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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: SEP 21 2009
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IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section
203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on July 26, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a kosher chef. On appeal, counsel indicated that an additional brief and evidence in support of the appeal would be filed within 30 days. The appeal was filed on June 6, 2008. As of this date, the AAO has received nothing further.

In support of the appeal, counsel states:

[S]ince the last submission, [the petitioner] has received an award from the Austrian Cook's Association acknowledging his 10 years of achievements in the field.

Since the last submission, [the petitioner] has become a member of The Food and Beverages Association of America.

[R]ecently, [the petitioner] has received an offer from [REDACTED], Executive Sous Chef of Walt Disney Swan and Dolphin Resort in Florida, inviting him to come for an expense paid trip to Florida. There [the petitioner] received an offer to work for a top Walt Disney restaurant plus paid flights and residence in the hotel for free.

Counsel submitted documentary evidence supporting his statements. However, since the events occurred after the filing of the petition, we will not consider the evidence to establish the petitioner's eligibility. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r. 1998).

Counsel further argues:

The Service did not take into consideration the fact that in the field of cooking one doesn't use the recommendation letters to apply for [sic] new job. To the contrary, the owners of the restaurants always know who is working for their "competitors" in the field and try to "steal" the best chef-cooks to raise the standard of their place and to get new public. In our case, [the petitioner] clearly falls into more than 3 categories of 8 C.F.R. § 204.5(h)(3) and is clearly qualified as an alien of extraordinary ability.

Counsel did not attempt to explain which criteria the petitioner claims to meet. Instead, counsel only claims that the petitioner meets more than three criteria. As counsel has failed to specify which of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) the petitioner purportedly meets, we have considered the evidence submitted under the criterion which was originally requested at the time the petition was filed. If it is counsel's contention that the petitioner meets a particular criterion not addressed in this decision, he has never provided such a statement or argument in this regard.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria,

at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

At the time of the initial filing of the petition, counsel stated:

[The petitioner] has received the Red Chaines des Rotisseurs as a member of Austrian Cook Association (he was the eighth person in Austria to be honored with this Award; only 12 or 13 people have this award in Austria today.) And it's my client's honor and obligation to wear this chain at every international cooking contest.

In May 2004 [The petitioner] was honored the Orange Chaîne des Rotisseurs from the International Gastronomic Society “*Chaîne des Rotisseurs*”. There few people in the world who have this award nowadays, and less than ¼ of them – are cooks worldwide. The person who receives the award – is the cook who keeps the highest standards of the Gourmet Association.

None of these assertions by counsel are supported by the documentary evidence contained in the record. There is no documentary evidence that the petitioner was the eighth person to receive the “Red Chaines des Rotisseurs,” or that few people in the world have won the “Orange Chaîne des Rotisseurs.” Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner submitted various pictures of the “Red Chaînes des Rôtisseurs” and “Orange Chaîne des Rôtisseurs,” including pictures of the petitioner wearing them. The petitioner also submitted the bylaws of the “Chaîne des Rôtisseurs.” In denying the petition, the director concluded that the ribbons and chains symbolized membership in the organization rather than awards. We agree with the director's conclusion.

A review of the bylaws reflect that ribbons are earned based on occupational duties and length of service. For example, a “rôtisseur/grillardin” earns a silver medal and chain with no ribbon when he or she is a young professional who works with a turning spit/grill. An “officier chef

rotisseur/grillardin” earns a gold medal and chain on an orange ribbon when he or she has been promoted from “chef rotisseur/grillardin” after five years of membership and outstanding service to his bailliage.

The ribbons reflect forms of rank rather than nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Furthermore, there is no evidence showing that petitioner’s ribbons had a significant level of recognition beyond the presenting organization. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner’s awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this case, there is no evidence demonstrating that the petitioner’s ribbons are tantamount to nationally or internationally recognized prizes or awards for excellence in the petitioner’s field of endeavor.

Accordingly, the petitioner has not established that he meets this criterion.

Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

At the time of the initial filing of the petition, counsel stated that the petitioner met this criterion by the petitioner’s membership in the following organizations:

1. Austrian Cooks Association (Verband der Köche Österreichs, VKÖ) – since July 1998; and
2. Chaînes des Rôtisseurs – since February 2004.

