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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

MAR 28 2003

File: WAC 01 254 56030 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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)

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ON BEHALF OF PETITIONER:

[redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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 Elizabeth Hayward
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 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 pertinent regulations 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.

The petitioner, described as an "Electronic Design Automation industry IC layout tool provider," seeks to employ the beneficiary as its president and chief executive officer [redacted] the petitioner's vice president of Operations, states that the beneficiary "is eminently qualified for this classification due to the sustained international acclaim for his extraordinary achievements in the field of Electronic Design Automation (EDA), physical design for high performance Integrated Circuits (IC). [redacted] adds that the beneficiary "developed Tempest-BLOCK and Tempest-CELL, EDA software, which have widely become industry standards" and "the leading

software tools for the world's most complex IC physical designs." In short, states [redacted] the beneficiary "is the inventor of the technology which forms the foundation of the company." In addition to being its president and CEO, the beneficiary is a founder of the petitioning company.

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, the petitioner claims, meets the following criteria.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

[redacted] states that the beneficiary "is a member of the EDA Consortium. The EDA Consortium . . . is an international association of companies developing design tools and services that enable engineers to create the world's electronic products." If the EDA Consortium is an "association of companies," then the beneficiary as an individual is not a member. Documentation in the record shows that the petitioning company, rather than the beneficiary as an individual, is a member of the EDA Consortium. This documentation contains no information as to how a company becomes a member of the EDA Consortium, and thus there is no support for the claim that the EDA Consortium requires outstanding achievements of its members.

[redacted] states that the beneficiary "is also a member of the Hewlett-Packard Channel Partner and Partnership Software Provider Programs, Cadence Design System, Inc.'s Connection Program, Artisan Components Partner Network, and the American Electronics Association." The documentation regarding these memberships consists of the following:

- A form letter addressed to "Hewlett-Packard Channel Partner," which does not specify whether the beneficiary or the petitioner is the partner;
- A partially legible photocopy of a plaque identifying the petitioning company as a "Premier Partner 2000" in a program, the full name of which is indistinct. The initials "HP" appear to be visible, corresponding to the company name "Hewlett-Packard."
- A letter addressed to [redacted] the petitioner's vice president of Business Development, reading in part "[t]hank you for being a member of the HP Partnership Software Provider Program." Even if the membership belongs to an individual rather than the company as a whole, the beneficiary is not the individual named on the letter.
- A letter, again addressed to [redacted] reading in part "[t]hank you for your interest in Cadence's Connections℠ Program." The letter again refers to corporate rather than individual membership, and it is clear

from the wording of the letter that the petitioner was not yet a member at the time it received this letter.

- A copy of a photograph of a plaque reading "Artisan Components Partner Network Member."
- An illegible copy of a photograph of a plaque, which the petitioner indicates shows membership in the American Electronics Association.

Most if not all of the above memberships are corporate rather than individual memberships, and the petitioner has submitted nothing to show that any of these memberships require outstanding achievement in the field as judged by recognized national or international experts. Many of the memberships appear to be little more than business arrangements; for instance, members of the HP Partnership Software Provider Premier Program receive advantageous deals on "a complete array of services and support" in exchange for an annual fee of $850.00. Business arrangements and service contracts of this kind are not memberships in associations.

For the above reasons, the evidence submitted does not establish that the beneficiary is a member of any association that requires outstanding achievements of its members.

> *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.*

[redacted] asserts that the beneficiary "is often cited in press releases for publication in various magazines and journals." Press releases are not independent articles written by journalists, but rather publicity materials prepared by or on behalf of the individuals or companies named in the releases. Such press releases are little removed from advertisements or other promotional writings.

Other articles in the record list the petitioner along with other companies that have received start-up venture capital. The record does not contain any published materials that show the impact that the beneficiary and his company have already had on the industry, or that the systems developed by the beneficiary are already in widespread use, let alone have become industry standards as claimed. Rather, the articles (dating from 1997 and 1998) describe the company's start-up efforts. Some of these articles do not even mention the beneficiary, and thus they cannot reasonably be said to be "about the alien" or to contribute to his acclaim; a reader who had never heard of the beneficiary before reading the article would still never have heard of him after reading it.

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

The petitioner submits several witness letters attesting to the significance of the beneficiary's work. Professor [redacted] of the University of Massachusetts, Amherst, states:

> I have known [the beneficiary] since 1999 but heard about his extraordinary technical achievements at Intel prior to that. Since then I have had the opportunity to meet him personally and discuss his unique approach to the solution of several important and very difficult problems facing the designers of high performance integrated circuits (chips). . . .
>
> Through [the beneficiary's] extraordinary abilities in Electronic Design Automation, he has developed software tools that help chip designers achieve significant improvements in design performance. . . .
>
> [The beneficiary's] contributions have significantly advanced the state-of-the-art in automated physical design. Very few persons have made such a profound impact on the electronic design automation industry as [the beneficiary] has.

