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U.S. Department of Justice
Immigration and Naturalization Service

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



File: WAC-00-261-54406

Office: California Service Center

Date: 24 MAY 2002

IN RE: Petitioner:
Beneficiary:



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:



Public Copy

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, 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 is a technology design and licensing company. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a senior software engineer. The director determined that the petitioner had not established the significance of the beneficiary's research, or that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

On appeal, counsel asserts that the director ignored evidence in the record.

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):

(B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if --

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position 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.

Service regulations at 8 C.F.R. 204.5(i)(3) state that a petition for an outstanding professor or researcher must be accompanied by:

(ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from former or current employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

This petition was filed on September 5, 2000, to classify the beneficiary as an outstanding researcher in the field of computer science. The director did not contest that the record established that the beneficiary had at least three years of research experience in the field of computer science as of September 5, 2000, only that the beneficiary's work has been recognized internationally within the field of computer science as outstanding.

Service regulations at 8 C.F.R. 204.5(i)(3)(i) state that a petition for an outstanding professor or researcher must be accompanied by "[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition." The regulation lists six criteria, of which the petitioner must satisfy at least two. It is important to note here that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. The petitioner claims to have satisfied the following criteria.

Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation

As evidence to meet this criterion, the petitioner submits three research articles which cite the beneficiary's own work. The research articles are primarily about the author's own work and cite the beneficiary's work only as background material. As such, these articles cannot be considered to be published material about the beneficiary's work and cannot serve to meet this criterion. They will be considered below, however, as evidence relating to international recognition of the beneficiary's contributions and published work.

In response to the director's request for additional documentation, the petitioner submitted press releases from the petitioner's website. These press releases are not about the beneficiary specifically. Moreover, the petitioner cannot demonstrate the beneficiary's international recognition by manufacturing evidence of published materials through its own press releases.

Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field

██████████ a member of the program committee for "several" conferences including the Second Working Conference on Asynchronous Design Methodologies (1995), International Symposium on Advanced Research in Asynchronous Circuits and Systems (1996 and 1997), confirms that he selected the beneficiary as a reviewer for those conferences. As ██████████ was the beneficiary's thesis advisor, however, this selection is not indicative of the beneficiary's international recognition.

The petitioner also submitted, however, letters from other conference committee members confirming that the beneficiary served as a reviewer for those conferences. Specifically, ██████████ confirms that the beneficiary was a reviewer for the Design Automation Conference (DAC) in 1997 and 1998, and ██████████ confirms that, as of the date of filing, the petitioner had been invited to serve as a reviewer for a 2001 IEEE International Symposium on Advanced Research in Asynchronous Circuits and Systems. In response to the director's request for additional documentation, the petitioner submitted a new letter from ██████████ confirming that the beneficiary did serve as a reviewer for that conference and a letter from ██████████ asserting that DAC is the premier Electronic Design Automation and silicon solution event and that it maintains a "first-class" list of worldwide experts as reviewers. Finally, Professor ██████████ confirms that the beneficiary served as a reviewer for the International Conference on Application of Concurrency to System Design 2001 after the date of filing.

Although we cannot consider the evidence of reviewing after the date of filing, the record reflects that, prior to the date of filing, the beneficiary was invited to serve (and did serve) as a reviewer for two international conferences by committee members other than his own advisor. As such, he meets this criterion.

Evidence of the alien's original scientific or scholarly research contributions to the academic field

██████████ an associate professor at the University of Southern California who has been following the beneficiary's work since he saw the beneficiary's presentation at a conference, writes:

[The beneficiary] has made significant contributions to the fields of asynchronous circuit design, verification and testing. He has co-authored several papers proposing structural methods for the automatic synthesis of asynchronous circuits On the field of formal verification, [the beneficiary] has proposed methods for the efficient symbolic representation of ██████████ as well as for automatically verifying speed-independent circuits, a subclass of asynchronous circuits. The results have been published in different international conferences. . . . Finally, he has proposed a promising testing methodology for asynchronous circuits based on synchronous test patterns that was published. . . . In addition to these and other international

publications, [the beneficiary's] proposed methods have been materialized in a CAD tool, *versify, testify*, which is freely available as an executable on the internet. . . .

In particular, his findings in the field of formal verification of asynchronous circuits have served partly as a basis of current work being conducted in my research group. One of my students . . . is currently working on her Ph.D. thesis improving some of the techniques proposed by [the beneficiary.] We have referenced [the beneficiary's] work in our articles. . . . In addition, in September 1998, [the beneficiary] provided us with the source code of his tool, *versify*, and we used some of the algorithms in that code as a model for our own tool development.

[REDACTED] a professor at the University of Utah who previously offered the beneficiary a visiting professor position which the beneficiary declined, provides similar information, asserting that asynchronous circuits have the potential for higher speed, lower power consumption, reduced electromagnetic radiation and noise, and higher modularity than synchronous circuits. [REDACTED] adds that asynchronous circuits are much more complex to design, making "automatic techniques crucial for their success as a valid design option."

[REDACTED] a member of the beneficiary's thesis committee, writes:

Asynchronous circuits are considered by the authors of the International Technology Roadmap for Semiconductors as a very promising technology to tackle some of the fundamental problems plaguing today's VLSI integrated circuits and systems-on-chip, namely power dissipation and electro-magnetic emission. They are also considered a means of improving the performance of such circuits beyond today's clock-limited speed.

