



B3

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



File: WAC 01 009 54356 Office: California Service Center

Date: OCT 01 1997

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:



**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, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner, a software development company, 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 professor or researcher. The petitioner seeks to employ the beneficiary as a research engineer. The director determined that the petitioner had not established eligibility for the classification sought.

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.

(iii) An offer of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:

(A) A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field;

(B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field; or

(C) A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in an academic field.

The petition was filed on October 3, 2000. Therefore, the petitioner must establish that the beneficiary had at least three years of experience as a researcher in the academic field as of October 3, 2000, and that the beneficiary's work has been recognized internationally within the computer/software engineering field as outstanding. The petitioner must also demonstrate that it has achieved documented accomplishments in the field of computer/software engineering.

Information contained in the record reflects that the beneficiary obtained a Master of Science degree in Engineering from the University of Michigan on December 21, 1993. From 1993 to 1996 the beneficiary pursued Ph.D. studies at the University of California, San Diego ("UCSD"), but did not complete his doctorate. The beneficiary discontinued his Ph.D. studies and commenced employment with the petitioner from 1996 through the petition's filing date. The director's decision erroneously concluded that the "beneficiary's research experience is not considered acceptable by the regulation, as the beneficiary did not acquire his Ph.D." Although research experience while working on an advanced degree is acceptable only if the alien has acquired the degree, the evidence provided by the petitioner indicates that the beneficiary had left the Ph.D. program at the UCSD in 1996. According to witness letters and a job-offer letter from the petitioner, the beneficiary has worked for the petitioner in a research capacity since 1996. While the beneficiary's research at the UCSD does not count toward the required three years of research experience, the beneficiary's research experience with the petitioning entity since 1996 is sufficient to satisfy the Service regulation at 8 C.F.R. 204.5(i)(3)(ii). Therefore, we withdraw the director's finding that the beneficiary's research experience "is not considered acceptable by regulation."

We also disagree with the director's contention that the beneficiary's research "does not include the type of scholarly or advanced theoretical research which can be considered comparable to the work of researchers at universities or other institutions of higher learning." The petitioner submits evidence demonstrating that the beneficiary was a named inventor on a patent approved by the U.S. Patent and Trademark Office in 2000. Patent number 6,144,375, filed in 1998, lists the petitioning entity as the assignee and the beneficiary as one of the inventors. The petitioner also submits evidence of the beneficiary's co-authorship of an article published in *Computer Networks and ISDN Systems* in 1997. The research article cites the petitioning entity as the research institution and lists the beneficiary as one of three participating authors. This evidence supports counsel's contention that the beneficiary has been employed in a comparable research position for a private employer (the petitioning entity) with documented accomplishments in the field of computer/software engineering.

As these issues were not the sole basis of the director's decision, we will also discuss whether the beneficiary qualifies as an outstanding researcher pursuant to the Service regulations at 8 C.F.R. 204.5(i)(3)(i). The 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 beneficiary 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 submits evidence pertaining to the following criteria.

*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.*

The petitioner submits a letter addressed to the beneficiary, dated August 15, 1997, from a guest editor of the Signal Processing Society of the Institute of Electrical and Electronics Engineers. The letter states: "I would appreciate it very much if you or one of your colleagues could review the enclosed manuscript, which has been submitted for publication as a regular paper in an upcoming special issue of *Proceedings of IEEE* on Multimedia Signal Processing." The director was correct in stating "...no corroborative evidence was submitted to support the petitioner's assertions of the beneficiary's purported service as a reviewer. The evidence does not show that the beneficiary actually reviewed the paper in question or the significance of the review." Further, there is no evidence of the beneficiary's international standing as the basis for his selection as a reviewer. The letter clearly shows the guest editor's willingness to accept the same review from "one of [the beneficiary's] colleagues." This letter, therefore, fails to establish the beneficiary's international recognition above other competent researchers.

The petitioner also submits the first page of a listing of reviewers selected to participate in the "Fifth International Conference on Computer Vision" in 1995. The incomplete alphabetic listing includes only those reviewers whose last names begin with "A" through "M." The page provided

includes 123 reviewers, so it would be reasonable to conclude that at least 200 other reviewers were also selected to participate. Because the statute demands international recognition, the petitioner must show how the beneficiary's selection to participate is reflective of such recognition. On appeal, the petitioner submits the preface to the *Proceedings of the Fifth International Conference on Computer Vision*, which describes the process for the selection of research papers included in the conference, but offers no information regarding how the reviewers themselves were selected. The issue here is not the distinguished reputation of the conference, but, rather, the individual achievements of the beneficiary. Given that approximately 200 other individuals were similarly selected to review papers for this conference, it has not been shown how the beneficiary's participation elevates him to a level of international recognition.

