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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**

[REDACTED]

D8

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 22 2010

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker under 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:

[REDACTED]

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 Director, California 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 filed this nonimmigrant petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary ability in the arts. The petitioner, which is self-described as a senior housing community, seeks to employ the beneficiary in the position of Executive Chef. The beneficiary was previously granted O-1 status for employment with a different petitioner and the petitioner now seeks to extend his status for two additional years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary is an alien of extraordinary ability in the culinary arts. The director determined that the petitioner failed to establish that the beneficiary meets the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A), and submitted evidence to satisfy only one of the six evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B), of which three must be met to establish eligibility.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner contends that the beneficiary is "a nationally and internationally recognized acclaimed chef," and relies on previously submitted testimonial evidence from well-known chefs in support of this claim. Counsel further asserts that a Google search for the beneficiary's name returned 2,130 relevant links, and that the evidence submitted in support of the appeal confirms "that the beneficiary is an internationally recognized and acclaimed multi-talented chef in the culinary industry worldwide."

I. The Law

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

Arts includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

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.

The regulation at 8 C.F.R. § 214.2(o)(3)(iv) states, in pertinent part:

Evidentiary criteria for an O-1 alien of extraordinary ability in the arts. To qualify as an alien of extraordinary ability in the field of arts, 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 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 which 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, 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; 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.

Additionally, the regulation at 8 C.F.R. § 214.2(o)(2)(iii) provides:

The evidence submitted with an O petition shall conform to the following:

- (A) Affidavits, contracts, awards, and similar documentation must reflect the nature of the alien's achievement and be executed by an officer or responsible person employed by the institution, firm, establishment, or organization where the work was performed.
- (B) Affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability . . . shall specifically describe the alien's recognition and ability or achievement in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information.

The decision of U.S. Citizenship and Immigration Services (USCIS) in a particular case is dependent upon the quality of the evidence submitted by the petitioner, not just the quantity of the evidence. The mere fact that the petitioner has submitted evidence relating to three of the criteria as required by the regulation does not necessarily establish that the alien is eligible for O-1 classification. 59 Fed Reg at 41820.

In determining the beneficiary's eligibility under these criteria, the AAO will follow a two-part approach set forth in a 2010 decision issued by the U.S. Court of Appeals for the Ninth Circuit. *Kazarian v. USCIS*, 2010 WL 725317 (9th Cir. March 4, 2010). Similar to the regulations governing this nonimmigrant classification, the regulations reviewed by the *Kazarian* court require the petitioner to submit evidence pertaining to at least three out of ten alternative criteria in order to establish a beneficiary's eligibility as an alien with extraordinary ability. *Cf.* 8 C.F.R. § 204.5(h)(3).

Specifically, the *Kazarian* 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 *6 (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 *3.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then, if qualifying under at least three criteria, considered in the context of a final merits determination. The final merits determination

analyzes whether the evidence is consistent with the statutory requirement of "extensive documentation" and the regulatory definition of "extraordinary ability" as "one of that small percentage who have risen to the very top of the field of endeavor."

The AAO finds the *Kazarian* court's two-part approach to be appropriate for evaluating the regulatory criteria set forth for O-1 nonimmigrant petitions for aliens of extraordinary ability at 8 C.F.R. § 214.2(o)(3)(iii), (iv) and (v). Therefore, in reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO 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 *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO reviews appeals on a *de novo* basis).

In the present matter, the petitioner has failed to submit evidence that satisfies three of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B), and has not established that the beneficiary has 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 he is prominent, renowned, leading, or well-known in the field of culinary arts. 8 C.F.R. §§ 214.2(o)(3)(ii).

As a preliminary matter, the AAO notes that the petitioner and counsel have repeatedly addressed the beneficiary's qualifications by referencing the evidentiary criteria applicable to aliens of extraordinary ability in the fields of science, education, business or athletics, pursuant to 8 C.F.R. § 214.2(o)(3)(iii). As the beneficiary's field of expertise and the proposed employment are in the field of culinary arts, the director correctly applied the criteria at 8 C.F.R. § 214.2(o)(3)(iv). Further, the petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that it seeks to classify the beneficiary as an alien of extraordinary ability in the arts.

