

PUBLIC COPY

U.S. Department of Homeland Security
Citizenship and Immigration Service

B2

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

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass., 3/F
425 I Street, N.W.
Washington, D.C. 20536



File: WAC 02 179 51088 Office: California Service Center

Date: **DEC 3 - 2003**

IN RE: Petitioner:
Beneficiary:



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:



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 Citizenship and Immigration Services (CIS) 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 
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner, an "electronic design automation software products" company, 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 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, filed on May 7, 2002, seeks to classify the beneficiary as an alien with extraordinary ability as a corporate "Vice President of Operations, Integrated Circuit ("IC") Solutions Group." Information contained in the record indicates that the beneficiary has been working in this capacity for the petitioning entity since early 2002. A letter from Denise Espinoza, Immigration Manager/Corporate Staffing, Cadence, Inc., states that the beneficiary "utilize[s] his engineering expertise to perform, and manage the performance of, critical high-level engineering functions in the IC Solutions Group."

On appeal, counsel for the petitioner requests that CIS reissue a Request for Evidence “to enable the petitioner to provide evidence... under the two regulatory bases cited in the CIS’ Notice of Decision.” Counsel states:

On December 21, 2002 CIS issued a Request for Evidence, asking that the petitioner submit additional evidence to establish the beneficiary’s qualification as an alien of extraordinary ability under the “original scientific contribution” basis. The CIS’ Request for Evidence acknowledged the evidence submitted to establish the alien’s qualification under the “leading or critical role” basis and under the “high salary” basis, but did not request further evidence of the beneficiary’s qualification under either of these two bases, indicating only that “Evidence was submitted for the criterion and will be further reviewed.”

We concur with counsel that the director’s Request for Evidence did not properly inform the petitioner of deficiencies in the record pertaining to two of the regulatory criteria. However, the Request for Evidence did not state that the evidence presented was sufficient to satisfy those two criteria either. While the wording of the Request for Evidence could certainly have been improved, this issue alone is not sufficient to undermine the grounds for denial. The notice of denial issued by the director does offer a satisfactory discussion of the deficiencies in the record. At this point, the decision already having been rendered, the most expedient remedy for counsel’s complaint is the full consideration on appeal of any evidence or arguments that the petitioner would have submitted to address the deficiencies noted in the director’s Request for Evidence.

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 that, it claims, meets the following criteria.

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

Beyond correspondence from [REDACTED] the petitioning entity’s Immigration Manager, the petitioner submitted six witness letters in support of the petition.

[REDACTED] now Chairman and Chief Executive Officer, Vyvo, Inc. and former Chief Executive Officer, DSP Communications, Inc., states that he “worked directly with [the beneficiary] for two years while at DSP Group.” He further states:

[The beneficiary] played a critical role at DSP Group, and was responsible for developing the DSP Group’s PineDSPCore® core design. This is a low power, low voltage and low cost digital signal processing integrated circuit architecture with associated advanced software development tools. The PineDSPCores and associated instruction sets are

designed for general purpose applications, including speech processing, speakerphone, telephony algorithms and cellular applications, which enables efficient processing for digital speech applications. The DSP core designs operate at both 3 volts and 5 volts and incorporate power management features for low power consumption. The efficient processing, flexible design and scalable memories of the Company's DSP core designs allow the development of smaller and lower cost DSP solutions and shorten time to market for new products and product enhancements.

The PineDSPCore®, first introduced in 1992, was developed by [the beneficiary] and subordinate VLSI designers and software developers to efficiently process speech and telephony algorithms. The PineDSPCore® core design is considered in our industry to be an original scientific contribution of major significance in our field. The DSP Group's core designs are small, highly efficient, 16-bit, general purpose DSPs with adjacent modular RAM and ROM and general I/O blocks for flexible layout and design. Universal design rules are used in the DSP core designs to allow easy implementation across multiple semiconductor process technologies.

* * *

As a measure of the national and international recognition the PineDSPCore® core design has received in our industry, please note that its technology has been licensed to the following prominent companies, all of which are leaders in their fields: Fujitsu, Hyundai, Kawasaki, Kenwood, LSI Logic, Samsung, Siemens, and Daimler-Benz.

