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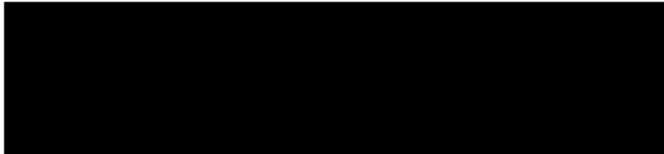
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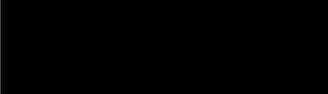
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

B2



DATE: Office: NEBRASKA SERVICE CENTER FILE: 

FEB 09 2012

IN RE: Petitioner: 
Beneficiary: 

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 in the arts.¹ The director determined that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On December 5, 2011, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), the AAO issued a notice advising the petitioner of derogatory information regarding his claimed employment with Rio's D'Sudamerica and his intent to continue to work in his area of expertise. In response, the petitioner submitted documentary evidence overcoming the derogatory information discussed in the AAO's notice.

On appeal, the petitioner asserts that he meets the regulatory categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i), (ii), and (v). For the reasons discussed below, the AAO will uphold the director's decision.

I. Law

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

¹ The petitioner was initially represented by attorney [REDACTED] In this decision, the term "previous counsel" shall refer to [REDACTED]

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* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting at least three of the following ten categories of evidence:

(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(ii) 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;

(iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;

(iv) 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 specialization for which classification is sought;

(v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;

- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.² With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-20.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO

² Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

II. Analysis

A. Evidentiary Criteria

This petition, filed on July 17, 2009, seeks to classify the petitioner as an alien with extraordinary ability as a "Culinary Artist of Peruvian Cuisine." The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).³

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

The petitioner submitted a certificate issued to him by his alma mater, the [REDACTED] stating: "For obtaining the Third Place in the I Competition Art and Passion Culinary Contest – Peruvian Talents, taken place in the installations of our school on the 05 of December 2003." There is no documentary evidence showing that the petitioner's 2003 third place award is a nationally or internationally recognized prize or award for excellence rather than an institutional honor limited to culinary students at his school.

The petitioner submitted a second certificate issued to him by the [REDACTED] stating: "We congratulate our student [the petitioner] for obtaining the First Place in the Competition of Creative Gastronomic Using Biodiversity Peruvian Products, organized by the [REDACTED] taken place on the 21st of May of 2004." The petitioner also submitted a May 26, 2004 congratulatory letter from the Director of Administration, [REDACTED] School, [REDACTED] stating: "We are very proud of your unfolding throughout the tournament, in which you demonstrated your professional quality and understanding of learned techniques, leaving the name of our academic institution in high standing."

On appeal, the petitioner submits a January 11, 2010 letter from [REDACTED] and [REDACTED] Peru, stating:

As a representative of the slow food movement in Peru, I have had the pleasure of working with [the petitioner] when he participated in our contest of gastronomic creativity featuring local Peruvian ingredients in 2004.

³ The petitioner does not claim to meet or submit evidence relating to the categories of evidence not discussed in this decision.

The contest brought together the top Chefs of the country, each one representing one of the top culinary schools in Peru. Each Chef contestant was asked to use local Indian Peruvian ingredients in personal and innovative interpretations of haute cuisine. [The petitioner] surprised us by not only using familiar ingredients such as quinoa, amaranth, oca, mashua and kaniwua in his cuisine, but he also incorporated "atajo" a plant used by ancient Peruvians in times of famine, to bring unique and powerful flavors to his dishes.

The knowledge and expertise [the petitioner] displayed was so impressive, that he was the overwhelming favorite and winner of the prestigious event. [The petitioner] was then chosen to represent Peru at the [redacted] in Turin, Italy

The letters submitted by the petitioner fail to demonstrate the national or international *recognition* of his 2004 first place award in the Competition of Creative Gastronomic Using Biodiversity Peruvian Products. The plain language of the regulation 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 instance, there is no documentary evidence demonstrating that the petitioner's 2004 first place award garnered significant recognition beyond the event organizers and therefore was commensurate with a nationally or internationally recognized prize or award for excellence in the field.

