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U.S. Department of Justice  
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D. C. 20536

**Public Copy**

[Redacted]

File: WAC-98-248-51706

Office: California Service Center

Date: **JUL 12 2001**

IN RE: Petitioner:  
Beneficiary:

[Redacted]

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

[Redacted]

*Identifying data deleted to prevent clearly unwarranted invasion of personal privacy*

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Robert P. Wiemann*  
Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner, Varian Associates, Inc., is a diversified electronics design, manufacturing, and marketing company. It seeks to classify the beneficiary 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 sciences. The director determined the petitioner had not established that the beneficiary has earned the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available ... to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as a scientist. The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to

qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, he claims, meets the following criteria.

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

In support of the petition and again on appeal, counsel asserts that the beneficiary received Upper Second Honors upon graduation from the University of London and that he received the Holloway College Honours for graduating in the top 5 percent of candidates in Physics. Awards based on scholastic achievement are not awards in a field of endeavor. University study is not a field of endeavor, but is training for future employment in a field of endeavor. In addition, the beneficiary only competed against other students; experienced individuals at the top of their field were not considered. Thus, the honors earned by the beneficiary do not indicate that he was or is at the top of his field.

*Published materials 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.*

In support of the petition and again on appeal, counsel asserts that the beneficiary has garnered the attention of the general media and of scholarly journals. In support of the petition, the petitioner submitted a press release regarding Intensity Modulated Radiation Therapy (IMRT) by Varian, the petitioner and current employer of the beneficiary; proceedings for a Varian User's Meeting in 1995 including articles by [REDACTED] and [REDACTED] regarding VARiS, a system developed by the beneficiary's team at Varian; Varian newsletters; an internet article from [www.newspage.com](http://www.newspage.com) regarding VARiS which appears to be the publication of a Varian press release;<sup>1</sup> and an article in Seminars in Radiation Oncology regarding information systems which references VARiS only to note that Impac is a better system but that the new version of VARiS negates some of the advantages of Impac over VARiS.

None of these articles reference the beneficiary specifically. That the articles are either about or simply mention a system developed by the petitioner does not amount to media attention regarding the beneficiary personally. An individual reading any of these articles who had not heard of the beneficiary would still not know who he was after reading the articles. Moreover, as stated above, the only article submitted as evidence of media attention outside of the industry is an article based on a press release by Varian. The petitioner cannot establish this criterion by issuing its own press release. Nor is it clear that [newspage.com](http://www.newspage.com) constitutes a major media publication. The article in Seminars in Radiation Oncology is not an article about the beneficiary, or even solely about VARiS. As stated above, the article only mentions VARiS as a comparison of several similar

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<sup>1</sup> The article concludes with general information regarding Varian and states, "Press announcements and other information about Varian are available on the Internet . . . CONTACT: Varian Associates." The copyright information indicates the article is a "business wire."

systems. Thus, the petitioner has not demonstrated that the beneficiary has attracted any media attention.

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

In support of the petition and on appeal, counsel asserts that the beneficiary:

was instrumental in the development of Nuclear Wholebody Scanner for worldwide medical industry. . . ; successfully led an engineering team to create and implement configuration and documentation for a cutting-edge startup which now manufactures the worldwide standard for avionics and flight simulation; and is in the process of managing product development of a critical new system for the oncology industry for the world's largest supplier of such products.

The petitioner submitted reference letters from individuals who worked with the beneficiary at Varian and General Electric as well as a letter from the beneficiary's mentor in school who requested the beneficiary's assistance when starting up his own aviation simulator company.

Regarding the beneficiary's involvement with nuclear scanners, Janet Burki, Director-Technical Services, at General Electric Railcar Services, states:

I first met [the beneficiary] in September 1993, when he was the Development Program Manager for GE Medical Systems' UK branch. We worked together on the nuclear scanner project, with [the beneficiary] acting as lead systems integrator and program manager. This product development was global in nature, and its success turned on the coordination of US and UK facilities. [The beneficiary's] extraordinary leadership, management skills, and technical knowledge were instrumental to the project's successful completion.

The petitioner also submitted promotional material for the GE nuclear scanners. While the beneficiary's management may have benefited GE's nuclear scanner project, the record does not establish that the beneficiary made a significant contribution to the field of product development by working on this project. While the beneficiary's technical ability was clearly an asset to manage the project, there is no evidence that the beneficiary designed the final product. The record lacks evidence that GE's nuclear scanners are innovative and a major contribution to nuclear scanning or that the beneficiary is primarily responsible for any innovative elements of the scanner.

Regarding the beneficiary's work on the information system VARiS [REDACTED] Senior Human Resources Manager for Varian, states:

For the past three years [the beneficiary] has led a team of twenty leading edge software engineers in the development of VARiS. During this period, the team has delivered four major software releases containing products which allow patients to be treated more efficiently and with greater accuracy than ever before. This has

directly resulted in increased lifespan of the patients treated by the system.

