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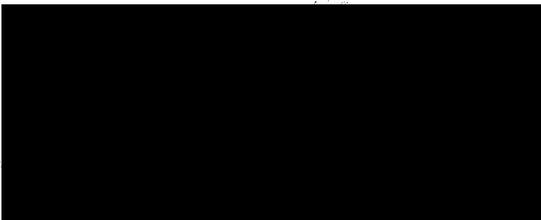
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Room A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

D8



File: SRC 03 237 50782

Office: TEXAS SERVICE CENTER

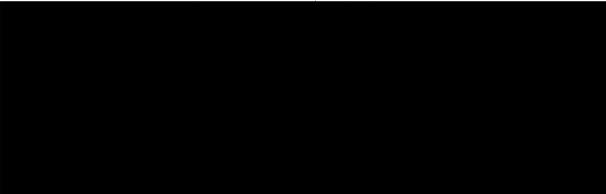
Date: APR 13 2005

IN RE: Petitioner:
Beneficiary



PETITION: Petition for Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:



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 Director of the Texas Service Center denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is seeking O-1 classification of the beneficiary as an alien with extraordinary ability in the arts under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), in order to employ him for three years as a chef for a hunting and fishing camp.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary satisfies the standards for classification as an alien with extraordinary ability in the arts.

On appeal, counsel for the petitioner submits a brief.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The first issue to be addressed in this proceeding is to determine whether the director used the correct standard in evaluating the beneficiary's eligibility for O-1 classification. On appeal, counsel for the petitioner asserts that the director applied the wrong standard. Counsel quotes the director's decision as follows:

"[T]he beneficiary is ineligible for O classification based on finding insufficient documentation to show that he is 'at the very top' of his field pursuant to 8 C.F.R. [§]214.2(o)(3)(ii) and that he does not have the requisite 'sustained acclaim' in the field of arts required by the statute."

In review, the director applied the correct regulation (8 C.F.R. § 214.2(o)(3)(iv)) for aliens of extraordinary ability in the arts, but erroneously cited language for aliens of extraordinary ability in the fields of science, education, business, and athletics ("sustained acclaim"). The AAO concurs that the less rigorous standard for the arts ("distinction") applies in the instant case. Nonetheless, the director's error is harmless, because she correctly applied the criteria for aliens of extraordinary ability in the arts when evaluating the evidence on the record.

The second issue to be addressed in this proceeding is whether the petitioner has established that beneficiary qualifies as an alien of extraordinary ability in the arts, i.e., has satisfied three of the criteria at 8 C.F.R. 214.2(o)(3)(iv).

8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of arts means distinction. Distinction means a high level of achievement in the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well known in the field of arts.

8 C.F.R. § 214.2(o)(3)(iv) states that in order to qualify as an alien of extraordinary ability, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

(A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award,

an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed, and will perform services as a lead or starring participant in productions or events that have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;

(2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

(3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, governmental agencies, or other recognized experts in the field in the alien is engaged. Such testimonials must be in a form clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence; or

(C) If the criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

The petitioner does not assert, nor does the record establish that the beneficiary has been nominated for or the recipient of significant national or international awards in culinary arts.

Evidence that the alien has performed and will perform services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.

No evidence was submitted in relation to criterion number one. The petitioner did not provide evidence in the form of critical reviews, advertisements, publicity releases, publications, contracts or endorsements to demonstrate that the beneficiary has and will perform as a lead or starring participant in productions that have a distinguished reputation. The beneficiary does not satisfy this criterion.

Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications.

For criterion number two, the petitioner submitted the following:

- In 1980, the beneficiary received an Achievement Award from the Hotel Inter-Continental, Cali, Colombia.
- In 1987, the beneficiary received a certificate of acknowledgement to the Food and Beverage Department for outstanding quality, service and operations in 1986 for the Asia-Pacific-Latin America Division, from the General Manager of the Intercontinental Hotel in Cali. A photograph and brief mention was published in the December-April 1987 edition of *ECOS Del Inter-Cali*. No information was provided about the publication.
- In 1988, the beneficiary was named Chef of the Year by the publication *Revista New Magazzin 73* in Bogotá, Colombia. The petitioner stated, "this award is given only the very best chef, adjudged by distinguished personalities in the industry."
- In 1994, the beneficiary received the Best Presentation trophy at the Culinary Competition in Santo Domingo, Dominican Republic.

This criterion requires that the evidence be in the form of published material. The petitioner submitted evidence for only two of the above four awards as published material, and the petitioner failed to provide circulation information about the publications. The petitioner failed to establish that the beneficiary satisfies this criterion.

Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials.