The petitioner submitted the following:

1. Letter from [REDACTED] of the Austrian Cooks Association, dated February 21, 2008, stating that the petitioner has been a member of the Austrian Cooks Association from June 16, 1998; and
2. Letter from [REDACTED] of the Austrian Cooks Association, dated February 21, 2008, stating that the petitioner has been a member of Chaînes des Rôtisseurs of Austria from 2004.

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association’s overall reputation.

The petitioner has failed to submit any documentary evidence establishing that membership in the Austrian Cooks Association requires outstanding achievement as an essential condition for admission to membership.

As noted previously, the petitioner submitted the bylaws for Chaînes des Rôtisseurs. The requirements for membership are summarized below:

1. Applications by invitation only;
2. Must be a financially responsible adult of good moral and ethical character and reputation; and
3. Must submit an application, which is countersigned by two sponsors who are members in good standing.

While membership is by invitation only, the only other conditions are that a person “must be a financially responsible adult of good moral and ethical character and reputation” and the submission of a countersigned application. These conditions fail to establish that outstanding achievement in the culinary field is an essential condition for admission to membership.

In this case, there is no evidence showing that the petitioner holds membership in an association requiring outstanding achievements of its members, as judged by recognized national or international experts in his field or an allied one.

Accordingly, the petitioner has not established that he meets this criterion.

Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

At the time of the initial filing of the petition, counsel stated that the petitioner met this criterion by the petitioner’s participation in training the Austrian National Finalists at a culinary contest in Calgary, Canada in 2004 and Hamilton Beach, Bermuda. Counsel further stated:

By being a chef cook, one of [the petitioner’s] primary responsibility is judging the work of the cooks who are working in the kitchen; both on the basis of their artistic presentation as well as their scientific combination of various tastes and textures.

The petitioner submitted a photograph of an orange ribbon with a handwritten caption stating that it was a “[B]adge from Canada 2004 for training the Austrian National Finalists at the Culinary Contest in Calgary, Canada.”

No documentary evidence was submitted supporting counsel’s claim that the petitioner participated in the training of Austrian National Finalists in Hamilton Beach, Bermuda. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19

I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

Nonetheless, the *training* of finalists for a culinary contest, either in Canada or Bermuda, is not the judging of the work of others in the same or an allied field of specification as required at 8 C.F.R. § 204.5(h)(3)(iv). Training entails providing vocational and technical instruction while judging entails reviewing and awarding the work of others.

Furthermore, counsel claims that because the petitioner's job duties as a chef cook are to judge the work of other cooks in the kitchen, he therefore, qualifies under this criterion. The responsibility of overseeing other cooks in the kitchen is part of the petitioner's daily responsibilities. The mere nature of evaluating other cooks in the kitchen as part of a daily and routine occupational responsibility does not rise to the level of acclaim required for this highly restrictive classification.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that “[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). For example, evaluating the work of accomplished chefs as a member on a national panel of experts is of far greater probative value than evaluating the work of culinary students.

Accordingly, the petitioner has not established that he meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

At the time of the initial filing of the petition, counsel stated that the petitioner performed a leading role in the following establishments:

1. Austrian International Airport from June 1, 1996 to August 31, 1996, summer trainee and March 2, 1998 to August 31, 1998, cook;
2. Maxim's de Paris in Paris, France from June 1, 1999 to December 31, 1999, assistant chef cook;
3. Ambassador Hotel in Paris France from November 4, 1999 to May 21, 1999, chef of the kitchen;
4. Royal Beach Hotel in North Beach Eilat, Israel from February 2000 to June 2002, chef tournat;

5. MS Berlin of Peter Deilmann Cruises from July 2, 2002 to July 15, 2002, cook;
6. Seehof Hotel and Restaurant in Unteruhldingen, Germany from August 2002 to May 2003, sous chef and trainer of staff; and
7. Hotel Imperial in Vienna, Austria from August 25, 2003 to October 24, 2004, assistant chef cook;

The petitioner submitted job verification and recommendation letters for each of the above. The job letters from Maxim's de Paris, Ambassador Hotel, and MS Berlin simply confirmed the petitioner's dates of employment and job title but provided no specific details regarding the beneficiary's duties or position.

