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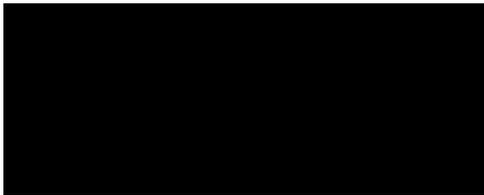


U.S. Citizenship  
and Immigration  
Services

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MAR 17 2004



FILE: EAC 03 008 53319 Office: VERMONT SERVICE CENTER Date:

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)

ON BEHALF OF PETITIONER:  
[Redacted]

**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office 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.

*Mari Johnson*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition in a decision dated January 10, 2003. The petitioner initially filed an unsigned appeal that was rejected. The petitioner then filed a signed appeal. In a decision dated May 19, 2003, the director rejected the subsequent appeal because it was untimely and considered it as a motion. The petitioner filed an appeal of the director's decision dated May 19, 2003, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, a restaurant, seeks O-1 classification of the beneficiary as an alien with extraordinary ability in the arts under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i) in order to employ him as an executive chef for three years.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary qualifies as an alien of extraordinary ability by virtue of being recognized as prominent in the field of culinary arts. The director further noted that the professional evaluation letters submitted appear to be based on a representation of the beneficiary's accomplishments that are contradicted by documentary evidence in the record. The director denied the petition, in part, finding that the petitioner failed to establish that the beneficiary was coming to the United States to perform services relating to an *event* or *events* as defined at 8 C.F.R. § 214.2(o)(3)(ii).

On appeal, counsel for the petitioner indicated that he would submit a brief within thirty days of filing the appeal. More than nine months have lapsed since the date of the appeal and nothing more has been submitted to AAO for inclusion in the record.

Section 101(a)(15)(O)(i) of 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.

The beneficiary is a 30-year old native and citizen of France. Following his graduation from the Lycée Hotelier de Toulouse in France, he pursued advanced culinary studies at the Lycée d'Etudes Professionel in Martinique, France.

The first issue to be addressed in this proceeding is whether the petitioner established that the beneficiary is coming to the United States to perform services relating to an *event* or *events* as defined at 8 C.F.R. § 214.2(o)(3)(ii). The director determined that the petitioner failed to establish that the beneficiary would be coming to the United States to perform services relating to an *event* or *events*. This portion of the director's decision shall be withdrawn. The regulation at 8 C.F.R. § 214.2(o)(3)(ii) states that the term *event* is defined 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 petitioner indicated on the Form I-129 that he intended to employ the beneficiary for a three-year period. The petitioner has shown that the beneficiary is coming to the United States to complete a three-year engagement. The petitioner has overcome this objection of the director to approving the instant petition.

The next issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary qualifies as an alien with *extraordinary ability in the arts* as defined by the statute and the regulations.

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)(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, and will perform, 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.

The petitioner asserts that the beneficiary has been the recipient of a significant international award in his field of endeavor, namely, recognition from the Confrérie de la Chaîne des Rôtisseurs. The petitioner submitted a letter dated January 31, 1999, written by a representative of the Confrérie de la Chaîne des Rôtisseurs. The letter is addressed to the beneficiary as "Chef David" and states the following:

On behalf of all the Chaîne members in the Turks and Caicos Islands, and their guests, I would like to congratulate you, and offer many thanks for an excellent evening held in the Library Restaurant last night at Parrot Cay. The level of swift and efficient service was equaled only by the superb food and wine. You should be extremely proud of the important role that you played to ensure the success of this event.

Although the petitioner submitted letters written by the Executive Director of the National Administrative Office and by the president of the Greater Washington Chapter of the Confrérie de la Chaîne des Rôtisseurs that asserts that the Turks and Caicos chapter acknowledged the beneficiary as a chef of extraordinary ability in its January 31, 1999 letter and characterizes that acknowledgement as a significant national or international award equivalent to that of an Academy Award, an Emmy, a Grammy or a Director's Guild award, the evidence indicates otherwise. The January 31, 1999 letter's author is thanking the beneficiary for his participation in an event held at his place of employment. The beneficiary does not satisfy this criterion.

The record does not establish that the beneficiary has achieved recognition for achievements evidenced by critical reviews or other published materials.

The petitioner asserted that the beneficiary has performed in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation. The petitioner stated in a letter addressed to CIS that:

The beneficiary has over ten years of experience in positions of increasing responsibility as an Executive Chef in a number of outstanding restaurants in France, England and the United States, each of which has an excellent reputation, including: Manoir des Primeveres in Ducos, Martinique . . . the French Army in French Guyana . . . the Federation Departementale de Formation Professionnelle in Lamartine, Martinique, where he served as a culinary arts professor . . . La Guinguette in Trinite, Martinique . . . La Batellere in Schoelcher, Martinique . . . Hotel la Belle Aurore, a four-star Michelin Guide hotel in St. Tropez, France . . . Parrot Cay Resort and Spa in Turks & Caicos Islands, British West Indies . . . and Angel Hotel in Suffolk, England.

