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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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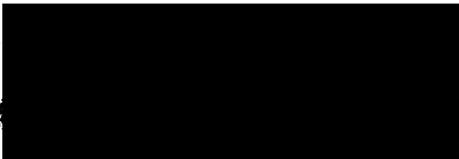


File: SRC-02-123-50628 Office: Texas Service Center Date: 11 SEP 2002

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:



Public Copy

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 record will be remanded.

The petitioner is a corporation operating a restaurant. The beneficiary is 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 arts, in order to employ him for a period of three years at a salary of \$490 per week.

The center director denied the petition finding that the petitioner failed to establish that the beneficiary satisfied the regulatory criteria for an alien with extraordinary ability in the sciences, education, business or athletics set forth at 8 C.F.R. 214.2(o)(3)(iii).

On appeal, counsel for the petitioner argued that the center director applied an incorrect regulatory 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. Section 101(a)(46) of the Act further states that the term "extraordinary ability" means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction.

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)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

On review of the record, it is noted that the director erroneously advised the petitioner of the incorrect regulatory standard. A chef is considered to be engaged in the arts. Pursuant to 8 C.F.R. 214.2(o)(3)(ii), a petitioner seeking classification of an alien with extraordinary ability in the arts must demonstrate distinction in the field of endeavor. Evidence of the requisite distinction may be demonstrated by submitting documentation satisfying at least three of the criteria listed at 8 C.F.R. 214.2(o)(3)(iv), rather than the similar criteria at 8 C.F.R. 214.2(o)(3)(iii). The standard of extraordinary ability as distinction, while high, is somewhat less than that of extraordinary ability in science, business, or athletics as being one of the few at the very top of the field of endeavor. Accordingly, the record will be remanded to allow the petitioner an opportunity to submit evidence addressing the appropriate regulatory criteria and for the issuance of a new decision.

Administrative notice is made that the record as presently constituted is insufficient to establish that the beneficiary has the requisite critical acclaim, national or international recognition, or record of major commercial success required to demonstrate distinction as set forth in the regulations.

In addition, 8 C.F.R. 214.2(o)(5)(i)(A) requires consultation with an appropriate U.S. peer group. The recognized U.S. peer group for the culinary arts is the American Culinary Federation ("ACF"). Therefore, the consultation letter submitted by the petitioner from the Culinary Institute of America is insufficient to satisfy this requirement.

ORDER: The matter is remanded for further review and for issuance of a new decision.