Gadi Singer, Vice President, Enterprise Platforms Group, and General Manager, Enterprise Processors Division, Intel Corporation, states:

I am familiar with [the beneficiary's] professional achievements through my collaboration with him while he was employed by Intel between 1992 and 1999. I consider [the beneficiary] to be a distinguished expert in the field of integrated circuits, and believe that he is among a small percentage of persons in our industry who have risen to the top of Very Large Scale Integration circuit design and development.

[The beneficiary] played a critical role at Intel, and was responsible for the definition of the Pentium™ MMX projects. [The beneficiary] was responsible for the integration, Back-End final checks and Tape Out procedures of the product, and served as the Engineering Manager for this project.

[The beneficiary] was also the leader of Intel's Timna platform architecture team. In this capacity, he conducted a number of critical strategic marketing and planning functions on behalf of Intel.

The record contains information printed from the Internet showing that the PineDSPCore® and Pentium™ MMX technologies were successfully licensed out and utilized in various product

offerings. None of the Internet documentation presented, however, specifically mentions the beneficiary as the inventor, primary motivator, or driving force behind the introduction of these products. For example, the record contains no evidence of an approved patent naming the beneficiary as an inventor of PineDSPCore® or Pentium™ MMX technologies. That the beneficiary played a role in ensuring the successful product development and commercial deployment of these technologies demonstrates only that he performed the job expected of him in his capacity as project manager. Beyond showing that these products were commercially successful, the petitioner must also show that beneficiary's individual work was widely acclaimed throughout the industry as an original major contribution.

Also submitted were letters from [REDACTED] Executive Vice President and General Manager, IC Solutions Business, Cadence Design Systems, Inc. (the beneficiary's current supervisor); [REDACTED] Chief Technical Officer, AMCC, Inc. (who studied with the beneficiary [REDACTED]); [REDACTED] President of Silverback Systems, Inc. (who worked with the beneficiary at National Semiconductor); and [REDACTED] Chief Executive Officer of Verisity Design, Inc. (who also worked with the beneficiary at National Semiconductor). These four witnesses repeat the assertions of the previous two witnesses. In fact, several of the passages contained in their letters are virtually identical to those found in the letters from [REDACTED] and [REDACTED]. It is acknowledged that [REDACTED] have lent their support to this petition, but it is apparent that they did not independently choose the wording of significant portions of their letters, which somewhat diminishes the weight to be given this evidence.

The petitioner's witnesses credit the beneficiary with managing projects for, and developing critical components of, products produced by Cadence, Intel, and DSP. The beneficiary may have benefited various projects undertaken by his employers, but a major contribution beyond the scope of his company's projects has not been demonstrated. Witnesses' statements to the effect that the beneficiary has achieved national or international acclaim for his contributions cannot suffice to establish such acclaim, when the petitioner provides no objective evidence (such as large number of patents naming the beneficiary as an inventor or a significant number of trade journal articles discussing his individual accomplishments) to support those assertions. Further, the petitioner must show not only that the beneficiary's work was important to his employers, but that it has generated widespread acclaim throughout his industry. We acknowledge that some projects directed by the beneficiary have yielded useful technological innovations; however, it does not follow that every product design manager whose products are commercially successful has made a major contribution to his field.

We therefore withdraw the director's finding that the petitioner's evidence satisfies this criterion. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim. The subjective assessments of witnesses selected by the petitioner cannot overcome the absence of extensive documentation that the law demands. If the beneficiary's contributions to the semiconductor industry are not widely praised outside of those with whom he has studied and worked, then it cannot be concluded that he has earned sustained national or international acclaim as one who has reached the very top of the field. While the petitioner's witnesses have stated in general terms that the beneficiary is a respected and highly capable integrated circuit design and

productization manager, there is no substantive evidence showing that he enjoys a national reputation here in the United States or in any other country. Rather, the beneficiary appears to have earned a reputation only among his professional acquaintances.

For the above stated reasons, we find that the beneficiary has not demonstrated any specific engineering contributions that have been so unusually influential or acclaimed as to rise to the level of a contribution of major significance in the semiconductor industry.

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

In order to establish that the alien performed in a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of the beneficiary's role within the entire organization or establishment and the reputation of the organization or establishment.

As cited under the previous criterion [REDACTED] and [REDACTED] assert that the beneficiary played a leading or critical role for DSP and Intel.

