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BA



FILE: [Redacted]
EAC 05 077 50233

Office: VERMONT SERVICE CENTER

Date: **DEC 21 2005**

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:

SELF-REPRESENTED

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

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant 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 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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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 to the United States will substantially benefit prospectively the United States.

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 earned sustained national or international acclaim at the very top level.

This petition, filed on January 13, 2005, seeks to classify the petitioner as an alien with extraordinary ability as an "Advanced level cook." The statute and regulations require the petitioner's acclaim to be sustained. According to Part 3 of the Form I-140 petition, the petitioner has been residing in the United States since June 2002. Given the length of time between the petitioner's arrival in the United States and the petition's filing date, it is reasonable to expect him to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as a cook in this country.

In support of the petition, the petitioner submitted a signed statement regarding his cooking qualifications. This document, however, was not sufficient to demonstrate the petitioner's sustained national or international acclaim, or that his achievements have been recognized in his field of expertise. On June 9, 2005, the director

denied the petition, finding that the petitioner's evidence did not satisfy any of the criteria at 8 C.F.R. § 204.5(h)(3).

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, international 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. On appeal, the petitioner has submitted evidence pertaining to the following criteria.

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

The petitioner submits the following:

1. "Certificate of Honor" from the "Labor Bureau of Quanzhou City" (allegedly issued in "October 1996") stating that the petitioner "was awarded the Prize of Second Grade Cook in the 1998 Competition of Culinary Arts in this city"¹
2. "Certificate of Honor" from the "Labor Bureau of Quanzhou City" stating that the petitioner "was awarded the Prize of First Grade Cook in the 1998 Competition of Culinary Arts in this city"
3. "Certificate of Prize" from the "Cooks' Association of Fuzhou City" stating that the petitioner "was awarded the First Grade in the 1998 Competition of Culinary Arts in this city"
4. "Letter of Thanks" from the Manager of the Chinese Meal Department of the Fuzhou City West Lake Hotel
5. Photograph of a trophy bearing an inscription stating: "[The petitioner] is awarded First Grade Prize of 'Straight Cup Culinary Arts Competition.'"

Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to Citizenship and Immigration Services (CIS) shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The translations accompanying the petitioner's trophy inscription, Letter of Thanks, and award certificates were not certified as required by the regulation.

In regard to item 1, the discrepancy regarding the date of issue and the date of the competition has not been resolved. Nor has the petitioner offered an explanation regarding why the name "BO YU" appears in English at the top of the certificate. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to

¹ The petitioner offers no explanation for the discrepancy regarding these dates. It is not possible for the petitioner to have been issued an award in "October 1996" for a competition that had not taken place until 1998. We further note that the name "BO YU" appears in English in the upper border of this certificate, but the appearance of this text is not explained, nor is it addressed in the accompanying English language translation.

a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

Based on the names of the issuing entities, we find that items 1 through 4 reflect local or institutional recognition rather than national or international recognition. In regard to item 5, there is no evidence demonstrating that the 1998 "Strait Cup Culinary Arts Competition" was national or international in scope. Nor is there evidence from the awarding entity or the print media showing that the petitioner's "Strait Cup Culinary Arts Competition" trophy is a nationally or internationally recognized culinary arts award.

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.

In order to demonstrate that membership in an association meets this criterion, the 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. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, 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 submits his employee identification card for the Quanzhou Hotel and his "Certificate of Professional Qualification" from Quanzhou City. Again, the translations accompanying these credentials were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the plain language of this criterion requires "documentation of the alien's membership in associations in the field." We cannot conclude that a qualification certificate and an employee identification card represent association memberships for purposes of this criterion. There is no evidence demonstrating that obtaining such credentials required outstanding achievement in the culinary arts or that the petitioner was evaluated by national or international experts in order to receive those credentials.

The petitioner also submits his "Certificate of Membership" for the Quanzhou City Culinary Arts Association (QCCAA). We cannot ignore that this association is a local association rather than a national or international association. Furthermore, there is no evidence of the bylaws or the official membership requirements for the QCCAA demonstrating that admission to membership requires outstanding achievement or that individuals are evaluated by national or international experts in consideration of their admission to membership.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submits what he alleges is evidence of his authorship of a book entitled *Male Tonic Recipes*. The evidence submitted by the petitioner shows only the cover of this book. The translation accompanying

the book cover was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no evidence of the field's reaction to this book, nor any indication that it is widely viewed as significantly influential. Nor is there evidence showing that this publication enjoyed substantial national or international readership.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner submits sixteen photographs of what are alleged to be his culinary creations. Without proper translations of the placards appearing in these photographs, it cannot be determined that the petitioner's culinary creations are among those pictured. Nevertheless, the plain language of this criterion requires the petitioner to provide evidence demonstrating that his creations have been "displayed" at culinary "exhibitions or showcases." In this case, the specific venues where the petitioner's culinary creations were displayed have not been identified. In fact, there is no contemporaneous evidence (such as an event program or brochure) demonstrating the petitioner's involvement at specific culinary exhibitions or showcases in the U.S. or China.

It must be stressed that a cook does not satisfy this criterion simply by arranging for his or her work to be displayed or evaluated. We find no evidence demonstrating that the petitioner's creations have regularly been displayed at exclusive national venues. Nor is there any indication that the petitioner's dishes have been featured along side those of culinary artists who enjoy national or international reputations. Furthermore, the petitioner has not demonstrated his regular participation in shows or exhibitions at exclusive venues devoted largely to the display of his culinary creations alone. The evidence presented by the petitioner is not sufficient to show that his exhibitions enjoy a national reputation or that participation in his exhibitions was a privilege extended to only top national or international culinary experts.

In this case, the petitioner has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

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 the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." The record contains no such evidence.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.