



B2

U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[Redacted]

File: [Redacted] Office: Nebraska Service Center

Date: 08 FEB 2002

IN RE: Petitioner: [Redacted]  
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]

Public Copy

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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, Director  
Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established 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). These 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, filed on July 27, 1999, seeks to classify the petitioner as an alien with extraordinary ability as a researcher of jet engine technology. The self-petitioning alien received a doctoral degree in mechanical engineering from Ohio State University in 1996. Initially, under Part 2 of the petition, the alien indicated that he was seeking classification as an outstanding professor or researcher. The Service regulation at 8 C.F.R. 204.5(i)(1) states that "any United States employer desiring and intending to employ a professor or researcher who is outstanding in an academic field under section 203(b)(1)(B) of the Act may file an I-140 petition for such classification." This classification requires the prospective employer to file the petition, thus

rendering a self-petitioning alien ineligible. On July 27, 2000, in response to the director's request for evidence, the petitioner notified the Service that he was seeking classification pursuant to section 203(b)(1)(A) of the Act as an alien of extraordinary ability.

The director denied the petition on August 18, 2000, acknowledging the petitioner's noteworthy achievements, but stating that the "evidence does not establish that he has achieved, at this time, the sustained national or international acclaim required for classification as an alien with extraordinary ability."

On appeal, counsel reiterates the petitioner's qualifications and claims the director's decision was "result-oriented." Counsel contends the director "ignored evidence regarding qualification, and applied non-existent legal standards." The petitioner submits additional evidence in support of the appeal which will be addressed along with the initial evidence accompanying the petition.

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

*Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

On appeal, counsel states: "[The petitioner] has been asked to review two papers submitted to the American Society of Mechanical Engineer's *Journal of Manufacturing Science and Engineering*." The petitioner submits two separate letters from [REDACTED] Associate Technical Editor of the *Journal of Manufacturing Science and Engineering*, requesting the petitioner's assistance in evaluating manuscripts submitted to the journal for publication. The record does not indicate how many other individuals were selected to perform the evaluations and the criteria used to select the reviewers.

Counsel argues: "The [director's] standard requiring 'the criteria used for his selection as a reviewer' has no basis in law. This basis is found at 8 C.F.R. 204.5(h)(3) which states: "A petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must reflect these requirements. If hundreds of professors and researchers from various other institutions were also asked to evaluate these manuscripts, the petitioner's participation in the project would fail to demonstrate his national acclaim or an achievement indicative of performing at the top of his field. The petitioner has not submitted evidence under this criterion to set himself apart from other colleagues in the field. Support of this argument is offered by both letters which state: "If you cannot complete the review within the prescribed

period, kindly pass this material on to one of your qualified colleagues, or send it back to the undersigned by return mail." This would seem to suggest that any of the petitioner's "qualified colleagues" at Ohio State University could also conduct these evaluations. Therefore, the petitioner's alleged participation as an evaluator does not seem to carry sufficient weight to reflect achievement at the top of his field.

It should also be noted that this criterion requires "evidence of the alien's participation" as a judge of the works of others. While the petitioner has submitted evidence he was "asked to review" the papers, there is no evidence to demonstrate that he actually completed the reviews. Simply being "asked to review" a paper is not demonstrative of actual participation as a judge of the work of others in one's field. Nothing has been submitted from the *Journal of Manufacturing Science and Engineering* to acknowledge that the petitioner completed the reviews and returned the evaluation forms. Nor has the petitioner proven that the manuscripts were not simply passed on to one of his qualified colleagues as per the instructions given in the letters. Thus, it remains unclear that the petitioner has sustained national or international acclaim through his alleged participation in the evaluation of only two manuscripts.

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

Counsel describes the petitioner's work:

[The petitioner's] research involves turbine jet engine technology, especially the use of a friction damper to reduce turbine blade vibration, and the development of computer technology used as an analytical tool for the friction damper design. The reduction of vibration of the turbine blade has vastly significant benefits.