The letter from [REDACTED] discusses the beneficiary's role at Cadence Technology, Inc. [REDACTED] states:

[The beneficiary] performs a critical role at Cadence Technology, Inc., where he oversees the definition, development and deployment of the company's Custom IC Electronic Design Automation Tools. [The beneficiary's] deep knowledge of the semiconductor industry, Very Large Scale Integration product development challenges, and familiarity with our customer's specific needs are critical for the success of Cadence's Custom IC business unit. [The beneficiary] brings to this critical position a key understanding of customer needs in addition to outstanding and internationally recognized accomplishments in several successful product developments.

The record contains no organizational chart from Intel, DSP, or Cadence Technology to demonstrate that the beneficiary's position carries more authority than that of the numerous other executives and project managers employed by these companies. Nor does the evidence presented detail the extent to which the beneficiary exercised substantial control over production, personnel, or business decisions executed on behalf of these companies.

The director found that the capacity in which the beneficiary has served at Intel and Cadence did not amount to a leading or critical role. The director stated: "[T]he fact that the [beneficiary] has been involved in various successful projects within [a] company is not an indication that he has performed a leading or critical role for the organization as a whole."

While we do not dispute Intel's distinguished reputation as a leader in the industry, we find that the record lacks evidence showing that DSP and Cadence Technology enjoy distinguished reputations when compared to other profitable technology companies. Further, the record does not show that the

departments or units overseen directly by the beneficiary at Intel, DSP, and Cadence distinguished themselves at the national or international level (independent of the overall reputation of the company of which they were a part). Finally, a review of the roles and responsibilities of the witnesses from institutions where the beneficiary worked shows that their roles and responsibilities far exceeded those of the beneficiary.

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

A letter from [REDACTED] Immigration Manager/Corporate Staffing, Cadence, Inc., states: “[The beneficiary] will continue to receive an annual salary of \$250,000, plus a comprehensive package of corporate benefits.” [REDACTED] statement regarding the beneficiary’s annual compensation is unsupported by objective documentation (such as payroll records or income tax forms). Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Moreover, the plain wording of the regulation requires evidence that the alien “has commanded” a high salary or other significantly high remuneration. Therefore, the evidence presented by the petitioner must demonstrate that the beneficiary was earning a significantly high compensation as of the petition’s filing date.

The petitioner presented documentation showing the local prevailing wage for a “Computer Hardware Engineer.” As noted by the director, however, the beneficiary seeks employment as a corporate manager (Vice President of Operations, IC Solutions Group) rather than as a computer hardware engineer. The director’s decision stated: “[T]he [beneficiary] supplied a salary table for positions within the engineering field. However, the [beneficiary] is not performing principally as an engineer, but as a manager within the company.” The director found that the petitioner had not shown that the beneficiary has commanded a significantly high salary in relation to other managers/corporate executives in his industry. We concur with this finding. Local prevailing wage figures for a computer hardware engineer fail to demonstrate that the beneficiary, Vice President of Operations for Cadence Technology, earns significantly high compensation in relation to other corporate executives in the semiconductor industry. Moreover, the petitioner’s use of median salary statistics as a basis for comparison is inappropriate. The petitioner must offer evidence showing that the beneficiary’s salary places him at the very top of his field, not in the top half. We conclude that the record contains no comparative evidence to establish the beneficiary is among the highest-paid corporate executives in the semiconductor industry.

We agree with counsel that the final statement of the director’s analysis under this criterion, e.g. that the beneficiary claims to be “among the ranks of the world’s most financially successful,” does not relate to this particular petition. This error of the director does not undermine the basis of the denial of the decision.

On appeal, counsel argues that the director failed to acknowledge the witness letters as “comparable evidence.” We note, however, that the director accepted the witness letters as evidence under the criterion pertaining to original scientific contributions. The regulation at 8 C.F.R. § 204.5(h)(4) allows

for the submission of comparable evidence, but only if the ten criteria “do not readily apply to the beneficiary’s occupation.” Therefore, the petitioner must demonstrate that the regulatory criteria are not applicable to the alien’s field. Of the ten criteria, at least half readily apply to the beneficiary’s occupation. Where an alien is simply unable to meet three of the regulatory criteria, the wording of the regulation does not allow for the submission of comparable evidence.

In sum, the evidence offered by the petitioner does not establish that the beneficiary has earned international or national acclaim in the United States or any other country.

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. The petitioner in this case has failed to demonstrate that the beneficiary meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the beneficiary has distinguished himself 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 is not persuasive that the beneficiary’s achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established the beneficiary’s 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.