II. Discussion

A. Facts

The beneficiary in this matter is a native and citizen of France. He received a Certificate of Professional Aptitude as a Chef (Classic Cuisine) from the [REDACTED] France in 1988. The beneficiary indicates in his resume that he completed training at the Hotel West End and served in an apprenticeship under [REDACTED]'s restaurant in France. The beneficiary worked as a chef de partie (sauces and fish) [REDACTED] from 1988 to 1989, and then moved to Israel, where he served as executive chef specializing in French Kosher cuisine for *L'Alhambra*, *L'Entrecote*, and [REDACTED]. Most recently, he was employed as [REDACTED] restaurant located in Las Vegas.

The petitioner seeks to employ the beneficiary as an [REDACTED] for the dining program at [REDACTED], an age-restricted community located in Walnut Creek, California. The petitioner explains that the management of the community wishes to develop a "Kosher Culinary Dining and French kitchen program," as it is home to many residents from Israel, France and other parts of Europe. The beneficiary would be in charge of the kitchen and dining management and staff administration for the new dining program.

B. The Beneficiary's Eligibility under the Evidentiary Criteria

The petitioner claims that the evidence submitted in support of the petition satisfies at least three of the eight evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B) and establishes that the beneficiary is an alien of extraordinary ability in the culinary arts. As discussed above, the evidentiary criteria applicable to beneficiaries working in the field of culinary arts are set forth at 8 C.F.R. § 214.2(o)(3)(iv). In denying the petition, the director determined that the evidence submitted meets only one of these criteria. After careful review of the record, it must be concluded that the petitioner has failed to overcome the grounds for denial.

The AAO emphasizes that submitting evidence to satisfy the evidentiary criteria will not automatically establish eligibility for this visa classification. The mere fact that the petitioner has submitted evidence relating to three of the criteria as required by the regulation does not necessarily establish that the alien is eligible for O-1 classification. 59 Fed Reg 41818, 41820 (August 15, 1994).

If the petitioner establishes through the submission of documentary evidence that the beneficiary has been nominated for or has been the recipient of, significant national or international awards or prizes in the particular field pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. The regulation lists an Academy Award, an Emmy, a Grammy, or a Director's Guild award as examples of qualifying significant awards or prizes. The petitioner indicates that the [REDACTED] is equivalent to these awards in the field of culinary arts. However, the petitioner does not claim that the beneficiary qualifies for O-1 classification on the basis of his nomination for or receipt of such an award.

Accordingly, the petitioner must establish the beneficiary's eligibility under at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B). The AAO will address each of these criteria below.

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.

The petitioner does not specifically address this criterion, but instead claims that the beneficiary "has been employed in a critical or essential capacity for organizations and establishments which have a distinguished reputation," pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). The AAO notes that the petitioner's claims and the testimonial evidence submitted in this regard relate to the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3), which requires evidence that the beneficiary has performed and will perform in a lead, starring or critical role for organizations and establishments that have a distinguished reputation.

The plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1) requires that the petitioner identify with specificity the *productions or events* in which the beneficiary performed services in a lead or starring capacity, document the distinguished reputation of such productions or events, and provide evidence of the beneficiary's role in such events in the form of critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.

The petitioner has not documented the beneficiary's role as a lead or starring participant in "*productions or events*" through submission of the required supporting evidence. The AAO notes that one of the individuals who provided expert testimony in support of the petition, [REDACTED], states that the beneficiary "has prepared kosher food for many famous persons and presidents of many countries." However, testimonial

evidence cannot be used to satisfy this criterion. Regardless, [REDACTED] did not identify a specific production or event in which the beneficiary served as a lead or starring participant.