Tari Vickery, Chief Operating Officer at Joint Systems, states:

At Varian, [the beneficiary] was specifically selected to head a team of 30 of Varian's most talented engineers to launch an entirely new Information Systems (IS) technology product line. Varian hired me in March 1997 as a Consultant to assist in developing an organizational structure for [the beneficiary]. The resulting product, VARiS, is a revolutionary information management system that integrates the data required at every stage of cancer treatment – from diagnostic imaging through treatment planning to final treatment delivery. The final product allows physicians to treat cancer patients more effectively than ever before, while simultaneously reducing patient treatment time. This fully integrated solution is the first of its kind in the industry; at present, no other vendors can offer such a sophisticated oncology management system.

It can be expected that if the beneficiary had truly made a major contribution to information systems technology letters would be available from major hospitals around the United States attesting to this claim. The only information regarding VARiS from a source other than Varian is the 1997 article in Seminars in Oncology which compares several information systems, including VARiS, stating:

With this type of data, the informal consensus is that Impac currently has an advantage over its group 1 rival, VARiS, as well as all other group 2 vendors. These differences are shrinking rapidly, however.

This article fails to support [redacted] assertion that VARiS was the first of its kind or that no other vendors can offer such a sophisticated system. The newpage.com article contains quotes from Emory Clinic in Atlanta. As discussed above in footnote 1, however, the article appears to be a press release by Varian. Moreover, while the article discusses the benefits of using an information system such as VARiS, the article does not indicate that VARiS is unique among information systems.

Regarding the beneficiary's alleged contribution to product development in avionics, Robert Butterfield, Founder and Chief Technical Officer of Advanced Simulation Technical, Inc., states:

My professional association with [the beneficiary] began in 1990, when I founded my own company – the aforementioned ASTI. This effort required me to gather the input and expertise of the "creme de la creme" in the engineering and development field to ensure that this formidable endeavor could be successfully accomplished. I was fortuitous [sic] enough to have [the beneficiary] consult with ASTI at its inception as Engineering Manager.

[The beneficiary's] challenge was to lead his team in creating an engineering management configuration and implementing a documentation structure of his own

design. This task was not only essential to my company's ability to roll-out the company's initial customer shipments, but the rapidity with which this project had to be executed was a prerequisite for its ultimate success. His ability to drive the timely delivery of our very first shipment was the key to our success and subsequent growth in this market.

While the petitioner provided information regarding ASTI in general, the petitioner provided no evidence of the significance of the beneficiary's designs for that company. As such, the record does not establish that the beneficiary's work for ASTI led to a contribution of major significance to the field of product development.

In light of the above, the record does not support the petitioner's claim that the beneficiary has made significant contributions to the field of product development.

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

In support of the petition and on appeal, counsel asserts that the beneficiary held leadership roles in "distinguished companies," such as Varian Associates, Inc., Advanced Simulation Technology, Inc., and General Electric Medical Equipment.

As evidence of the beneficiary's leadership roles, the petitioner submitted the letters discussed and quoted above.

The letters indicate only that the beneficiary has managed and supervised teams within larger companies. The record does not reflect that the beneficiary has had a leadership role within the companies as a whole. For example, the beneficiary served as the Product Development Manager for the UK Medical Services branch of GE. The beneficiary did not perform in a leadership capacity for GE itself, and the petitioner has not shown that this particular subdivision of GE represents a distinguished establishment in its own right. Moreover, the term "leading role" implies more than simply serving as a first line supervisor of a product development team. Again, with Varian, the beneficiary merely managed the Information Systems branch of the company. There is no evidence the beneficiary held a leadership position within Varian's top corporate structure.

Finally, even if we accepted that the beneficiary played a significant role in the upstart of ASTI, there is no evidence that it was already a "distinguished organization" at its inception or that it became one during the beneficiary's tenure there. In light of the above, the petitioner has not demonstrated that the beneficiary meets this criterion.

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

In support of the petition and on appeal, counsel asserts that the beneficiary is one of the highest paid individuals in his field, with an annual salary of \$103,688 in addition to stock options.

Counsel refers to a chart which indicates that the salary for software design supervisors with 18 years of experience (the highest level provided) is between \$75,273 and \$115,358, with a mean of \$90,690. That the beneficiary received a higher salary than the mean does not necessarily imply that he is at the very top of his field. The beneficiary received well below the maximum. That the beneficiary also received stock options is not significant as it is not uncommon for companies, especially technical companies, to provide their employees with stock options in addition to salary. Furthermore, the petitioner must establish that the beneficiary commands a high salary among all others in his field, not just those with the same number of years of experience. Thus, the petitioner has not demonstrated that beneficiary meets this criterion.

The director denied the petition on March 7, 2000, without having issued a request for additional evidence. On appeal, counsel asserts that, according to 8 C.F.R. 103.2(b)(8), the director does not have the discretion to issue a denial without first requesting evidence which might address any deficiencies. Counsel has not supported this argument, however, by providing additional evidence which the petitioner would have submitted. Moreover, the director did not conclude that evidence was missing, but that the evidence submitted did not establish the beneficiary's eligibility.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the beneficiary has distinguished himself as a scientist to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the beneficiary shows talent as a product developer, but is not persuasive that the beneficiary's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.