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U.S. Department of Justice  
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536

**PUBLIC COPY**



16 DEC 2002

File: WAC 01 136 52714 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(B)

IN BEHALF OF PETITIONER:



**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 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 CFR 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 CFR 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Elizabeth Hayward*  
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 Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(B), as an outstanding researcher. The director determined that the beneficiary works as an engineer rather than a researcher, and therefore does not qualify for the classification sought.

Section 203(b)(1)(B)(iii)(III) of the Act provides that visas shall be made available to qualified immigrants with international recognition and three years of experience "to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field."

The petitioner is a developer and manufacturer of semiconductor components, and it seeks to employ the beneficiary as a senior member of technical staff (IC Design). The petitioner was formerly a division of Siemens, which had filed an identical petition on the beneficiary's behalf in 1998. That petition was approved, and the beneficiary's application to adjust status was pending when the current petitioner was "spun off" from the parent company. The director did not revoke the approval of the first petition, but instructed the newly reorganized petitioner to submit a new petition on the beneficiary's behalf. The record indicates that the beneficiary's duties are essentially identical to his duties before the petitioner split from the parent company.

The director, in denying the petition, stated that the record "clearly shows that the beneficiary is currently recognized internationally as outstanding in the academic field." The director added, however, that the beneficiary's duties "appear to be engineering design tasks carried out by workers in virtually all major information technology companies." The nature of the beneficiary's duties is central to the denial of the petition, and therefore we examine the description of these duties.

In a 1998 letter submitted with Siemens' initial petition, and resubmitted with the second petition, Philip M. Palmer, Human Resources Manager for Siemens Microelectronics, states:

As a Senior Member of Technical Staff (IC Design) with Siemens, [the beneficiary] will research and develop micro-architecture for cutting-edge high-performance super-scalar microprocessors in the embedded application market. He will perform analysis of various implementation options and provide suggestions for optimum solutions. [The beneficiary] will draw on his expertise in VLSI implementation and algorithm research to develop high performance datapaths and optimize for both area and power. In carrying out this novel engineering, [the beneficiary] will be required to utilize his extensive experience with VLSI designs using high level design methodologies such as HDLs, synthesis, timing analysis, and formal

verification. [The beneficiary] will mentor and guide two less experienced engineers in delivering data-path components.

While Mr. Palmer has, above, described the petitioner as an "engineer," his next paragraph indicates that the position involves research:

In order to carry out this critical and innovative microprocessor research and development, Siemens requires an individual who possesses a superior education and research background and has achieved a top level of expertise within this field. A thorough research background in computer architecture, the possession of broad analytical skills . . . and extensive experience in researching and developing micro-architecture and performance analysis is required. . . .

As a pivotal member of the design team, he has been conducting research, designing, and developing state-of-the-art micro-architecture. This involves implementing integer pipeline control and datapaths as well as registering files for super-scalar in-order issuing of Tricore (a high-performance embedded microprocessor).

On appeal from the director's decision, Ralph Haines, the petitioner's senior director of engineering, states that the beneficiary "is much more than an 'engineer.' He is heavily involved in research activities for our company. He has made patent applications for new technology developments." Submitted with Mr. Haines' letter is a copy of U.S. Patent number 6,038,660, which identifies the beneficiary as a co-inventor, as well as application documents for other patents. A patent application from 2001 identifies the beneficiary as the sole inventor. This documentation is strong evidence that the petitioner is involved in the creation of new and original technology, which reasonably falls under the aegis of research.

An individual whose duties consist entirely of product design through configuration of existing technology, or preparation of specialized software using widely available software packages, is not engaging in research. In this instance, however, the latest submission of materials demonstrates that the beneficiary has engaged, and continues to engage, in research for the petitioner. The beneficiary's work involves innovation and invention and transcends product design and software adaptation. The petitioner has thus overcome the only stated ground for the denial of the petition. Based on the evidence submitted, we conclude that the petitioner has established that the beneficiary qualifies under section 203(b)(1)(B) of the Act as an outstanding researcher.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has sustained that burden.

**ORDER:** The decision of the director is withdrawn. The appeal is sustained and the petition is approved.