Even if the petitioner were to establish that his 2004 first place award meets the elements of this regulatory criterion, which he has not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires the petitioner's receipt of qualifying "prizes or awards" in the plural. The use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). Therefore, the petitioner's receipt of a single nationally recognized award does not meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(i).

In light of the above, the petitioner has not established that he meets this regulatory 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.

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 submitted letters from the General Director and the Executive Director of the [REDACTED] stating that the petitioner became an "investigator" of Peruvian cuisine at their institution in 2005. The petitioner also submitted a letter from the Director General of the [REDACTED] stating that the petitioner mentored students at the institute. The petitioner has not established that his relationship with these institutions as an investigator and as a mentor constitutes his "*membership* in associations in the field" (emphasis added) as mandated by the unambiguous language in the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Regardless, the submitted evidence does not establish that the Center of Regional Cuisine and the [REDACTED] require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field.

The petitioner submitted a letter from [REDACTED] stating that the petitioner is a member of the society. On appeal, the petitioner submits a letter from [REDACTED] verifying the petitioner's membership in the society since April 2008 and stating: "Members of the [REDACTED] are leaders in the community, who have distinguished themselves by their accomplishments both in Peru and across the World." There is no documentary evidence (such as bylaws or rules of admission) showing that the [REDACTED] requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field.

In light of the above, the petitioner has not established that he meets this regulatory criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The AAO withdraws the director's finding that the petitioner meets this regulatory criterion. In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a

particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.⁴

The petitioner submitted an October 14, 2005 article about him by [REDACTED] [REDACTED] entitled "A kitchen placed on low heat," but there is no circulation evidence showing that [REDACTED] qualifies as a form of major media.

The petitioner submitted material from an October 2004 report prepared by the Peruvian delegation for the event entitled [REDACTED] in Torino, Italy, but the material was unaccompanied by an English language translation as required by the regulations at 8 C.F.R. §§ 103.2(b)(3) and 204.5(h)(3)(iii). Regardless, the petitioner is not mentioned in the material and there is no evidence showing that the preceding event report qualifies as a major trade publication or some other form of major media.

The petitioner submitted an article about him entitled [REDACTED] printed from www.perudotcom.com, but the article's date of publication was not provided as required by the plain language of this regulatory criterion. Further, there is no documentary evidence demonstrating that the preceding website qualifies as a form of major media.

The petitioner submitted restaurant review of [REDACTED] in the September 28, 2007 *Chicago Sun-Times*. The restaurant review is accompanied by a photograph of the petitioner, but the article is about the restaurant's food and ambiance rather than the petitioner himself. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien." See, e.g., *Accord Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1,*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). Further, there is no circulation evidence showing that the *Chicago Sun-Times* qualifies as a form of major media.

The petitioner submitted an August 2006 article in *Time Out Chicago* entitled [REDACTED] about [REDACTED] and its owner [REDACTED] but the article only briefly mentions the petitioner in passing. Further, there is no documentary evidence showing that *Time Out Chicago* qualifies as a form of major media.

In response to the director's request for evidence, the petitioner submitted the following:

1. Material indicating that the petitioner's "Peruvian Sweet Corn Cake Dessert" appeared in the November/December 2009 issue of [REDACTED]
2. An August 21, 2009 article posted at [REDACTED] entitled [REDACTED] It's [REDACTED] that profiles the petitioner's Sweet Corn Cake dessert;
3. A July 23, 2009 restaurant review of [REDACTED] in *Chicago Reader* that is about the restaurant rather than the petitioner himself;

⁴ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

4. A December 2009 article in *Dining Chicago* entitled [REDACTED] that includes only one sentence mentioning the petitioner;
5. An August 26, 2009 blog article posted at [REDACTED] entitled [REDACTED] "Asia meets South America in cool fish dish" that profiles a recipe of the petitioner.