[REDACTED] of the Coordinate Metrology and Measurement Laboratory at Ohio State University states:

[The petitioner] joined my research group in June 1990 as a graduate student and research assistant. He took part in many of our research projects sponsored by the National Science Foundation, the Air Force, and several leading jet engine companies. Particularly, started [sic] from 1992, [the petitioner] and I have had a research contract with the GUIde Consortium. The GUIde Consortium is a joint effort of the U.S. Government, University, and Industrial community [sic]. The Consortium provides a structure through which government agencies, industry, and universities can contribute to a coordinated research program in the area of blade vibration in jet engines. In this capacity, [the petitioner] has had the opportunity to interact with researchers from the Air Force, the Naval [sic], and jet engine companies. [The petitioner] graduated from Ohio State with a Ph.D. degree in December 1996 and he rejoined our research group in February 1998. Over the past five years, he has been investigating the contact kinematics of the friction interface and its influence on

the dynamic behavior of the frictionally constrained mechanical structure for the GUIde Consortium.

[The petitioner] exhibited very high level [sic] of research ability. He had done exciting [sic] research in the area of blade vibration. His research was top quality work, innovative and solid. It resulted in seven journal publications on related, but distinct, subjects. In particular, he developed a friction interface theory, which led to several friction force models for various friction interface configurations. In addition to developing theories for predicting blade vibration, his effort has also led to the development of a state-of-the-art computational design tool, named BDAMPER. In the past, jet engine companies have relied on experimental testing to evaluate their designs. This process is important since excessive vibration of turbine blade [sic] can lead aircraft engines to catastrophic failure if they are not properly designed. However, experimental testing is very expensive and time-consuming. By using the design tools that [the petitioner] is developing, the number of experimental tests and redesigns that is necessary for the design and manufacture of a durable engine can be significantly reduced. In other words, [the petitioner's] effort will help reduce engine production costs, improve engine reliability, and consequently will help maintain U.S. industry's leadership in jet engine technology.

[The petitioner's] research is definitely in the national interest of the United States. He has an excellent background in the areas of turbine blade vibration and structural dynamics and has the capability and sincerity to do innovative research and development. I expect that in a long run [sic] the payoff of his continuing work in the U.S. will be great to all Americans.

[REDACTED] of the GUIde Consortium, states:

I am familiar with [the petitioner's] work through a five-year project funded by the GUIde consortium from 1992 to 1996. The goal of that project is to characterize the contact kinematics of friction interfaces and to develop the necessary friction force models for various friction interface configurations. In this study, [the petitioner] developed a friction interface theory, which led to several friction force models. Based on these models, he also developed an effective computational tool that can be used to design friction damping in turbine jet engines for reducing the blade vibration. The importance of this tool can not be over-emphasized due to the fact that excessive vibration of fans, compressors, and turbines is an industry-wide problem that strongly affects engine development schedules and the engine's subsequent reliability. The computer program developed by [the petitioner], called BDAMPER, is now widely used by various jet engine companies, including General Electric Aircraft Engines, Pratt & Whitney, and Allied-Signal Engines. I have used BDAMPER in consulting work for Pratt & Whitney. I used it to analyze the forced response of shrouded blades that were failing because of excessive

vibration. I wrote a paper on the results of that study entitled, "A Rational Method for Optimizing Shroud Damping," ASME Technical Publication 96-GT-402, which was presented at the International Gas Turbine and Aeroengine Congress & Exposition. Based on a comparison with test data I must say that the performance and effectiveness of BDAMPER was extraordinary. For the first time we have a rational, scientific method for designing shroud dampers in gas turbines because of BDAMPER, [the petitioner's] computer code.

With the outstanding achievement of the BDAMPER project, a continuing three-year project was funded by our Consortium in order to support additional enhancements to BDAMPER. Currently, [the petitioner] works as a post-doctoral researcher under this project. He has successfully developed a 3D friction force model and integrated it into the new version of BDAMPER. This addition extends the application spectrum of BDAMPER to areas having more complex and more realistic friction damper configurations.