With the exception of the uncorroborated claims made in [REDACTED] letter, the petitioner has primarily sought to establish the distinguished reputation of the organizations and establishments that have employed the beneficiary in the past, rather than establishing his role in specific productions or events. Such claims will be considered under the relevant criterion below.

In addition, the petitioner has not provided evidence that the beneficiary *will perform* services as a lead or starring participant in productions or events which have a distinguished reputation. The beneficiary has been offered employment as the executive chef of the dining program at a senior living community. The petitioner has not identified the beneficiary's involvement in specific productions or events with a distinguished reputation as part of his proposed job responsibilities. As such, the AAO concurs with the director's conclusion that the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1) has not been met.

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

The director determined that the petitioner did not submit evidence to meet the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2), noting that "no published materials by or about the beneficiary in major newspapers, magazines, trade journals or other publications were submitted."

Upon review, the AAO notes that the petitioner did submit three published reviews of the Israeli restaurant [REDACTED] where the beneficiary served as Executive Chef from 1991 to 1996. One review, titled [REDACTED] according to all the rules of the ritual," was published on the Israeli website *Restaurants On Line*. The favorable review refers to the beneficiary as "the renowned French chef." The petitioner provided another review titled [REDACTED] but the source of the article was not provided. The favorable review identifies the beneficiary as one of two chefs at [REDACTED]. A third review of [REDACTED] also appears to have been published on the *Restaurants On Line* web site. The article simply mentions that the beneficiary is the restaurant's chef.

The petitioner also submitted a review of the restaurant [REDACTED] where the beneficiary worked from 1996 to 1998. The review is favorable and mentions that "it is a kosher restaurant under the supervision of the Tel Aviv Rabbinate and under the expertise of the French chef [REDACTED]." The AAO notes that while the four preceding reviews were submitted with an English translation of the original Hebrew text, pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The translations submitted by the petitioner are not accompanied by such certifications.

The petitioner submitted a copy of an online profile of [REDACTED] from <http://www.usmenuguide.com>, which identifies the beneficiary as a chef who has been "trained by some of France and Israel's masters," and states that he "exhibits an extensive knowledge of French cuisine as well as a

healthy approach to modern cooking." This evidence appears to be an online advertisement for the restaurant, rather than a review or article.

Finally, the petitioner submitted an article titled [REDACTED] which appears to have been published in the "Dining Out" section of a magazine. The name of the magazine and the date of publication were not provided. The article discusses the [REDACTED] and the French Kosher cuisine served there, and includes an interview with the restaurant's owner. The article also contains a quote from the beneficiary and includes the following mention of him:

[The beneficiary] . . . a French native of Jewish faith and tradition, attended culinary school in Nice, France. He developed his culinary skills at top restaurants and from working with world renowned master French chef [REDACTED] of France. [The beneficiary] learned to cook in accordance with kosher dietary laws at well-known dining venues including [REDACTED] all in Israel.

On appeal, counsel asserts that "from the Google Search we can find many related links about [the beneficiary]. The petitioner submits "results 1-10 of about 2,130" derived from a Google search of the beneficiary's name. The petitioner did not provide copies of any articles. It is the petitioner's burden to establish eligibility for the benefit sought by submitting documentary evidence relevant to the evidentiary criteria. Section 291 of the Act, 8 U.S.C. § 1361. The AAO will not conduct a Google search to determine whether there are published articles about the beneficiary available on the Internet that meet the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2).

The AAO notes that the results of the search conducted by the petitioner appear to include a review of the [REDACTED] published by the *Las Vegas Review-Journal*, and a reference to the beneficiary on the website [REDACTED] published on January 20, 2010, subsequent to the filing of the petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The remaining results include a Facebook page, a LinkedIn page, a public profile on Plaxo, a help wanted ad, a review that was previously submitted, and an un-translated French website. Based on this minimal evidence, it does not appear that there are, in fact, more than 2,000 articles about the beneficiary on the Internet.

