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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: SRC 02 017 58632

Office: TEXAS SERVICE CENTER

Date:

17 OCT 2002

IN RE: Petitioner:

Beneficiary:



PETITION: Petition for a Nonimmigrant Worker under 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:



**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, Director
Administrative Appeals Office

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 cookbook publishing company. The beneficiary is a master cook and author who specializes in Ecuadorian cuisine. The petitioner seeks O-1 classification of the beneficiary, as an alien with extraordinary ability in the arts, in order to employ her as a master cook and author in the United States for a period of three years.

The director denied the petition finding that the petitioner failed to demonstrate that the beneficiary satisfies the regulatory standards as an alien of extraordinary ability in the arts.

On appeal, counsel for the petitioner states that the director erred in her finding that the beneficiary is not extraordinary as set forth in 8 CFR 214.2(O)(3)(iv).

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). No claims have been made that these standards do not readily apply in this matter.

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 beneficiary has neither been nominated for, nor has she been the recipient of, any significant national or international awards or prizes in the field of culinary arts. The beneficiary's cookbook placed first in a contest, but the petitioner failed to establish that this is a significant national or international prize.

Counsel asserts that the beneficiary 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. Counsel asserts that the beneficiary received a critical review when her cookbook placed first in a contest. The petitioner failed to establish that this cookbook contest had a distinguished reputation. Counsel states that four advertisements publicizing the beneficiary's book signing appearances and her cookbook are proof that the beneficiary has performed in a lead role in a production or event with a distinguished reputation. The petitioner failed to show how book signing appearances and publication of her cookbook are productions or events with a distinguished reputation.

Counsel submits that the beneficiary has achieved national or international recognition for achievements evidenced by critical review or other published materials by or about the individual in major newspapers, trade journals, magazines or other publications.

The record contains three newspaper clippings. The first clip is a photograph of the beneficiary standing behind a punch bowl. The photograph accompanies two recipes. The photograph is captioned with the beneficiary's name. This was published in "El Universo" newspaper. The petitioner failed to mention where "El Universo" is published and the size of its circulation. On appeal, Counsel mentions an article published in "El Nuevo Herald," and another in the "Miami Herald," but failed to include copies.

The petitioner included an article published in the Vanidades magazine that reprinted excerpts from the beneficiary's cookbook. The petitioner also included seven articles printed in the Hogar magazine. One article publicized the beneficiary's cookbook. The remaining articles demonstrate food and plate preparation by the beneficiary.

The petitioner has not demonstrated the importance of the cookbook written by the beneficiary. The record contains no evidence of the circulation or reputation of this work. The petitioner has not established, for example, that this work is a best seller. Authorship of cookbooks, alone, is not sufficient to establish prominence.

The record contains insufficient evidence to establish that the beneficiary has a record of major commercial or critically acclaimed successes as either a chef or an author. Similarly, the record does not demonstrate that the beneficiary has received significant recognition for her achievements from food critics, culinary organizations, or government agencies.

The record contains no evidence as to the beneficiary's having commanded a high salary. The petitioner has not established that the proposed weekly wage of \$600 constitutes a high salary in relation to other chefs and authors.

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

In a request for additional documentation, the director informed the petitioner that the advisory opinion provided with the petition was insufficient. In response, counsel provided the Service with an evaluation from the Director of Culinary Education at Johnson & Wales University, North Miami. The Service only accepts consultations for chefs from the American Culinary Federation. This case was dismissed on separate grounds so this issue need not be discussed further.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.