While conducting his Ph.D. research, [the beneficiary] defined a new methodology for the verification of an asynchronous circuit implementation (derived by hand or synthesized automatically) against a formal specification of its behavior. Asynchronous circuits are particularly difficult to verify, due to the problem known as "state explosion." [The beneficiary] developed an effective means of fighting against state explosion that made it possible to verify circuits that could not be managed by older techniques He also implemented his verification algorithms in a prototype tool that is now publicly available and has been used in practical applications. . . .

Also, his contribution to the development of techniques for testing asynchronous circuits is extremely significant. No logic circuit can be used in practice without having undergone extensive post-fabrication testing. Testing asynchronous circuits has been traditionally considered very difficult, due to the large number of state signals and the difficulty of managing unpredictable behavior in the presence of physical faults. [The beneficiary's] techniques can be used to find appropriate test patterns for asynchronous control circuits.

[REDACTED], another member of the beneficiary's thesis committee and fellow instructor at the Universitat Politècnica de Catalunya, provides similar information, asserting that *versify* is "currently being used by several academic institutions" [REDACTED] further asserts that there are at least two research groups, one in Spain and one in Russia, that are working on implementing the techniques presented in one of the beneficiary's papers. [REDACTED] a staff CAD engineer at Intel Corporation who met the beneficiary through a collaboration with [REDACTED] reiterates much of the information quoted and discussed above. [REDACTED] asserts that the beneficiary's findings have contributed to [REDACTED]'s own work. [REDACTED] a senior scientist with the petitioner who has collaborated with [REDACTED] asserts that he knew of the beneficiary prior to working with him for the petitioner and reiterates much of the information discussed above. [REDACTED] another of the beneficiary's coworkers, provides similar information and asserts that *versify* was used by his students at the [REDACTED]

[REDACTED] Senior Vice-President and Chief Technical Officer with Synopsis, writes that the research and design team at the petitioning company have made "significant contributions" in the design and development of innovative and complex software and advanced technologies. [REDACTED] indicates that Synopsis and the petitioner have formed a "strategic alliance" to develop asynchronous circuits. Finally, [REDACTED] states that it is his understanding that the beneficiary has been instrumental in the petitioner's development of this technology.

The articles in the record reveal that while several of the above letter writers don't acknowledge being one of the beneficiary's collaborators, they are listed as co-authors of some of the beneficiary's articles. Nevertheless, contrary to the director's conclusion, the record does contain two letters from independent experts, [REDACTED] who, working in the United States, became aware of the beneficiary's work performed in Spain. As discussed below, the beneficiary's articles are in the record¹ and have been cited by several independent research groups worldwide. The record as a whole sufficiently, if minimally, reflects that the beneficiary has gained favorable international recognition for his contributions. Thus, the petitioner has established that the beneficiary meets this criterion.

Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field

Eight of the beneficiary's articles or published conference presentations appear in the record and the citation evidence indicates that the beneficiary has authored at least 12 articles and presentations published in journals and conference proceedings. The director requested evidence of the international circulation of these journals, a request completely in accordance with the regulations.

¹ In the third paragraph on page three of her decision, the director states that the articles reflecting the beneficiary's alleged contributions are not in the record. In the eighth paragraph of the same page, the director acknowledges that the record does contain articles submitted as evidence of the beneficiary's contributions. It is not clear what the director concluded on this issue, however, the record does include copies of the beneficiary's articles.

In response, counsel personally attests to the international circulation as do some of the beneficiary's references. 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). Similarly, the assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). Despite the petitioner's failure to submit evidence regarding this issue, it is likely that the proceedings of international conferences are circulated internationally. Even if we concluded that the petitioner had failed to establish the journals' international circulation, as discussed above, the beneficiary already has met two of the criteria, and, as such, the petitioner has established the beneficiary's eligibility.

In addition, 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 international recognition; we must consider the research community's reaction to those articles.

██████████ asserts that the petitioner's work is widely cited in international publications and that the journals and conferences which have published his work are among the finest in the field. Similarly, ██████████ asserts that he has read many articles published by international researchers which cite the petitioner's work. ██████████ indicates that he has cited the beneficiary's work, although it is noted that he is the co-author of the majority of the beneficiary's articles. As such, citations by ██████████ represent self-citation and are not significant.

Initially, the petitioner submitted evidence that eight of his articles have been cited a total of 24 times in the approximately five years between publication and the date of filing, eight of which are self-citations by co-authors. In response to the director's request for additional documentation, the petitioner submitted evidence that an additional 14 articles and published conference presentations cite his work, two of which are self-citations by co-authors. Considering the evidence together, the petitioner has demonstrated that nine of the beneficiary's published articles and conference presentations have been cited by 28 independent researchers worldwide. One of the beneficiary's articles was cited 17 times. While somewhat limited, this citation evidence is minimally sufficient to demonstrate that the international computer science community has recognized the beneficiary's published work.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that the beneficiary is recognized internationally. Therefore, the

petitioner has established the beneficiary's eligibility for the benefits sought under section 203 of the Act.

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.