Upon review, the AAO finds all of the above-referenced evidence deficient for several reasons. First, the AAO cannot find that a review of a restaurant that mentions the name of the restaurant's executive chef in passing provides evidence that the mentioned chef has achieved "national or international recognition for achievements" as required by the plain language of the regulations. Furthermore, the AAO cannot find that such restaurant reviews are "about" the chef. Rather, the reviews are about the restaurant and the overall dining experience. It is reasonable to believe that the executive chef of any fine dining restaurant would be able to submit evidence that his or her name has appeared in reviews of the restaurant. A favorable restaurant review, in and of itself, does not qualify as "recognition for achievements," in the same way, for example, that a profile of a chef in a national food magazine or major newspaper would. A favorable restaurant review establishes that the beneficiary successfully performs his duties as an executive chef but does not necessarily establish national or international recognition.

Second, even if the submitted reviews could be considered "recognition for achievements," the petitioner has not provided the evidence needed for the AAO to determine whether any of the submitted articles have appeared in major publications, as required by the plain language of the regulations. Without such evidence, the AAO cannot conclude that publication of a review is one which would garner the beneficiary "national or international recognition." As noted above, while it appears that one of the submitted articles was published in a magazine, the name of the magazine, the date of publication, and the magazine's circulation figures were not provided. Similarly, the petitioner has not demonstrated that the publication of a review on the websites "U.S. Menu Guide" or "Restaurants On Line" is equivalent to publication of a review in a major newspaper, magazine or trade journal. While the regulation allows the petitioner to submit evidence in the form of "other publications," the petitioner still has the burden of establishing that the publication is "major." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Therefore, while the AAO disagrees with the director that "no evidence" was submitted that pertains to the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2), we concur that this criterion has not been met.

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.

As discussed above, the petitioner has not specifically addressed this or any other criterion applicable to aliens of extraordinary ability in the arts, but does claim that the beneficiary meets the similar criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7), applicable to aliens of extraordinary ability in the fields of science, business, education or athletics.

The director determined that no evidence was submitted to satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3). As with the previous criterion, the AAO disagrees that "no evidence" was submitted. The record shows that the beneficiary has held the position of executive chef for at least two Israeli establishments, namely, [REDACTED]. He also served as executive chef for the Las Vegas-based [REDACTED]. [REDACTED] The position of executive chef is considered a critical role within a restaurant or catering business. Therefore, if the petitioner submits evidence demonstrating that at least one of the organizations that employed the beneficiary has a distinguished reputation, then it will have met its burden to establish that the beneficiary's previous employment meets this criterion. The AAO notes that the petitioner has submitted evidence pertaining to the distinguished reputation of the Michelin-star rated French restaurants [REDACTED] where the beneficiary worked early in his culinary career. However, the record does not establish that his roles with these organizations, as apprentice and chef de partie (sauces and fish), respectively, were "critical" roles. In order to establish that the petitioner performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

The plain language of the regulation requires that the petitioner submit articles in newspapers, trade journals, publications or testimonials to meet its burden to establish that the beneficiary has performed in a critical role for organizations and establishments that have a distinguished reputation. The petitioner has submitted reviews for

the above-named restaurants. However, as discussed above, the AAO has found them deficient to demonstrate that the beneficiary has received national or international recognition for his achievements. Based on the same deficiencies discussed above, the AAO finds the reviews alone insufficient to establish that one or more of the restaurants that have employed the beneficiary as executive chef have a distinguished reputation.

The petitioner has submitted several testimonials in support of the petition, some of which specifically address the reputation of the beneficiary's former employers. In a letter dated January 21, 2010, [REDACTED] provides an outline of the beneficiary's employment history from 1988 to 2008, and states that "all of the above [restaurants] are the famous and top restaurants in the world."

[REDACTED], states that he credits the beneficiary with "earning the restaurant [REDACTED] wonderful praise and acclaim throughout the industry."