For criterion number three, the petitioner submitted the following testimonials regarding the beneficiary's past roles:

██████████ Owner, Cafe Chino, Houston, Texas, wrote that the beneficiary "has excelled as an Executive Chef and Food and Beverage Manager for over 20 years in the employ of such significant hotels as Hilton, Sheraton, Intercontinental and others. . . . [The beneficiary] has successfully supervised large staffs, including 250 at [the] Riande Continental Hotel and Casino. He has supervised multiple restaurants and banquet facilities for 3,000 guests."

██████████ Owner of La Colombe D'Or Restaurant, Houston, Texas, wrote that the beneficiary "held a vital position of Executive Chef on an opening team of one [hotel]."

██████████ General Manager, Tony's Restaurant, Houston, Texas, wrote that "[the beneficiary] has worked for significant [high-class] international hotels and resorts . . . where the critical positions of Executive Chef and Food and Beverage Manager are only reserved for chefs of highest ability."

██████████ Owner, China Garden Restaurant, Houston, Texas, wrote: "[the beneficiary] has worked as an Executive Chef and Food and Beverage Manager at such international hotel chains as Hilton Hotels, Sheraton and Intercontinental where [such] positions [the beneficiary] held are given only to world class chefs."

██████████ General Manager, Hotel Almirante, Bogotá, Colombia, wrote in general terms about the role of executive chefs:

The job of an Executive Chef at any large hotel is critical to the hotel's success and reputation among its guests, potential guests and industry critics. The Executive Chef is responsible for the operation of the entire kitchen including the management of staff and resources. The Executive Chef also sets the tone of a hotel's dining experience by creating menus, and organizing theme-specific buffets and banquets.

According to the petitioner's CV, he has held the position of Sous-Chef, Executive Chef, Executive Sous Chef, Food and Beverage Department Director, Production and Service Manager, and Food and Beverage Manager at numerous establishments including International Holiday Inn, Hilton, Sheraton, Concorde, and Intercontinental Hotels.

The petitioner failed to establish that these organizations have a distinguished reputation and that the beneficiary played a critical or starring role for the organizations. It is not enough to assert generalities about Executive Chefs in the hotel industry. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner submitted the following testimonials regarding the petitioner's prospective employment:

██████████ manager of the petitioning organization, wrote that the petitioning organization's accommodations are premier and the cuisine rivals five-star restaurants.

██████████ Vice President of Sales, Kirby Inland Marine, L.P., states that the petitioning organization "has a well-established reputation of high quality" and provides "utmost quality accommodations, dining, hunting and fishing resources."

██████████ Chairman of the Board of Kirby Corporation, wrote that the petitioning organization, The Hollywood Camp, is devoted solely to corporate entertainment for the benefit of Kirby Corporation and its affiliates. He further wrote, "because the purpose of entertainment at The Hollywood Camp is to build meaningful long-term business relationships, the guests' positive experience at the camp is of utmost importance. Therefore, The Hollywood Camp must ensure that all of its services are of the highest quality. A pleasurable dining experience is one of the critical factors that makes a trip to The Hollywood Camp a memorable experience. Therefore, The Hollywood Camp's chef holds a critical position at the camp, crucial to the success and long-term results of the entertainment at the camp which in turn may impact the success of the companies using the camp."

██████████ President of Kirby Inland Marine, L.P., states that the Hollywood Camp distinguished itself for its "remarkably exquisite dining, first-class accommodations, and a company of prominent guests."

In review, the petitioner has submitted four testimonials from individuals either directly or indirectly involved in the petitioning organization and its parent corporation, Kirby Inland Marine, LP. More persuasive

evidence of a distinguished reputation would come from independent sources. The petitioner has failed to establish that it possesses a distinguished reputation.

It is further noted that the petitioner initially indicated on the Form I-129 petition that it intended to hire the beneficiary as a "chef," the petitioner later indicated that it intended to hire the beneficiary as its "executive head chef." A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The petitioner submitted testimonials as evidence to satisfy this criterion. In review, the testimonials do not establish that the beneficiary played a leading or critical role for organizations with a distinguished reputation. The beneficiary does not satisfy this criterion.

Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications.

No evidence was submitted in relation to criterion number four.

Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements.

For criterion number five, the petitioner submitted numerous testimonials. While the testimonials' authors all speak highly of the beneficiary's reputation, and skill, the evidence falls short of establishing that the beneficiary has received significant recognition for his achievements from organizations, critics, government agencies, or other recognized experts in his field.

Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence; or

No evidence was submitted in relation to criterion number six.

The beneficiary fails to satisfy at least three of the criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv). After a careful review of the entire record, it is concluded that the petitioner has not shown that the beneficiary is a person of distinction in the culinary arts as defined in the pertinent regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.