The preceding articles were published subsequent to the petition's filing date. A petitioner, however, must establish his eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, the AAO will not consider material published after July 17, 2009 in this proceeding. Nevertheless, none of the preceding articles meet all the elements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

The petitioner's response to the director's request for evidence included a September 25, 2005 article in [REDACTED] entitled "A rhythm of slow food," but the article includes only a few sentences about the petitioner. Further, there is no circulation evidence showing that [REDACTED] qualifies as a form of major media.

The petitioner's response also included an October 25, 2008 in *Chicago Reader* entitled "The [REDACTED] The article is about [REDACTED] and his restaurant business, and only briefly mentions the petitioner in passing. Further, there is no documentary evidence showing that *Chicago Reader's* local circulation qualifies the free weekly newspaper as a form of major media.

The petitioner also submitted a profile of [REDACTED] in *Chicago Dining Out*, but the date and author of the material were not identified as required by the plain language of this regulatory criterion. Further, the material only mentions the petitioner in passing and there is no documentary evidence showing that *Chicago Dining Out* qualifies as a form of major media.

The petitioner's response included an April 9, 2008 blog article posted on the website of the [REDACTED] entitled "[REDACTED]" but the author of the article was not specifically identified. Moreover, there is no evidence indicating that the preceding blog posting constitutes publication in a major trade publication or in some other form of major media.

The petitioner's response also included a duplicate copy of the October 14, 2005 article by [REDACTED] posted at [REDACTED].com, but there is no documentary evidence showing that the preceding website qualifies as a form of major media.

Moreover, even if the petitioner were to submit circulation evidence showing that the October 14, 2005 article about in [REDACTED] meets the elements of this criterion, which he has not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires material about the alien in "professional or major trade publications or other major media" in the plural. Therefore, published material about the petitioner limited to only one major publication does not meet the plain language requirements of this regulatory criterion.

In light of the above, the petitioner has not established that he meets this criterion

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner submitted several reference letters discussing his talent as a chef, culinary training, and activities in the field. Talent and the ability to secure employment in one's field, however, are not necessarily indicative of original artistic contributions of major significance in the culinary field. The record lacks evidence showing that the petitioner has made original artistic contributions that have significantly influenced or impacted his field.

_____ restaurant in Chicago, praises the petitioner for his "unique talent and reputation for mastery of the *nouveau andino* ethnic cuisine," but he does not provide specific examples of how the petitioner's original work has impacted the field at large such that his work rises to the level of artistic contributions of major significance in the field. Vague, solicited letters from colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010).

_____ Lima, Peru, states:

[The petitioner] enhanced his familial training in the preparation of Traditional Peruvian Cuisine by enrolling in the _____ where he continued his studies of bio-diverse ingredients, ancient herbs and the art of "slow cooking."

In addition to his educational training, [the petitioner] has developed his talent on the job. I employed [the petitioner] as an Assistant Executive Chef at _____ from November 2004 through February 2006. I witnessed firsthand [the petitioner's] superb talent for preparing Traditional Peruvian Cuisine. He possesses a keen understanding of local produce, ingredients and culinary techniques. [The petitioner] has demonstrated an unmatched flare for combining flavors that would normally be incompatible to create dishes that are ground-breaking and enjoyable at every bite, yet rooted in Peru's culinary traditions.

* * *

[The petitioner's] impeccable talent led to his appointment as an Investigator with the _____ in April 2005, where I serve as the General Director. In this position, [the petitioner] is responsible for entering various indigenous communities to examine their culinary styles, as well as their use of local ingredients. [The petitioner] not only raises awareness in Peru of the incalculable array of culinary traditions by demonstrating the indigenous culinary traditions to the public, he also experiments with the indigenous culinary dishes and techniques to develop modern cuisine. He returns to these communities to present his findings. [The petitioner's] extraordinary ability to study traditional forms of Peruvian, experiment with indigenous dishes and instruct

others has proved invaluable to the preservation of Traditional Peruvian Cuisine and the development of the culinary art.