[The petitioner's] extraordinary ability has been demonstrated by his achievements in the fields of turbine blade vibration and friction interface theory. BDAMPER is used by all of the main U.S. engine companies and his research is generally acknowledged in his field as truly innovative and breakthrough. It is my belief that his expertise, knowledge and future potential would significantly benefit the national interest of the United States in improving jet engine reliability.

[REDACTED] states:

I am a professor of Mechanical Engineering at the Ohio State University. I have known [the petitioner] for six years through his Ph.D. research study. I served on his doctoral dissertation committee, and had followed his research work for four years. I am extremely impressed with [the petitioner's] research work in the areas of friction contact modeling and turbine blade vibration. [The petitioner] has developed an innovative friction interface theory that can be applied to design friction damping for reducing turbine blade vibration. He has made significant contributions to analyzing the influence of the friction damping on the dynamic behavior of frictionally constrained structures. His research is important because it provides a means for the development of a computer tool for friction damping design that can assist in designing more efficient, reliable, and economical jet engines. Based on his theory, [the petitioner] has developed a computer program, which is now used by various jet engine companies as a design tool. In fact, this computer program, named BDAMPER, has been available since 1993, with immediate beneficiaries being the jet engine companies, including General Electric Aircraft Engine [REDACTED] and AlliedSignal Engines.

[REDACTED] of Pennsylvania State University states:

I am a Professor of Mechanical Engineering and a faculty member of the Center for Gas Turbines and Power at Pennsylvania State University. I have followed the research work of [the petitioner] for the last three years, largely because of my own involvement in similar research activities.

I have read several of [the petitioner's] scholarly journal papers, and in my opinion, they are truly original and innovative in the areas of friction interface modeling and turbine blade vibration. Realizing the limitation of the one-dimensional friction force model in the practical turbomachinery application, [the petitioner] studied the more complex friction contact interface, and developed various friction force models such as the variable normal load, dual-interface, two-dimensional, and three-dimensional friction force models. These friction force models not only precisely describe the behavior of the friction interface under various contact conditions, but also are computationally effective. In order to develop a design tool for predicting the turbine blade vibration, these advanced friction force models become critically important. In fact, based on his research work, a tool has been developed by [the petitioner] to benefit the jet engine industry for reducing the design cost and improving the jet engine reliability. [The petitioner's] research work is a successful example of transferring the technology to the practical application.

In addition to the achievement of [the petitioner's] work, his advanced friction interface theory provides a means to studying other critical problems in turbomachinery vibration, e.g. the mistuning phenomenon of the shrouded bladed disk. I believe that the techniques and theory developed by [the petitioner] and their subsequent refinement promise considerable advances in the turbine jet engine technology.

[REDACTED] Research Engineer at AlliedSignal Engines, states:

I have been involved in the design of aircraft engine components for 14 years, first at GE Aircraft Engines in Cincinnati, Ohio, and currently at AlliedSignal Engines in Phoenix, Arizona. I received a doctorate in the field of aeroelasticity in 1997 from the University of Cincinnati.

In my opinion, [the petitioner] possesses extraordinary ability in the field of structural vibrations, particularly in the area of friction damping. His research in vibration damping is generally acknowledged in his field as truly original, innovative and breakthrough.

Over the past several years, I have collaborated with [the petitioner] under the auspices of the GUIDE Consortium. This consortium consists of representatives from the aircraft engine industry, government laboratories, and universities. [The petitioner's] efforts were sponsored by the U.S. Air Force and the National

Aeronautics and Space Administration (NASA) as a key part of the National High Cycle Fatigue Initiative. His research has resulted in a computer simulation code that is used throughout the U.S. aircraft engine industry. This design tool has already been used to improve several aircraft engine components, and is an outstanding example of applied research.

[The petitioner's] extraordinary ability has been demonstrated by his achievements that have been implemented in his field. He has also published several articles in prestigious professional journals on these research efforts. His expert knowledge of vibration damping will continue to substantially benefit the national interest of the United States because this expertise is crucial to keep the U.S. aircraft engine industry at the forefront of technology and innovation.