[redacted] president and CEO of Synplicity, Inc., states:

> As an elected member on the Board of Directors of the EDA Consortium, I am qualified to assess [the beneficiary's] abilities. I have my finger on the pulse of EDA. I possess first-hand knowledge of [the beneficiary's] extraordinary abilities in the field of EDA for the semiconductor industry. He has invented a unique design methodology and the algorithms that allow the assembly of transistors for semiconductors to be done as efficiently as the top designers can do manually. . . . His efforts are already having a profound effect on the industry. This advancement in technology is critical to the semiconductor chip industry.

[redacted] president and CEO of Silverback Systems, Inc., states:

> [The beneficiary's] Tempest-CELL and Tempest-BLOCK software tools automate the physical design of integrated circuits so designers can concentrate on other aspects of the chip design process. . . . The Tempest-CELL and Tempest-BLOCK tools complete the physical design of an integrated circuit in a matter of days where manually this process took expert designers many months to complete. . . .
>
> [The petitioner's] impressive customer base is evidence that [the beneficiary's] contributions are presently being applied to the advancement of the semiconductor industry. Only a select few individuals have contributed what [the beneficiary] has to the EDA industry and none in a shorter period of time.

Several other corporate president/CEOs offer similar assertions on the beneficiary's behalf.

The petitioner submits copies of six patent applications from April 1999. These filings show that the beneficiary has been a prolific inventor, but an inventor does not bestow significance on an invention simply by applying for the patent. Similarly, the U.S. Patent and Trademark Office does

not attest to the significance of an invention by accepting, or approving, a patent application. A U.S. patent demonstrates originality but not necessarily significance.

The director requested further evidence, and in response the petitioner has submitted new letters from several of the initial witnesses, along with documentation of a seventh patent application filed in March 2002 (after the date of the director's request). Witness letters, while not without weight, cannot carry the same significance as objective documentation. The types of documentation listed in the regulations are objectively verifiable, and such documentation exists regardless of the petitioner's decision to seek immigration benefits on the beneficiary's behalf. The letters, on the other hand, exist not because of the beneficiary's reputation but because the petitioner solicited them. Furthermore, the petitioner has selected the individuals writing the letters and thus there is no objective way to determine whether the views expressed in those letters represent a consensus throughout the field. The assertions contained in these letters represent uncorroborated third-party claims, subjective opinions, and statements that are too general to establish any specific proposition.

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

The beneficiary has, in the past, worked for IBM and Intel, both of which are internationally recognized leaders in the computer industry. The distinguished reputations of these establishments are not in dispute. The petitioner must establish, however, that the beneficiary's work for those corporations constituted leading or critical roles.

The petitioner asserts that the beneficiary performed in a critical role for Intel by serving as a chip layout architect and chip layout design tool development engineer from 1989 to 1994. The petitioner does not submit any letters from any Intel officials. The only evidence submitted regarding the beneficiary's work at Intel consists of photographs of "recognition awards" presented to the beneficiary. The plaques express thanks or appreciation for the beneficiary's contributions to various projects.

The record does not show the extent of the beneficiary's involvement in these projects, the number of other Intel employees who received similar plaques, or the degree to which the beneficiary was critical to the company. [redacted] claims that "the Intel appreciation award [is] a recognition given only to thirty (30) people per year throughout the entire Intel organization of approximately 60,000 employees." The record contains nothing from Intel to corroborate this claim, and [redacted] does not cite any primary source for this information.

[redacted] states that the beneficiary "developed software to automate Intel's integrated circuit design process in addition to performing the actual layout on one of the first Intel Pentium microprocessor chips." The record lacks evidence from Intel to corroborate this claim and explain the significance of the petitioner's involvement. Simply working on an important project is not inherently a leading or critical role.

Regarding the beneficiary's work at IBM, [redacted] states "[a]s Layout Engineer, he played an integral role in the development of the physical design architecture of IBM's PowerPC microprocessor. [The beneficiary] also assisted in the development of IBM's automated integrated circuit design tools, which IBM uses to develop its most advanced integrated circuits." As evidence, the petitioner cites the beneficiary's own resume (which is a list of claims rather than supporting evidence) and the witness letters discussed above. None of these witnesses, however, are IBM officials in a position to attest, first-hand, to the critical nature of the beneficiary's role there. Professor [redacted] states that he has performed consulting work for IBM, but his letter does not mention the beneficiary's work at IBM at all. Other letters contain general references to the beneficiary's work at IBM, stating that the beneficiary gained valuable experience there and at Intel. The evidence is not sufficient to allow the conclusion or inference that the beneficiary played a leading or critical role for either Intel or IBM.

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

[redacted] states that the beneficiary "will be compensated in the amount of $200,000 per year for his work as President and CEO of" the petitioning company, and that the beneficiary received $51,000 in bonuses in 2000. The evidence submitted with the petition shows that the petitioner paid the beneficiary $166,666.67 in 2000 and $250,000.00 in 2001, and that the beneficiary holds 3,250,000 shares of common stock in the petitioning company. As CEO, the beneficiary's signature appears on the stock certificate. The petitioner also submits documentation showing that the average Level 2 wage for chief executives in Santa Clara County (where the petitioner is based) is $144,227 per year.