* * *

Based on my . . . collaboration with [the petitioner] at [redacted] and the Center of Regional Cooking, I have realized that his ability to create Traditional Peruvian Cuisine is unparalleled. His dishes are truly innovative and exquisite. As a result, he is one of Peru's most influential and prominent chefs in a culinary art that requires a thorough knowledge of Peru's biodiversity, as well as the history of Peruvian cuisine.

[redacted] opines that the petitioner "is one of Peru's most influential and prominent chefs," but she fails to identify the original dishes or culinary techniques that earned him this distinction. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). [redacted] also asserts that the petitioner's work "has proved invaluable to the preservation of Traditional Peruvian Cuisine and the development of the culinary art," but she does not provide specific examples of how the petitioner's work has influenced the field at large or otherwise equates to original contributions of major significance in the field.

[redacted] of Peru, states:

[The petitioner] is a young man known not only known for his reputable career in cooking in our country with an iron will to make his career a form of art, and exquisite culinary style, but most importantly his unique ability to innovate and to incorporate the legacy of his Peruvian heritage.

* * *

In 2005, [redacted] of Peru was one of the sponsors of the Peruvian delegation whom represented Peru in the [redacted] that took place in Santiago, Chile. At that event [the petitioner] was appointed head cook of one of the demonstrations the Peruvian delegation embodied, appealing to all present with his creative style gave a new concept and value to the regional cooking of the Andes.

As representative of [redacted] of Peru, I vouch for [the petitioner's] impeccable work of which I had the opportunity and pleasure to witness during the Conference mentioned previously as well as other events that have taken place in conjunction.

[redacted] fails to explain how the petitioner's cooking demonstration at the regional conference differentiated him from the other participating chefs or was otherwise indicative of an original artistic contribution of major significance in the culinary field.

[redacted] Peru, states that the petitioner "has proven to be a highly capable investigator in the study of gastronomy

(culinary), exemplifying qualities of honor, capability, proactivity, efficiency and a high regard for teamwork," but [REDACTED] fails to provide specific examples of how the petitioner's work has significantly impacted the field at large or otherwise constitutes original contributions of major significance in the culinary field.

[REDACTED] states:

This letter is to bring to your attention that [the petitioner], graduated from the career of Haute cuisine in our institution, was chosen by the Academic Direction to represent us in the [REDACTED] "organized by the [REDACTED]

* * *

After a week of testing and refinement of the dish, the perfect combination between national inputs and Peruvian culinary creativity was created, which gave rise to the following dishes. His entry was a guinea pig with chicharron pressing recoto confit and amaranth and Kañiwa cookie. And his main course was alpaca loin with crispy rosti Andean tubers tabulated with quinoa with tomato sauce and Aguaymanto sachá. After the final assessment announced the winner of first place, [the petitioner] representative of [REDACTED] School, also unveiled the award that he deserved, a trip to Turin-Italy as a delegate of Peru in the major European event "The [REDACTED] where he would prepare a dish of Peruvian inputs

Regarding [REDACTED] comments, the AAO notes that the petitioner's award from the "Gastronomic Creativity Contest Biodiversity" has already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria.

In a letter submitted in response to the director's request for evidence, [REDACTED] San Antonio campus, states:

[The petitioner] is a highly recommended chef and is very recognized as such by chef colleagues in Peru.

I had the pleasure to meet [the petitioner] while in Chicago last May. I was a key member of [REDACTED] culinary team that prepared the 2009 Ivy Award Dinner, for *Restaurant & Institutions* magazine. The focus of the food was Mexican Cuisine, of which I am one of the CIA's experts. I called [the petitioner], and he was able to assist us during this event.

I was able to see his extraordinary culinary talents, he is also very attentive, creative and dedicated. [The petitioner] is able to work in teams and he quickly became a strong team supporter.

In a subsequent letter submitted on appeal, [redacted] states:

I believe that [the petitioner] is an excellent chef whose abilities have been and continue to receive recognition both in the U.S., Peru, and other South America countries. He is an exceptional cook with a clear and refined vision.

I know [the petitioner] for a couple of years and we worked together in the Gala dinner in Chicago for the [redacted] at the [redacted] show last year. Where I saw him in action, I was impressed not only by his total commitment to his profession but his knowledge regarding all things Peruvian. I know for fact that he has worked in Peru with the best chefs acquiring a deeper knowledge and practice.

