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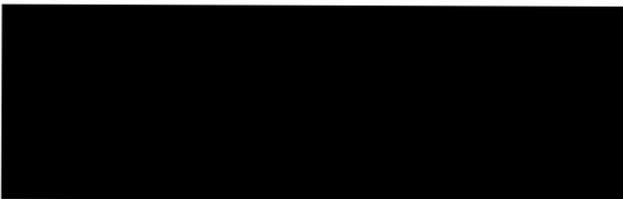
FILE: [REDACTED]  
SRC 04 251 52510

Office: TEXAS SERVICE CENTER Date: JUL 13 2006

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.

Σ Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas 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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel states: “[The petitioner] meets at least 3 out of 10 of criteria [sic] listed in 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 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 she has earned sustained national or international acclaim at the very top level.

This petition, filed on September 27, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a specialty cook preparing potosinas style Mexican dishes.

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. The petitioner has submitted evidence pertaining to the following criteria.

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

In order to establish that she performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted thirteen letters in support of the petition that mention her work at [REDACTED] a now defunct restaurant once located in San Luis Potosi, Mexico. The director's decision noted that many of these letters were deficient in that they were "not backed up by any resumes showing the qualification of the reference letters' writers." For example, the letters of support from [REDACTED] and [REDACTED] were written by individuals who claim no experience in the food service industry. We further note that nine out of the thirteen letters of support did not include an address or telephone number through which their authors may be contacted. Finally, none of the letters of support identify the specific dates of the petitioner's employment at [REDACTED]

[REDACTED] the only individual whose letter was accompanied by a resume (which included his address), states that he has "been a chef for the past fifteen years." He further states:

I have known [the petitioner] for about six years and I have much admiration for cooking abilities, especially about the way she prepares Potosinas Style Mexican dishes.

\* \* \*

[The petitioner] has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. [The petitioner] worked for [REDACTED] an extremely well known restaurant in Mexico, famous for their [REDACTED] largely due to [the petitioner's] cooking abilities. [REDACTED] closed down shortly after [the petitioner] relocated to the U.S. because they could not find another [REDACTED] Style Specialty Cook like [the petitioner].

Additional letters of support from [REDACTED] and [REDACTED] repeat the assertions of [REDACTED]. None of their letters state that they worked at La Cigarra, nor do they explain how they became aware of the nature of the petitioner's role at that restaurant.

In response to the director's request for evidence, the petitioner submitted letters of support from an individual identifying himself as the former manager of [REDACTED] and a local live stock owner and butcher from San Luis Potosi, [REDACTED]. These individuals describe the petitioner as an "excellent" and "extraordinary" cook and assert that [REDACTED] had a distinguished reputation, but their letters are not adequate to show that the reputation of the petitioner or the restaurant extended beyond the boundaries of San Luis Potosi.

The director's notice of denial and request for evidence both stated that the record lacked independent, objective evidence demonstrating the distinguished reputation of [REDACTED]. We agree with the director's finding. For example, the petitioner has submitted no published restaurant reviews showing that La Cigarra

had earned a distinguished reputation at the national or international level. Aside from some photographs in which it is impossible to ascertain the location where they were taken (no signage identifying [REDACTED] the record includes no contemporaneous evidence establishing the petitioner's employment at the restaurant. In fact, aside from these photographs, all of the evidence submitted by the petitioner in this case has been prepared proximate to the petitioner's September 27, 2004 filing date and long after the petitioner's employment at [REDACTED] had terminated.

In response to the director's request for evidence, counsel stated: [REDACTED] closed down shortly after [the petitioner] left to the United States. It is difficult to provide objective proof of a restaurant that has not existed for over 10 years and was located in San Luis Potosi, Mexico." Pursuant to Section 291 of the Act, however, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. The letters of support submitted by the petitioner are not first-hand evidence of [REDACTED] distinguished reputation. The benefit sought in the present matter is not the type for which documentation is typically unavailable and the statute specifically requires "extensive documentation" to establish eligibility. See section 203(b)(1)(A)(i) of the Act. Further, the regulations governing the present immigrant visa determination have no requirement mandating that Citizenship and Immigration Services (CIS) specifically accept the credibility of personal testimony, even if not corroborated by objective evidence.

The statements from counsel and multiple witnesses that [REDACTED] closed down more than ten years ago raise an important point. According to Part 3 of the Form I-140, Immigrant Petition for Alien Worker, the petitioner's "date of arrival" in the United States was August 24, 1994. There is no evidence of the petitioner's employment as a cook subsequent to that date. The statute and regulations, however, clearly require the petitioner's acclaim to be "sustained." Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than ten years), it is reasonable to expect her to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as a specialty cook in this country. Even if we were to accept that [REDACTED] had earned a distinguished reputation before its closure (which we do not), there is no evidence showing that, since her arrival in the United States, the petitioner has sustained her prior acclaim as a cook in Mexico through employment as a cook for a distinguished establishment here in the United States.

