U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

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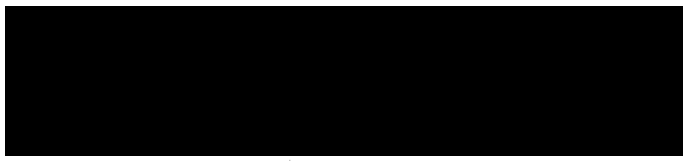
D8

FILE: EAC 04 240 53613 [redacted] Office: VERMONT SERVICE CENTER Date: JUL 13 2005

IN RE: Petitioner: [redacted]
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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Acting Director (Director), Vermont Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification of the beneficiary as an employment-based immigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 101(a)(15)(O)(i), as an alien of extraordinary ability in the arts, in order to employ him as an assistant executive chef for a period of three years. The director determined that the petitioner had not established that the beneficiary qualifies as an alien of extraordinary ability in the arts.

On appeal, counsel asserts that the director failed to follow relevant immigration law, regulations and AAO case decisions in denying the petition.

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 which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions, has a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability.

According to the regulation at 8 C.F.R. § 214.2(o)(3)(ii):

> *Extraordinary ability in the field of arts means distinction.* Distinction means a high level of achievement in the field of 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.

The specific requirements for supporting documents to establish that the alien qualifies as an alien of extraordinary ability in the field of arts are set forth in the regulation at 8 C.F.R. § 214.2(o)(3)(iv). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the alien has achieved distinction in his or her field of endeavor.

This petition, filed on August 23, 2004, seeks to classify the beneficiary as an alien with extraordinary ability as a chef. The beneficiary earned an advanced professional diploma in cooking at the Ecole Ceproc, Paris, France in June 1994. Subsequent to earning a certificate in advanced pastry studies at Ecole Lenôtre, Paris, France in February 1995, the beneficiary was employed as a pastry chef and executive chef in Paris, France and Birmingham, Alabama.

The regulation at 8 C.F.R. § 214.2(o)(3)(iv) indicates that an alien can establish he or she is recognized as being prominent in his or field of endeavor through evidence of a one-time achievement (that is, a significant, nationally or internationally recognized award, such as an Academy Award). Barring the alien's receipt of such an award, the regulation outlines six criteria, at least three of which must be satisfied for an alien to establish the prominent necessary to qualify as an alien of extraordinary ability in the field of arts. The petitioner has submitted evidence that, it claims on appeal, satisfies four of the six criteria. At no point has counsel or the petitioner specifically identified and addressed the regulatory criteria discussed below.

> *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.*

According to the evidence on the record, the beneficiary has been awarded the following:

- First Place Regional Champion in Sugar Sculpture by the International Restaurant and Hotel Management Association in Paris, 1999.
- First Place in Chocolate Sculpture by the Salon du Chocolat in Paris, 1998.
- Gold Medal in Pastry by INTERSUC in Paris, 1997.
- First Place Championship in the French National Dessert Championship in Paris, 1997.
- Finalist in the Lenôtre Pastry Competition, acknowledging the best pastry apprentices by CEPROC Professional School in Paris, 1995.

According to the evidence on the record, the Lenôtre Pastry Competition recognizes the "best pastry apprentices." Student or apprentice awards cannot be considered significant nationally or internationally recognized awards. The evidence on the record is devoid of documentation establishing the significance of any of the above listed awards. The petitioner has failed to establish that the beneficiary satisfies this criterion.

> *Evidence that the alien has performed 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 testimonial.*

The record of proceeding contains several reviews of the beneficiary's prior employers, including Rue de Provence, Birmingham, Alabama; Hotel Meurice, Paris, France; and Hotel Concorde Saint-Lazare, Paris, France. The petitioner submitted a copy of the beneficiary's resume that indicates that the beneficiary was employed as an executive chef for Rue de Provence, Hotel Meurice and Hotel Concord Saint-Lazare. There is no indication as to whether the beneficiary played a lead or starring role for any of his employers.

The petitioner included a review of the petitioner, which was published in the online version of the *Washington Post's* Entertainment Guide. The review is very brief and fails to establish that the petitioning organization has a distinguished reputation.

The petitioner submitted numerous testimonials/evaluations of the beneficiary. The majority of the evaluations specify the authors' authority, and expertise in the field of endeavor. Two evaluations do not identify the authors' authority. [redacted], First Vice Chairman, The James Beard Foundation, is silent as to her credentials to write an evaluation. Similarly, a letter from [redacted] President, Confrerie de la Chaine des Rotisseurs, Greater Washington, DC Chapter, is silent as to his expertise in evaluating chefs. Those which do not specify the authors' expertise cannot be considered. The remaining evaluations are almost identical. While the evaluations authors' attested to the contents of the letters by signing them, the use of identical boilerplate language diminishes the evidentiary value of these letters. Each evaluation is premised upon a review of the beneficiary's credentials, including his education and experience. The evidence fails to establish that the beneficiary has become prominent in his field.

> *Evidence that the alien has received significant recognition for achievements from organizations, critics, governmental 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.*

As evidence that the beneficiary has received significant recognition for achievements from organizations, critics, government agencies or other recognized experts in the field in satisfaction of criterion number five, the petitioner submitted evaluations that list the beneficiary's awards. The petitioner failed to establish the significance of these awards; hence, failed to establish that the beneficiary has received significant recognition for his achievements. The beneficiary does not satisfy this criterion.

> *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.*

According to the Form I-129 petition, the petitioner has offered to pay the beneficiary a $50,000 annual salary. As evidence that the proffered wage may be considered "high," the petitioner submitted prevailing wage information for Executive Chefs. Although the survey submitted indicates that the beneficiary would receive almost twice the prevailing wage for executive chefs in the geographical area of the petitioner, the survey submitted is geographically too restrictive. This criterion must be indicative of national acclaim in the field. The petitioner should have submitted wage survey information for all executive chefs on a nationwide basis. The petitioner should have provided more than just the average (prevailing) wage. To evaluate whether the salary is high, CIS needs to compare it to the median and highest wages offered nationwide to executive chefs. It is noted that counsel asserts, "CIS has consistently acknowledged that a $50,000 annual wage is well in excess of the prevailing wage and is commensurate with a chef who merits O-1 classification." In support of this assertion, counsel submits five Form I-797 receipt notices that he claims were O-1 approvals for chefs earning $50,000 or more. He also submits a December 30, 2002 letter from a prominent chef who advises that the annual salary of $50,000 proffered to the chef of another restaurant is "appropriate for a chef of extraordinary ability." First, counsel has failed to submit evidence that the beneficiaries of the five receipt notices were in fact proffered $50,000 in wages. The assertions of counsel are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Second, the AAO takes administrative notice of the fact that the chef named in the letter was the beneficiary of an unrelated O-1 nonimmigrant petition [redacted] The AAO dismissed the appeal in that case, and specifically found that the $50,000 wage for that beneficiary was not "high in relation to others in the field." The beneficiary in this proceeding does not satisfy this criterion.

Counsel asserts that the petitioner submitted ample evidence establishing that the beneficiary merits O-1 classification, including a consultation from Professor [redacted] Institute of America, which states that the beneficiary is an alien of extraordinary ability in the culinary arts. Consultations are advisory in nature and are not binding on CIS. 8 C.F.R. § 214.2(o)(5)(i)(D).

On appeal, counsel asserts that the facts in the instant case are in line with prior AAO decisions. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

After a careful review of the entire record, including the opinion of Professor the AAO finds that the petitioner has not shown that the beneficiary is a person of extraordinary ability in the culinary arts.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the director's decision will not be disturbed.

ORDER: The appeal is dismissed.