The petitioner also submitted letters that corroborate the beneficiary's employment with five out of seven of the establishments listed above. The letters indicate that the beneficiary was employed as a sous-chef, instructor or chef (cuisinier). The letters do not corroborate the petitioner's assertion that the beneficiary was employed as an Executive Chef at any of the above named establishments, other than the petitioner's restaurant. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner asserts that the beneficiary has and will perform in a lead, starring, or critical role for the petitioner. The petitioner further asserts that the petitioner is an establishment that has a distinguished reputation. As evidence of its distinguished reputation, the petitioner submitted two critical reviews of the petitioner's restaurant. It is noted that the critical reviews were published in local publications. The petitioner is located in Washington, D.C. The reviews were published in *The Washington Blade*, a free local weekly publication, and the *Washington Post Magazine*, also a local publication. The local reviews do not demonstrate the national or international reputation of the petitioner as a distinguished organization. In order for the beneficiary to show national or international acclaim under this criterion, the petitioner must establish that the organization or establishment has a distinguished national or international reputation. The evidence is insufficient to establish that the petitioner has a distinguished reputation.

The record contains insufficient evidence to establish that the beneficiary has a record of major commercial or critically acclaimed successes.

For criterion number five, the petitioner submitted four virtually identical references from culinary experts including Jonathan Zearfoss, Professor of Culinary Arts at the Culinary Institute, Michael Richard, owner of Citronelle and Citrus restaurants, Robert Wiedmaier, owner of Marcel's restaurant, and Robert Donna, owner of Galileo's restaurant. While the references attested to the contents of the letters by signing them, the use of identical boilerplate language with no explanation of how the reference knows of the beneficiary's talents seriously diminishes the evidentiary value of these letters. The evidence is insufficient to establish that the beneficiary satisfies this criterion.

As evidence that the beneficiary would command a high salary for services in relation to others in the field, counsel for the petitioner submitted evidence that the director had approved similar petitions for chefs with the same annual salary as the beneficiary. The director determined that the beneficiary satisfied criterion number six. This portion of the director's decision shall be withdrawn. First, Citizenship and Immigration Services (CIS) is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals, which may have been erroneous. *See Matter of Church of Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Second, the petitioner failed to establish that the director had determined that \$50,000 was a high salary for the approved chefs.

The petitioner also submitted letters from the owners of two well-known restaurants that state the proffered annual salary of \$50,000 is more than appropriate for a chef of extraordinary ability. The evidence is considered, but is insufficient to establish that the beneficiary satisfies this criterion.

The petitioner provided CIS with a prevailing wage determination for executive chefs in the geographical area where the petitioner is located.<sup>1</sup> Although the survey submitted indicates that the beneficiary would receive almost twice the prevailing wage for executive chefs in the geographical area of the petitioner, the survey submitted is geographically too restrictive. This criterion must be indicative of national acclaim in the field. The petitioner has offered to pay the beneficiary an annual salary of \$50,000. The petitioner should have submitted wage survey information for all executive chefs on a nationwide basis. The petitioner should have provided more than just the average (mean) wage. To evaluate whether the salary is high, AAO needs to compare it to the median and highest wages offered nationwide to executive chefs. The beneficiary does not satisfy this criterion.

The petitioner asserted that the criteria listed at 8 C.F.R. § 214.2(o)(3)(iv) do not readily apply to the beneficiary's profession. The petitioner failed to establish that the criteria are inapplicable to chefs. Assuming, *arguendo*, that the criteria are inapplicable, the evidence on the record is insufficient to establish that the beneficiary is renowned, leading or well known, or has achieved *distinction* in his field of endeavor.

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.

Beyond the decision of the director, the petitioner failed to submit an appropriate consultation. The regulation at 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.

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<sup>1</sup> \$25,626 per year in Washington, D.C.

A professor of culinary arts at the Culinary Institute of America has stated in a letter dated September 13, 2002 that he finds the beneficiary to be an alien of extraordinary ability based upon his credentials and experience. It is noted that the professor made his opinion based upon erroneous information as to the beneficiary's work experience as an Executive Chef, as indicated above. In any event, consultations are advisory in nature and are not binding on CIS. 8 C.F.R. § 214.2(o)(5)(i)(D). Further, the appropriate U.S. peer group for chefs is the American Culinary Federation. Since the appeal will be dismissed for the reasons stated above, this issue will not be analyzed further.

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 not met that burden.

**ORDER:** The appeal is dismissed.