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U.S. Department of Justice

Immigration and Naturalization Service

**PUBLIC COPY**

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



File: SRC 02 162 55849 Office: TEXAS SERVICE CENTER

Date: 16 OCT 2002

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

Petition: Petition for 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:



identity of data deleted to prevent clearly warranted 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, Director  
Administrative Appeals Unit

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

The petitioner is a catering service that seeks to employ the beneficiary as an executive pastry chef for a period of one year. The director determined that the petitioner had not established that the beneficiary qualifies as an alien of extraordinary ability in the arts. The director also found that the petitioner has not established the existence of an "event" as that term is defined in the regulations.

On appeal, counsel asserts that the director applied an erroneous standard in the adjudication of the petition and that the beneficiary is qualified for the classification sought.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(O)(i), 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 or, with regard to motion picture and television productions, has a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability.

In order to qualify as an alien of extraordinary ability in the field of 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)(3)(iv).

It is noted that the Service's decision in a particular case is dependent upon the quality of the evidence submitted by the petitioner, not just the quantity of evidence. The mere fact that the petitioner has submitted evidence relating to three of the criteria as required by the regulation does not necessarily establish that the alien is eligible for O-1 classification. The evidence submitted must establish that the beneficiary qualifies as an alien of extraordinary ability.

In addition, regulations define extraordinary ability in the field of arts to mean distinction. Distinction, in turn, is defined as "a high level of achievement in the field of 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)(ii). Pursuant to 8 C.F.R. 214.2(o)(3)(ii), arts includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

The petitioner asserts that the beneficiary has a reputation for the quality of his pastries and his "mastery of the intricacies of classical European pastries." He earned the title of Master Craftsman for the trade of pastry chef. The petitioner provided evidence in the form of photographs of pastries created by the beneficiary, and testimonials from chefs.

The beneficiary has neither been nominated for, nor has he been the recipient of, any significant national or international awards or prizes in the field of culinary arts.

Counsel for the petitioner states that criterion number one is not directly applicable to the occupation of pastry chef, so counsel offered comparable evidence for consideration.

Counsel states that the beneficiary earned a level of national recognition for achievements evidenced by five articles that appeared in three different French newspapers. The petitioner has not established the expertise of the authors, and has not submitted any information regarding the circulation or reputation of these publications. Counsel asserts that beneficiary earned recognition by participating in the Annual Search for the Best Pastry Chef in France, an event sponsored by the Loews Miami Beach Hotel. The petitioner failed to establish the significance of the beneficiary's participation in this event.

Counsel asserts that the beneficiary satisfies criterion number three as he has worked as a lead pastry chef for respected high quality establishments, including his own bakery. Counsel asserts that the French newspaper articles, the testimonials of experts in pastry making and in the culinary arts, and the accolades of municipal government officials and leaders of civic organizations, demonstrate recognition for the beneficiary's professional and artistic contributions to distinguished establishments during his more than twenty-five years of work as a pastry chef. The director determined that the Service would expect that since the beneficiary owned the business that he would work as the lead, if not only, pastry chef. On review, the evidence does not demonstrate that the beneficiary has achieved sufficient prominence in his field to satisfy this criterion.

Counsel asserts that the beneficiary has a record of major commercial or critically acclaimed successes to satisfy criterion number four. Counsel states that the success the beneficiary enjoyed as the owner of a distinguished bakery establishment in France is recognized by the testimonials of government officials

and civic leaders, and in newspaper articles that highlight his accomplishments and distinction as a pastry chef. Counsel notes that the beneficiary earned a master craftsman certificate for the trade of pastry chef. Counsel included a copy of an article that states an individual must head his or her own business enterprise, must have been a craftsman for at least two years and must have at least six years professional experience to qualify for a master craftsman certificate. However, the petitioner has neither discussed the significance of the certificate nor indicated the number of individuals who currently hold it. On review, the petitioner has established that the beneficiary has been successful in his field of endeavor, but the petitioner has not established that the beneficiary has a record of *major commercial or critically acclaimed successes*.

Finally, counsel asserts that the beneficiary's standing as a "leading pastry chef" is shown in the evaluation by the dean of students and faculty at the New England Culinary Institute, submitted to satisfy the requirement of a consultation under 8 C.F.R. 214.2(o)(5). The dean stated that the beneficiary has "a strong background and excellent experience," and opined that the beneficiary should be granted an O-1 visa. The dean said that the beneficiary "can make a considerable contribution to the food service industry in Florida as a chef in the United States." On review, the dean failed to provide sufficient explanation for his recommendation as required by the regulation. In any event, consultations are advisory in nature and are not binding on the Service. 8 C.F.R. 214.2(o)(5)(i)(D).

As evidence that the beneficiary has received significant recognition for achievements from organizations, critics, government agencies or other recognized experts in the field in satisfaction of criterion number five, counsel refers to the numerous testimonials included with the petition. The record does not demonstrate that the beneficiary has received significant recognition for his achievements from food critics, culinary organizations, or government agencies.

Counsel asserts that the beneficiary has had "a level of remuneration substantially greater than that available to an ordinary pastry chef." As evidence of that remuneration, counsel provided several reference letters, including one banking concern which states: "[the beneficiary's] professional qualities have made him a resounding success, as demonstrated by the growth and development of his business in Saint-Pons until his departure." To fairly evaluate the petitioner's assertions regarding the beneficiary's salary history, the Service would need more information such as actual income numbers and wage scales of pastry chefs in the locality.

Counsel states that the petitioner has offered to pay the beneficiary \$1,150 per week. Counsel asserts that this amount is well above the prevailing wage for the occupation of a baker in Miami-Dade County. The petitioner provided evidence of the prevailing wage for bakers in Miami, Dade County. While it is apparent that the petitioner has offered to pay more than twice the prevailing wage for bakers to the beneficiary, the petitioner has not established that the beneficiary will be functioning as a mere "baker." The petitioner declared that it intended to make the beneficiary "an executive pastry chef" with responsibilities to manage the pastry division and develop a wholesale manufacturing produce line.

After a careful review of the entire record, including the opinion of the New England Culinary Institute, it is concluded that the petitioner has not shown that the beneficiary is a person of extraordinary ability in the culinary arts.

There is a final issue in this proceeding. Under section 101(a)(15)(O) of the Act, a qualified alien may be authorized 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). The term "event" is defined at 8 C.F.R. 214.2(o)(3)(ii) as an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or engagement.

The director found that there must be a specific time frame within which the event can be accomplished. Counsel asserts that 8 C.F.R. 214.2(o)(3)(ii) defines the term event to include engagement and indicates that the types of acceptable events are not limited to those on the illustrative list. Counsel asserts that the beneficiary will be coming to the United States for an engagement to participate in the petitioner's business project to expand her wholesale dessert division. Counsel's argument may be persuasive; nonetheless, the petitioner has made no reference to a specific point in time at which the beneficiary's services will no longer be required. The examples provided by the regulation suggest occurrences or phenomena of definite and finite duration. Therefore, the existence of an event has not been established.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the director's decision will not be disturbed.

**ORDER:** The appeal is dismissed.