



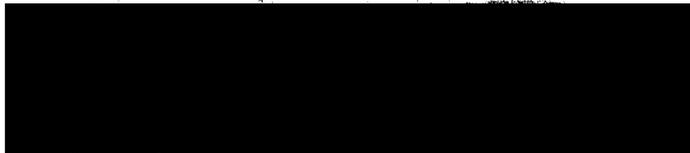
U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
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Washington, D.C. 20536



File: EAC 02 275 52367

Office: VERMONT SERVICE CENTER

Date:

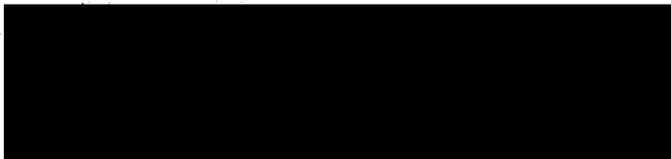
FEB 27 2003

IN RE: Petitioner:  
Beneficiary:



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:



**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.

Robert P. Wiemann, Director  
Administrative Appeals Unit

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a gourmet restaurant that seeks to employ the beneficiary as an executive sous chef for a period of three years at an annual salary of \$60,000. The director determined that the petitioner had not established that the beneficiary is a chef of distinction and qualifies as an alien of extraordinary ability in the arts.

On appeal, counsel for the petitioner asserts that the director erred in evaluating the evidence submitted 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. § 101(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).

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.

The 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 consistently distinguished himself as an extraordinary chef throughout his career and that he has worked at some of the most critically acclaimed restaurants in Europe. The petitioner provided evidence in the form of testimonials and published information about the beneficiary's former employers as well as about the petitioning restaurant.

After careful review of the record, it must be concluded that the petitioner has failed to establish that the beneficiary meets the O-1 eligibility requirements as an alien of extraordinary ability in the arts.

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.

The petitioner failed to submit any evidence in relation to criteria numbers one and two.

For criterion number three, the petitioner asserts that the beneficiary has performed services as a lead or starring participant for organizations that have distinguished reputations. The beneficiary has worked as the sous chef at the Restaurant Barbetta in New York City, and at the Restaurant Gut Faistenberg, Beuerberg, Germany. He has held lesser positions as chef, demi-chef, and commis de cuisine throughout his career.<sup>1</sup> A sous chef is the second in command under the master chef. While employed at the Restaurant Barbetta, he was not the sole sous chef. The authors of the reference letters from Restaurant Barbetta and the Restaurant Gut Faistenberg had high praise for the beneficiary, but the petitioner failed to establish that the beneficiary was a lead or starring participant for these organizations.

The petitioner asserts that the beneficiary will perform services as a lead or starring participant for an organization that has a distinguished reputation, i.e., the petitioning restaurant. The petitioner has established that it has a distinguished reputation. In the capacity of executive sous chef, the beneficiary will perform services as a lead participant. Nevertheless, the

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<sup>1</sup> He was a chef at the Butcher Shop in Nentershausen, Germany. He was a demi-chef entremetier at the Hotel Gasthof Post in Lech am Arlberg, Austria, and a demi-chef de partie at the Hotel Brandenburger Hof in Berlin. He worked as the commis de cuisine at Wald & Schlosshotel Friedrichsruhe, Oehringen, Germany and as chef tournant at both the Restaurant Gut Faistenberg, Beuerberg, Germany and at the Hotel Tennerhof in Kitzbuehel, Austria.

regulation requires that the alien submit evidence that he has already performed in a critical role for a distinguished organization at the time the petition is filed. The beneficiary fails to satisfy criterion number three.

The petitioner failed to submit evidence in relation to criterion number four.

As evidence that the beneficiary has received significant recognition for achievements from organizations, critics, and recognized experts in the field, the petitioner submitted reference letters and a consultation from the French Culinary Institute. Monika Drautz, owner of the Drautz-Able Winery wrote that the beneficiary is "considered to be one of Europe's foremost chefs." Michael Hornung, a member of the Chaine de Rotisseur culinary club wrote on a car dealership letterhead that the beneficiary's "ability in handling of fish and crustaceans...is worthy of note." Manfred Jungen, Executive Chef at Hotel Historisches Kurhaus, wrote that the beneficiary is "among the best chefs de cuisine of Germany." Heinz Lurz, owner of Fisch & Feinkost, a fish wholesaler, wrote that the beneficiary is "considered to be one of Europe's foremost chefs." Edward Donaldson, regional director of Rosewood Hotels & Resorts, wrote that he knows the beneficiary from the Restaurant Barbetta and that the "combination of the [beneficiary's] talent in the kitchen, work ethic and ability to adapt to new opportunities and challenges are outstanding." Finally, Alain Sailhac of the French Culinary Institute wrote that the beneficiary is "regarded as an exciting, creative and talented young chef, and a leading proponent of Austrian cuisine. He is a chef of international renown who has worked at several of the leading restaurants in Europe." In the absence of objective corroborating evidence such as articles about the beneficiary published in professional journals or mass media, the evidence is insufficient to demonstrate that the beneficiary is a chef of distinction. On appeal, counsel for the petitioner asserts that the beneficiary was employed by three restaurants in Germany that have been awarded a one-star rating by the Michelin restaurant guide and that the petitioner has been rated as a two or three-star<sup>2</sup> restaurant. Counsel asserts that the beneficiary has received significant recognition from several experts in the food service industry. The petitioner has not established the expertise of all of the testimonials' authors. On review, the evidence does not demonstrate that the beneficiary has achieved sufficient prominence in his field to satisfy this criterion.

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<sup>2</sup> Rated as a two-star restaurant by the *Daily News* (NY), *The New York Observer*, the *New York Post* and *The New York Times* in 2000. Rated as a three-star restaurant by *The Forbes Magazine* in 2000.

As evidence that the beneficiary will command a high salary for services in relation to others in the field, the petitioner provided the Service with a salary survey published by the National Restaurant Association showing that the median annual salary for sous chefs to be \$30,000. The petitioner indicated that it intends to pay the beneficiary \$60,000 a year, well above the median wage. However, the petitioner failed to provide the Service with a copy of the beneficiary's contract or other reliable evidence of the proffered salary.

Finally, counsel asserts that the beneficiary's standing as a prominent chef is shown in the evaluation by the senior dean of studies at the French 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 "is regarded as an exciting, creative and talented young chef . . . of international renown who has worked at several of the leading restaurants in Europe," and opined that the beneficiary "is an alien of extraordinary ability in the culinary arts." In 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).

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

Beyond the decision of the director, there is only one source of consultations that the Service will accept for chefs and that is the American Culinary Federation. Since the appeal will be dismissed for the reasons stated above, this issue need not be examined further.

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.