Wen-Te Wu, Project Engineer for Pratt & Whitney, an affiliate of the GUIde Consortium, states:

I have been involved in the turbine jet engine design for six years. Currently I work at [REDACTED] in designing friction dampers for our military jet engine. Because of the similar research interest, [the petitioner's] research work has drawn my attention. He developed innovative friction damping theories, which have been published in various prestigious international journals, and are widely accepted by the turbine engine industry. These theories not only can be applied to predicting structural vibration of frictionally constrained mechanical systems, but also can provide an in-depth understanding of the sophisticated friction contact phenomenon. In addition to his theoretical research ability, [the petitioner] also possesses an excellent computational skill. Based on his theories, he has developed a state-of-the-art computer tool, named BDAMPER, for designing effective friction dampers of turbine blades in jet engines. This tool helps the major jet engine companies in the United States, including Pratt & Whitney, reduce the cost of developing high-performance jet engine and increase the engine durability as well.

The classification sought by the petitioner requires him to establish that he has attained national or international acclaim for his contributions of major significance to the field. Out of the six individuals offering letters for the petitioner, five have collaborated with him through his studies at Ohio State University or in conjunction with the GUIde Consortium. The letters from his former professors, research collaborators, university colleagues, and co-workers fail to establish national or international notoriety in the field of mechanical engineering. If the petitioner's work is not widely praised outside of Ohio State University and the GUIde Consortium, then it cannot be concluded that he enjoys sustained national or international acclaim as one who has reached the very top of his field.

The construction of the regulations demonstrates the Service's preference for verifiable, documentary evidence, rather than subjective opinions of witnesses selected by the petitioner. It should be noted that the Service is not questioning the credibility of the petitioner's witnesses,

but looking for evidence that the petitioner's research has impacted the field beyond his acquaintances. More persuasive is the letter from [REDACTED] of Pennsylvania State University. This independent researcher notes the petitioner's development of BDAMPER and describes it as a tool that "benefits the jet engine industry by reducing design cost and improving jet engine reliability." He adds: "I believe that the techniques and theory developed by [the petitioner] and their subsequent refinement promise considerable advances in the turbine jet engine technology."

The petitioner's research work appears to improve upon existing methods, as opposed to pioneering new methods. While the petitioner's computational design tool, BDAMPER, clearly has practical applications utilized by companies participating in the GUIde Consortium, it can be argued that any Ph.D. thesis or article, in order to be accepted by a university or for publication, must offer new and useful information to the pool of knowledge. It does not follow that every researcher whose theories are accepted for publication or as a dissertation has made a major contribution.

The petitioner has not provided sufficient evidence that his research, to date, has consistently attracted significant attention outside of the GUIde Consortium or Ohio State University. Several of the testimonial letters, such as the one from [REDACTED] speculate on the future promise of advances resulting from the petitioner's theories. While the witnesses describe the petitioner's research as innovative, there is insufficient evidence to demonstrate its lasting or wide-ranging impact on the field of mechanical engineering. In sum, the letters do not demonstrate the wider reputation resulting from the petitioner's contributions which is critical to a demonstration of sustained national or international acclaim.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

Counsel states: "The petitioner has written and co-written numerous articles for publications well known in his academic field." The petitioner submits evidence of ten articles co-authored with [REDACTED]. The petitioner initially joined [REDACTED] "research group in 1990 as a graduate student and research assistant." The petitioner later accepted a post-doctoral research position offered by [REDACTED] to complete his Ph.D. dissertation.

The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment."

Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces the Service's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those

articles. Frequent citation by independent researchers demonstrates more widespread interest in, and reliance on, the petitioner's work.

While the fact that the petitioner's research was published in respected scientific journals is impressive, it does not necessarily set him apart from others in his field. And while the petitioner's friction force model research has attracted the attention of [REDACTED] the record contains no evidence that the petitioner's articles have been cited by independent researchers, or any researchers at all. Further, the record fails to demonstrate that the petitioner's published works have earned him, individually, national or international acclaim.

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 petitioner has distinguished himself as a researcher in the field of mechanical engineering 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 petitioner shows talent as a researcher of jet engine technology, but is not persuasive that the petitioner's achievements set him significantly above 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.