Any worldly experienced chef would be impressed by [REDACTED] past work at [REDACTED] the French Riviera as well as [REDACTED]. I have an appreciation for [REDACTED] accomplishments as I understand the high standards and reputation that the Alhambra name brings and [the beneficiary's] talents in the kitchen are a testament to the standards of excellence that are in place in the [REDACTED] organization. It is important that a chef challenge himself to learn from the best early in his career; and [the beneficiary] has done so by demonstrating extraordinary talent and creativity in kitchens throughout France and Israel.

[REDACTED], editor and publisher of [REDACTED] magazine, states that the beneficiary worked "under renowned [REDACTED] at [REDACTED] and then became Executive Chef at [REDACTED] where he came to my attention with his refined fine dining Kosher creations."

As noted above, the petitioner also submitted a letter from J [REDACTED] currently executive chef of [REDACTED] in Las Vegas, who states:

[The beneficiary] brought benefits everywhere that he worked. Those restaurants' financial performance improved because of [the beneficiary's] extraordinary talents and technique in the culinary art. For example, the revenue of [REDACTED] [sic] in Tel Aviv, Israel increased to \$1.2 million after [the beneficiary] joined the chef's team. He is a reputable chef in the Kosher Food in the Las Vegas culinary field. Every one knows that Las Vegas has the most preeminent chefs in the worlds [sic]. . . .

Recently [the beneficiary] is working with [the petitioner] in Walnut Creek, California, a high-class senior house with a nice restaurant. The most residents are Jewish native people who lived in the U.S. many years. However they still prefer to have kosher food, if possible the Kosher French cuisine. The management team tried hard to find a quality chef in kosher food.

Finally, the petitioner submitted a letter from [REDACTED], owner of [REDACTED] who states:

[The beneficiary] has been employed in several famous restaurants in the past, for example, [redacted] Catering, the [redacted] restaurant in [redacted] Yafo, Israel, [redacted] [sic], Hotel [redacted] Nice France, and etc. He also worked as the executive chef with [redacted] in Las Vegas, NV.

The AAO finds this expert testimony sufficient to establish that the [redacted] restaurants [redacted] and [redacted] enjoy a distinguished reputation.

In order to meet this criterion, however, the petitioner must also establish that the beneficiary "will perform in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation." 8 C.F.R. § 214.2(o)(3)(iv)(B)(3). While the AAO acknowledges that the beneficiary has been offered the critical role of Executive Chef, the petitioner has not provided evidence in the form of articles in major newspapers, trade journals or other publications to demonstrate that the dining program at The Heritage Point senior living community has a distinguished reputation. [redacted] states that the petitioning company operates a "nice restaurant." This testimonial evidence is insufficient to establish that the beneficiary would be serving in a critical role for an organization or establishment that has a distinguished reputation.

Counsel for the petitioner addressed the reputation of the petitioner's establishment in a letter dated April 12, 2010, submitted in response to the director's request for evidence:

Please be informed that the Heritage Senior House is not a famous restaurant, but it is a famous retirement house in the United States. Senior people living there request a higher standard of the life quality. Most of residents are European native and Jewish native people. They are looking for a right chef for several years.

Counsel concedes that the beneficiary has not been offered employment with a "famous restaurant" and offers no documentary evidence in support of his claim that the beneficiary will be managing the restaurant and dining program of a "famous retirement house." Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The only documentary evidence submitted with respect to the petitioner includes copies of menus from the petitioner's restaurants, photographs of food prepared by the beneficiary, and an excerpt from the website of The Heritage Pointe, confirming that it advertises itself as a "premier active senior resort." Contrary to counsel's claims, the evidence submitted does not establish the petitioner's distinguished reputation in the culinary arts.

Accordingly, the petitioner has not submitted evidence to satisfy each part of the plain language of this regulatory 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.