The two letters from [redacted] indicate that the petitioner assisted her at the 2009 [redacted] dinner and that she was impressed by his knowledge and culinary talents, but she does not provide specific examples of how the petitioner's work has impacted the field at a level indicative of original artistic contributions of major significance.

[redacted] states:

I met [the petitioner] when he was a culinary Student at the [redacted] of Peru. From the very beginning, [the petitioner] displayed a talent and aptitude for preparing Peruvian Cuisine, and soon distinguished himself as the best student of the school. Not only does he have extensive knowledge of traditional dishes, but also the capacity to integrate those dishes with other influences to create a unique interpretation of haute cuisine.

During his time at school, [the petitioner] also impressed me with his knowledge of ancient Peruvian Ingredients and otherwise forgotten foods of the native peoples of the Andean region. In particular, [the petitioner] researched the "route gastronomique" of the potato in the Mantaro Valley a luscious area of Peru, home to different varieties of potato. The "route gastronomique" can be loosely translated as the life cycle. [The petitioner] studied every aspect of the potato's journey, from earth to plate and back again.

[The petitioner's] work impressed me so much that I asked him to lead the research for my book, [redacted]. In my book, I explore the wide varieties of Peruvian bread, and the social and religious aspect of bread in Andean culture. [The petitioner's] contributions to my book exemplified his extraordinary knowledge of Peruvian Cuisine.

* * *

I will forever value his contributions to my book, a winner of the [REDACTED] Award for the world's best book in its category.

[REDACTED] asserts that the petitioner performed research at the [REDACTED] of Peru, but there is no documentary evidence demonstrating that his potato research was recognized beyond the school such that his work constitutes original contributions of major significance in the field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner's original contributions be "of major significance in the field" rather than limited to a single research institution or employer. [REDACTED] also states that the petitioner "lead the research" for his book, [REDACTED]. The record, however, does not include a copy of the book or excerpts from the book listing the petitioner as a coauthor or contributor. Further, [REDACTED] does not specifically identify the petitioner's original contributions to his book, nor is there an explanation indicating how any such contributions of the petitioner were of major significance in the culinary field. Moreover, the AAO notes that the regulations contain a separate criterion regarding the authorship of scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi). The AAO will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable.

The reference letters submitted by the petitioner discuss his culinary training, work experience, and talent as a chef, but they do not specify exactly what his original contributions have been, nor is there an explanation indicating how any such contributions were of major significance in his field. It is not enough to be a talented chef and to have others attest to that talent. An alien must have demonstrably impacted his field in order to meet this regulatory criterion. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of "major significance" in the field. The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). While the petitioner has earned the admiration of his references, there is no evidence demonstrating that he has made original artistic contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other chefs in the culinary industry, nor does it show that the field as a whole has specifically changed as a result of his work.

The reference letters submitted by the petitioner are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-*

K-, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”). Thus, the content of the experts’ statements and how they became aware of the petitioner’s reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a soccer player who has made original contributions of “major significance.” Without extensive documentation showing that the petitioner’s work equates to original contributions of major significance in his field, the AAO cannot conclude that he meets this regulatory criterion.

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

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director’s findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the petitioner has not established that he meets this regulatory criterion.

Summary

The AAO concurs with the director’s determination that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). A final merits determination that considers all of the evidence follows.

B. Final Merits Determination

The AAO will next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor,” 8 C.F.R. § 204.5(h)(2); and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-20. In the present matter, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i) – (iii), and (v).