The wording of the regulation calls for comparison between the alien's salary and that earned by others in the field. Even if we were to disregard the fact that the prevailing wage figure is local rather than national, the figure applies to all chief executives without apparent regard to the field of endeavor. Having declared the beneficiary's field to be electronic design automation, the petitioner must establish that the beneficiary's earnings prior to the filing date exceeded those of other CEOs in that field. That being said, the petitioner must establish that the beneficiary is among the highest paid chief executives in his field at a national or international level; it cannot suffice simply to show that his salary exceeds the average in Santa Clara County.

As founder and head of the petitioning company, the beneficiary has essentially paid himself the salary shown on the above documents. Evidence regarding what the beneficiary has paid himself is not strong evidence of acclaim. Assertions regarding what the beneficiary will receive in the future are speculative, and do not reflect what the beneficiary has commanded (rather than will command) as remuneration. The record contains nothing to establish the level of compensation that the beneficiary received when he was not effectively in charge of determining that amount for himself.

Beyond the above criteria, the petitioner asserts that the beneficiary's extraordinary ability is evident from the substantial infusion of venture capital into the petitioning company, and into the beneficiary's participation in numerous design automation conferences. [redacted] general

partner of Lightspeed Venture Partners, states that his company has invested in the petitioner because the beneficiary "has invented a unique technology, which could revolutionize software tools for Integrated Circuit physical design." Joerg Sperling, managing director of Ridgewood Capital, states that the beneficiary "possesses the unique intellectual property and the ability to redefine the way business is done in the Electronic Design Automation physical design industry." Clearly these venture capital firms have sufficient faith in the beneficiary and the petitioner to invest in the company. The same letters, however, clearly refer to the beneficiary's work in terms of its potential, rather than in terms of how the beneficiary has already affected the industry as a whole and thereby won acclaim. Infusion of venture capital is not *prima facie* evidence of extraordinary ability or sustained acclaim.

Regarding the design automation conferences, materials in the record appear to indicate that these conferences are, essentially, trade shows in which numerous companies demonstrate their wares and services in order to attract clients and investors. The materials from these conferences mention the petitioning company and its products, but not the beneficiary individually. The record contains nothing to show that the petitioner's participation at these conferences is the result of the beneficiary's "burgeoning reputation in the field" as [redacted]

The director denied the petition. The director stated that "the mere filing of a patent application" is not sufficient to establish original contributions of major significance. The director noted that most of the petitioner's media coverage discusses the petitioner's obtaining venture capital rather than actual technological achievements. The director also concluded that the petitioner has not shown that the beneficiary receives "one of the highest salaries for a President/Chief Executive Officer of a major company."

On appeal, counsel states that the director "placed great weight on the fact that [the beneficiary's] patents had only been filed and not approved by the United States Patent Office." The petitioner provides documentation to show that three of the beneficiary's seven patent applications have now been approved (the fate of the other four applications is not stated). The director, however, did not state that the patent applications would have carried greater weight had they been approved. Also, the director did not even directly state, much less emphasize, that the patent applications had not yet been approved. Rather, the director indicated that an innovation or invention does not take on added significance merely because the inventor has sought a patent. The petitioner has submitted nothing from the U.S. Patent and Trademark Office (USPTO) to show that patent applications are approved only for inventions of major significance. According to statistics available from the USPTO web site, http://www.uspto.gov, the USPTO accepted 288,811 patent applications in 1999 (the year the beneficiary filed six of his seven applications) and approved 169,086 the same year. Statistics indicate that the USPTO approves more than half of all patent applications submitted. Given these figures, we cannot conclude that a patent application, whether approved or not, is *prima facie* evidence of the major significance of the invention for which the patent is sought.

The petitioner submits a copy of an article from the July 2000 issue of *Computer Aided Design Report*. The article, "Custom Layout Aids," mentions the petitioner and its Tempest-Block and Tempest-Cell products (in the article, the words "Block" and "Cell" are not capitalized as they are

in [redacted] correspondence). The article states that the petitioner's products are "exceptional" because "the software routes interconnections before it lays out transistors. Most other systems take the opposite approach." The article ends with contact information for the petitioning company. The beneficiary's name does not appear anywhere in the article. Accompanying the article is a letter to the beneficiary from [redacted] publisher of *Computer Aided Design Report*, which reads in part "[e]nclosed is a complimentary copy of *Computer Aided Design Report*. Please note the article titled '*Custom Layout Aids*.' Your company is mentioned in this article on page 5. Thank you for your contribution to this article." The contact information at the end of the article, coupled with the fact that the beneficiary contributed to the article itself, indicates that the article is more akin to a promotional press release than an objective product review or bulletin.

The remainder of counsel's appellate brief essentially repeats earlier claims, such as the contention that the beneficiary played a critical role for Intel Corporation and the observation that the petitioner has submitted a number of witness letters. We have already discussed these claims above and to address them again would be redundant.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor. Review of the record, however, 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 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.