The director determined that the petitioner failed to submit any evidence to meet this criterion and the AAO notes that counsel raises no specific objection to this finding on appeal. Upon review of the record, the petitioner has not submitted any published evidence of the beneficiary's commercial or critically acclaimed successes or occupational achievements, and thus has not established that the beneficiary can meet the criterion at 8 C.F.R. 214.2(o)(3)(iv)(B)(4).

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.

The director determined that the testimonial evidence in the record satisfies this criterion. The AAO concurs with this finding. [REDACTED] states that the beneficiary "is a pioneering chef with [REDACTED] as most of the French chefs do not prepare the food the kosher system and most of the kosher chefs do not prepare kosher food in French recipes." He recognizes the beneficiary as "one of those very few chefs in the world who are able to provide such kind of cuisine." [REDACTED] also recognizes the beneficiary as "a prominent chef with French cuisine in kosher in Israel, Europe and now in the United States," and states that the beneficiary "played a leading role in French cuisine in the Kosher system," and "made great contributions to the combination of Kosher French cuisine." [REDACTED] states that the beneficiary "has made great contribution to the [REDACTED] industry" and is "recognized as one of the greatest Kosher Chefs." Finally, [REDACTED] states that the beneficiary "has made extreme contributions to Middle Eastern, French and Kosher culinary arts," and "is recognized as a top chef in Kosher Fine-Dining art."

All of these chefs appear to have sufficient knowledge of the beneficiary's employment history and possess the required expertise to render their independent expert opinions. Therefore, the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5) has been met.

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

The petitioner has offered the beneficiary an annual salary of \$50,000. According to petitioner's counsel, this salary is "much higher than the regular chefs." The petitioner offered no evidence pertaining to the salaries the beneficiary has received as compensation for any prior position with other employers.

In denying the petition, the director acknowledged the proffered salary and observed that the petitioner failed to submit evidence that it represents "significantly high remuneration for services compared to others in the field." The director further noted that, upon review of sites and publications which indicate earnings for chefs and top chefs, it appears that the beneficiary is being offered a salary that is below average for an executive chef employed in California. The petitioner has not objected to the director's finding or otherwise addressed this criterion on appeal.

Upon review, the AAO concurs with the director's determination that the petitioner has not met its burden to establish that the beneficiary's salary is high in relation to others in the field. The petitioner's claim was based

entirely on counsel's assertion that this salary is "higher than the other chefs." Again, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, the petitioner has failed to meet its burden to establish that \$50,000 is a high salary in relation to that offered to other executive chefs.

However, we will withdraw the director's conclusion that the beneficiary's proffered salary is "below average for an executive chef employed in California." The director failed to cite the specific source of the information that served as a basis for this conclusion and has not incorporated such information into the record of proceeding. When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i).

B. Final Merits Determination

sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. However, as discussed above, the petitioner established eligibility for only one of the criteria, of which three are required under the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B).

Notwithstanding the above, a final merits determination considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) that the beneficiary has 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 he is renowned, leading, or well-known in the field of arts, pursuant to 8 C.F.R. § 214.2(o)(3)(ii); and (2) that the beneficiary is recognized as being prominent in his field, pursuant to 8 C.F.R. § 214.2(o)(3)(iv). *See Kazarian*, 2010 WL 725317 at *3.

In this case, we concur with the director's finding that the petitioner has not established that the beneficiary is prominent to the extent that he could be considered renowned, leading or well-known in the field of culinary arts.

The specific deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B). The petitioner submitted documentation relating to the beneficiary's education, employment history, and achievements. Although the petitioner's evidence meets one of the six criteria, the submitted evidence is not indicative of the beneficiary's prominence in the field and there is no indication that his individual achievements have been recognized to the extent that he is leading, renowned or well-known in the field.

The beneficiary has worked with and garnered the respect of chefs who are nationally and internationally recognized and he has worked in establishments that have a distinguished reputation. However, this classification focuses on the beneficiary's individual achievements and recognition within the field. The petitioner has provided little evidence of such recognition beyond providing testimonial evidence from other chefs and from the beneficiary's prior employers.