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(i), this decision has already addressed why the submitted awards do not rise to the level of nationally or internationally recognized awards for excellence in the field. The petitioner’s evidence is also not indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his

field. The AAO cannot conclude that winning a competition limited to culinary school students is an indication that he "is one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for immigrant classification as an alien of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899. Likewise, it does not follow that a chef who has only received awards in student level competition should necessarily qualify for approval of an extraordinary ability employment-based immigrant visa petition. The AAO notes that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

The court's reasoning indicates that USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(ii), there is no evidence showing that the [REDACTED] the Peruvian [REDACTED] and [REDACTED] require outstanding achievements of their members, as judged by recognized national or international experts in the field. Further, the petitioner has not established that his memberships are indicative of or consistent with sustained national or international acclaim, or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(iii), all of the petitioner's submissions were deficient in at least one of the regulatory requirements such as not including an author, not being about the petitioner, or not being accompanied by evidence that they were published in major media. The petitioner has failed to demonstrate that the published material about him is indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of the field.

In regard to the evidence submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(v), there is no documentary evidence demonstrating that the petitioner's work had major significance in the field, let alone an impact consistent with being nationally or internationally acclaimed as extraordinary. Aside from the petitioner's failure to submit evidence demonstrating that he has made original artistic contributions of major significance in the field, the AAO notes that his claim is based primarily on reference letters. While reference letters can provide important

details about the petitioner's culinary experience and activities in the field, they cannot form the cornerstone of a successful extraordinary ability claim. The statutory requirement that an alien have "sustained national or international acclaim" necessitates evidence of recognition beyond the alien's educational and professional contacts. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) 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). Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a chef who has sustained national or international acclaim at the very top of the field. Moreover, the letters of support, while indicating that the petitioner is a talented chef, do not consistently establish his sustained national or international acclaim at the very top of the field. Talent alone is not the statutory standard for the classification sought. Rather, Congress mandated that eligibility would be established by extensive evidence of national or international acclaim. Section 203(b)(1)(A)(i) of the Act. Congress expressed its intent that this classification be limited to those who could demonstrate a one-time achievement (not claimed in this case) or a career of acclaimed work. H.R. Rep. No. 101-273, 59 (Sept. 19, 1990). The documentation submitted by the petitioner for the category of evidence at 8 C.F.R. § 204.5(h)(3)(v) is not indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

In this matter, the petitioner has not established that his achievements at the time of filing were commensurate with sustained national or international acclaim as a culinary artist or chef, or being among that small percentage at the very top of the field of endeavor. The submitted evidence is not indicative of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The conclusion the AAO reaches by considering the evidence to meet each category of evidence at 8 C.F.R. § 204.5(h)(3) separately is consistent with a review of the evidence in the aggregate. Ultimately, the evidence in the aggregate 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). While the petitioner need not demonstrate that there is no one more accomplished than himself to qualify for the classification sought, it appears that the very top of his field of endeavor is far above the level he has attained.

C. Prior O-1 Nonimmigrant Visa Status

The record reflects that the petitioner was the beneficiary of an approved O-1 nonimmigrant visa petition for an alien of extraordinary ability in the arts. Although the words "extraordinary ability" are used in the Act for classification of artists under both the nonimmigrant O-1 and the first preference employment-based immigrant categories, the statute and regulations define the term differently for each classification. Section 101(a)(46) of the Act states, "The term 'extraordinary ability' means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction." The O-1 regulation reiterates that "[e]xtraordinary ability in the field of arts means distinction." 8 C.F.R. § 214.2(o)(3)(ii). "Distinction" is a lower standard than that required for the immigrant

classification, which defines 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). The evidentiary criteria for these two classifications also differ in several respects, for example, nominations for awards or prizes are acceptable evidence of O-1 eligibility, 8 C.F.R. § 214.2(o)(3)(iv)(A), but the immigrant classification requires actual receipt of nationally or internationally recognized awards or prizes. 8 C.F.R. § 204.5(h)(3)(i). Given the clear statutory and regulatory distinction between these two classifications, the petitioner's receipt of O-1 nonimmigrant classification is not evidence of his eligibility for immigrant classification as an alien with extraordinary ability. Further, the AAO does not find that an approval of a nonimmigrant visa mandates the approval of a similar immigrant visa. Each petition must be decided on a case-by-case basis upon review of the evidence of record.

It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the alien's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the alien, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, *1, *3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

III. Conclusion

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 and 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) of the Act and the petition may not be approved.

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 at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review 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.