issue.

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 appeal is sustained.