On appeal, counsel for the petitioner relies primarily on the opinions of to support the proposition that the beneficiary is "a nationally and internationally recognized and

acclaimed chef." The opinions of these chefs were taken into consideration, and both the director and the AAO have determined that their testimonial evidence is sufficient to satisfy the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5). However, the petitioner cannot rely primarily on such letters to establish the beneficiary's eligibility for this classification.

The favorable opinions of experts in the field, while not without evidentiary weight, are not a solid basis for a successful extraordinary ability claim.¹ Unusual in its specificity, section 101(a)(15)(O)(i) of the Act clearly requires "extensive documentation" of the alien's achievements. Again, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. However, 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. at 500, n.2. Even when written by independent experts, letters solicited by an alien in support of a nonimmigrant petition are of less weight than preexisting, independent evidence of recognition in the field.

The AAO emphasizes that four out of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B) require the petitioner to submit various types of published materials to establish the beneficiary's recognition, such as critical reviews, advertisements, publicity releases, newspaper, magazine or trade journal articles. Therefore, it is significant that the petitioner has submitted little published evidence regarding the beneficiary with the exception of several restaurant reviews. Absent evidence that the regulatory criteria are not applicable to the beneficiary's occupation, pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(C), the petitioner must submit some published materials "about" the beneficiary in order to establish his eligibility for this classification. It is not reasonable to include the beneficiary among the group of chefs recognized in the field as leading, renowned or well-known if the petitioner does not establish that he has received some form of independent recognition based on his reputation or achievements.

Therefore, the conclusion we reach by considering each evidentiary criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the beneficiary

¹ Letters may generally be divided into two types of testimonial evidence: expert opinion evidence and written testimonial evidence. Opinion testimony is based on one's well-qualified belief or idea, rather than direct knowledge of the facts at issue. *Black's Law Dictionary* 1515 (8th Ed. 2007) (defining "opinion testimony"). Written testimonial evidence, on the other hand, is testimony about whether something occurred or did not occur, based on the witness' direct personal knowledge. *Id.* (defining "written testimony"); *see also id.* at 1514 (defining "affirmative testimony").

Depending on the specificity, detail, or credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

as a chef who has achieved a level of distinction to the extent that he can be deemed to be renowned, leading, or well-known in the field of culinary arts. 8 C.F.R. § 214.2(o)(3)(ii). Based on the evidence submitted, it can be concluded that the beneficiary has had his food favorably reviewed in several publications of unknown circulation and has garnered the respect of his peers in the culinary field, particularly due to his unusual specialization in Kosher French cuisine. By contrast, [REDACTED] have been selected for appearances on Food Network television shows such as [REDACTED] and appear to be substantially more prominent in the culinary field. While the evidence may distinguish the beneficiary from other executive chefs with a shorter or less distinguished employment history, or those with a less unique culinary specialty, the petitioner must establish that the beneficiary is recognized based on his own reputation as leading, renowned or well-known in the culinary field.

Nothing in the decision of the AAO should be seen as an attempt to minimize the accomplishments or obvious talent of the beneficiary or as a comment on the criteria used by the petitioner to select persons for positions. Further, the AAO once again emphasizes that the petitioner sought to establish the beneficiary's eligibility by addressing the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B), rather than the relevant criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B), and many of its claims simply failed on an evidentiary basis.

III. Prior Approval and Conclusion

The record does show that the beneficiary held O-1 status authorizing employment with a different petitioner at the time the petition was filed. The prior approval does not preclude USCIS from denying an extension and amendment of the original visa petition based on a reassessment of the beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii).

In the present matter, the director reviewed the record of proceeding and concluded that the beneficiary was ineligible for O-1 classification for employment with the instant petitioner. In both the request for evidence and the notice of decision, the director clearly articulated the objective statutory and regulatory requirements and applied them to the case at hand. 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. 1988). Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof. See section 291 of the Act.

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.