We find the petitioner has not established that she performed in a leading or critical role for a distinguished organization, or that her involvement has earned her sustained national or international acclaim.

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

The petitioner submitted a September 9, 2004 letter of support from [REDACTED] stating: "As a potosinas Style Specialty cook, [the petitioner] commands a high salary in relation to others in the field, earning a monthly salary of \$4000 pesos. Based on my expert opinion and having worked in the culinary industry for so many years, the average salary for specialty cooks is around \$300/400 per week."

The petitioner also submitted a September 9, 2004 letter from [REDACTED] stating: "[The petitioner] commanded well over 48,000 pesos a year in earnings. Based on my expert opinion and having worked in the

culinary field for many years, I can say that [the petitioner] commands a high salary in relation to others in the field.”

In response to the director’s request for evidence, the petitioner submitted an August 11, 2005 letter from [redacted] stating: “The salary that [the petitioner] earned is very high compared to what other similar cooks made in Mexico. It is impossible to compare her salary to the salary of cooks in the United States because there aren’t other cooks in the United States similar to her.” Interestingly, [redacted] letter does not cite any specific salary amounts upon which her conclusion is based.

In fact, none of the preceding individuals cite specific data for specialty cook salaries in Mexico from the early 1990’s to support their claims regarding the petitioner’s high salary. The petitioner submits no corroborative evidence in the form of reliable statistical salary information from a recognizable or credible organization such as the Economic Research Institute or other statistical gathering organization that examines salary scales. Further, [redacted] and [redacted] assertions regarding the petitioner’s earnings are not supported by contemporaneous financial documentation (such as the petitioner’s pay stubs, payroll records, or income tax forms) showing that the petitioner actually earned the compensation specified in their September 9, 2004 letters. Nor has it been adequately explained how the preceding witnesses are aware of the petitioner’s compensation from more than a decade ago. Finally, and most importantly, the record includes no evidence of the petitioner’s earnings as a cook during the decade preceding the petition’s filing date. Without evidence showing that the petitioner has earned a high salary in relation to others in her field during the period proximate to the petition’s filing date, the petitioner has not shown that her prior acclaim from Mexico has been sustained.

On appeal, counsel challenges the director’s comparison of the petitioner’s salary in Mexico to that of cooks from the United States. We agree with counsel that this was not an appropriate basis for comparison. The petitioner, however, has submitted no reliable statistical data in support of her claim that her salary was significantly high in relation to that of other Mexican specialty cooks. Further, we concur with the director’s finding that the petitioner failed to submit independent, objective evidence to support the assertions of the aforementioned witnesses. The evidence submitted by the petitioner is not adequate to show that her compensation was significantly high in relation to others in her field or that her recent earnings have sustained her prior acclaim from Mexico. The petitioner has not established that she meets this criterion.

In his appellate brief, counsel argues that the petitioner “meets at least 3 out of 10” of the criteria at 8 C.F.R. § 204.5(h)(3), but neither his appellate brief nor his response to the director’s request for evidence specifically identifies the third criterion that the petitioner seeks to fulfill.

In this matter, we concur with the director’s finding that the petitioner has failed to demonstrate that she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

As stated previously, the statute and regulations require “extensive documentation” for eligibility under this visa classification. The commentary for the proposed regulations implementing section 203(b)(1)(A) of the Act provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). The criteria require specific documentation

beyond mere testimony, such as awards, published material about the alien, and memberships requiring outstanding achievement. As an example of the specific nature of the documentation required, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires the "title, date and author" of the published material about the alien. While letters of support may place the evidence for the regulatory criteria in context, they cannot serve as primary evidence of the achievement required by the criteria. Further, while the regulation at 8 C.F.R. § 204.5(h)(4) permits "comparable evidence" where the ten criteria do not "readily apply" to the alien's occupation, the regulation neither states nor implies that letters attesting to the alien's standing in the field are "comparable" to the strict documentation requirements in the regulations setting forth the ten criteria. Evidence in existence prior to the preparation of the petition carries greater weight than letters of support prepared especially for submission with the petition. As previously discussed under the criteria at 8 C.F.R. §§ 204.5(h)(3)(viii) and (ix), we find that the claims made in the opinion letters are not adequately supported by contemporaneous evidence. Where the regulations require specific, objective evidence in support of a petition, the petitioner's burden of proof is not satisfied by submitting unsupported testimony. See 8 C.F.R. § 103.2(b)(1). Accordingly, the AAO gives the submitted letters less weight and finds them unpersuasive on the whole. See *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence.

The statute and regulations also require the petitioner's acclaim to be "sustained." In this case, the petitioner's extraordinary ability claim rests entirely on activities that occurred in Mexico prior to her August 24, 1994 arrival in the United States. There is no indication that whatever level of acclaim the petitioner had in Mexico in the early 1990's has been sustained since her entry into the United States more than a decade ago.

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a 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 includes 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.