[REDACTED], and [REDACTED], from the Austrian International Airport stated:

Among his tasks were producing hot and cold meals as well as deserts [sic]. [The petitioner] was characterized by his commitment and trustworthiness; he fulfilled the tasks given him with much care and to our fullest satisfaction. He was equally liked and recognized by colleagues and superiors.

[REDACTED] and [REDACTED] from the Royal Beach Hotel stated:

[The petitioner] proved his high professional knowledge and high standard in all our outlets. This includes besides the variety and presentation of our dishes also hygiene standards, control of food cost and educating the cooks, which worked under his supervision. [REDACTED] was also in charge of the "La Cucina" – Italian style non-kosher restaurant for a period of four month [sic].

On banquets and out side [sic] catering up to 1200 people he took a big part of organizing, producing and serving.

[The petitioner] is a very good partner – a man you can trust. [The petitioner] possesses a pleasant disposition and was well like [sic] by both his co-workers and superiors.

[REDACTED] and [REDACTED], of the Seehof Hotel and Restaurant stated:

[The petitioner] field of occupation was to take orders, price comparisons, inventory orders, and training of the personnel. He showed himself from the beginning as an outstanding co-worker, who was flexible and honest.

[The petitioner] is a very considerate worker who will not neglect anything to learn more of his work. Therefore he utilizes his cooking experience and implements that in the work. He carried out his tasks to our fullest satisfaction.

[The petitioner] is characterized by his readiness to help; he always stepped in when work was needed. We are fully satisfied that carried out all our requests.

[REDACTED], of the Hotel Imperial stated:

In this position [the petitioner] was substantially sharing the responsibility and the guarantee of the outcome of our sauces. In this position he also was responsible for the organizing of the Café Imperial's Banquettes and Catering Services. His unusually high competence and his active participation were equated to the level Chef-Cook. [The petitioner] acted fully responsible and was always greatly contributing to the team's achievements. [The petitioner] became an important organizer in our team by his high-quality cooperation; he acted extremely exemplary; [the petitioner] significantly contributed to the reputation for the Austrian kitchen and the Hotel Imperial by participating in the organization of the "Austrian Weeks" in our sister hotel in Dubai.

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim.

While the job verification and recommendation letters praise the petitioner in his employment history as a chef, the letters do not demonstrate that he performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The record lacks information regarding the specific nature of the petitioner's roles and how those roles differentiated him from the other members of the organizations. We note that several of the positions were either "trainee" or "assistant chef" positions. It is unclear how these roles are of a leading or critical nature to the particular establishment. Further, there is no evidence showing that the organizations for which the petitioner served had a distinguished reputation. In this case, the documentation submitted by the petitioner does not establish that he was responsible for the success or standing of the organizations to which he was appointed to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

Accordingly, the petitioner has not established that he meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

At the time of the initial filing of the petition, counsel contended that the petitioner earned a salary of:

1. \$1,600 (USD) per month at the Royal Beach Hotel, which was "almost double salary than any chef cook from Israel would get";
2. \$2,273 (USD) "with today's exchange rate" per month at MS Berlin of Peter Deilmann Cruises, which "was one of the highest salaries paid on the ship";

3. \$1,768 (USD) per month at Hotel Imperial, which “is about 1/3 more than the highest salary in the kitchen”;
4. \$1,400 (USD) per month at the Austrian International Airport; and
5. \$1,700 (USD) per month at Maxim’s de Paris.

There is no documentary evidence in the record stating the salary of the petitioner in any of the above establishments. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Further, the plain language of this regulatory criterion requires the petitioner to submit evidence showing that he has commanded a high salary “in relation to others in the field.” The petitioner offers no basis for comparison showing that his compensation was significantly high in relation to others in his field.

Accordingly, the petitioner has not established that he meets this criterion.

In this case, we concur with the director’s finding that the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner’s achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A)(i) of the Act, and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.