Thus, the evidence offered by the petitioner fails to demonstrate that the beneficiary meets this criterion.

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

The petitioner submits five witness letters in support of the petition. The witnesses describe the beneficiary's graduate research at UCSD and his commercial research for the petitioning entity, "an innovator in interactive sports and entertainment software for the Internet."

Dr. Brian Schunck, Technical Director, Adept Technology, Inc., supervised the beneficiary's graduate research at the University of Michigan and co-authored a research article with Dr. Jain in 1995. Dr. Schunck states: "[The beneficiary] has been working for [the petitioner] since 1996. He was part of the team from the UCSD Visual Computing Laboratory that founded [the petitioning entity]." Dr. Schunck credits the beneficiary with designing and developing software components that have allowed the petitioning entity to tackle diverse markets such as sports, entertainment, personal events and security. We do not dispute the beneficiary's value to the projects undertaken by his employer. The issue in this case, however, is whether the beneficiary's individual contributions represent a significant contribution to the academic field. The beneficiary may have benefited various projects undertaken by his employer, but his ability to impact the field beyond his company's projects has not been demonstrated.

Dr. Mohan Trivedi, Professor of Electrical and Computer Engineering, UCSD, describes the beneficiary's work for the petitioning entity to "commercialize research that was done at the Visual Computing Laboratory." Dr. Trivedi states:

[The beneficiary] was the founding engineer who worked with a small team and helped build the company and its technology to its current state, a leader in event management and experience solutions... This work has resulted in several pending patents as well as a primary revenue stream for the company. Some of the products that [the beneficiary] has architected include *PRAJA Presence SDK*, *PRAJA ActionSnaps!*, *Tournament Tracker*, *PRAJA QuickView*, and the next generation platform: *PRAJA Event Management System*.

██████████ President and CEO of the petitioning entity, describes the beneficiary as “a founding member of [the petitioning entity’s] research team.” He states: “[The beneficiary’s] research portfolio at [the petitioner] includes the filing of two patents for three-dimensional user interfaces.” The director’s decision acknowledged the patent filings, but stated: “Since anyone may file a patent application regardless of whether the invention or idea is a scholarly research contribution, the mere filing of a patent application... is not sufficient evidence of an alien’s original scientific or scholarly research contributions to the academic field.”

██████████ credits the beneficiary with publishing three research articles and presenting findings at ten conferences. The record, however, contains no evidence that the publication or presentation of one’s work is a rarity in beneficiary’s field, nor does the record sufficiently demonstrate that independent international researchers have heavily cited or relied upon the beneficiary’s findings in their research. While the beneficiary’s research may have commercial applications, it can be argued that any article, in order to be accepted in a scientific journal for publication, must offer new and useful information to the pool of knowledge. It does not follow that every scientist whose scholarly research is accepted for publication has made a significant contribution to his field. The beneficiary’s published works will be further addressed under a separate criterion.

Dr. Rangachar Kasturi, Professor of Computer Science and Engineering, Penn State University, has co-authored three publications with ██████████. He states that the beneficiary has contributed to the development of several patent petitions and product lines for the petitioning entity. Other witnesses credit the beneficiary with being a co-inventor on two approved patents while working at the Visual Computing Laboratory at UCSD. The granting of a U.S. patent documents that an innovation is original, but not every patented invention or innovation constitutes a contribution of international significance. Nothing has been submitted to demonstrate that the beneficiary’s patents are more significant than the thousands of other patents granted annually by the United States Patent and Trademark Office.

Drs. ██████████ and Kasturi both speculate on the future significance of the beneficiary’s research. ██████████ states that the beneficiary’s research at the UCSD “holds great promise in developing even more advanced technology for communications, video entertainment and surveillance, and military reconnaissance projects.” It should be noted that at the time of the petition’s filing, four years had elapsed since the beneficiary’s departure from the UCSD. The petitioner offers no evidence from independent experts in the above industries to confirm the successful implementation of the beneficiary’s graduate research results. Dr. Kasturi describes the beneficiary as a “developer of innovative products which are expected to be of significant value to the United States.” The witnesses’ speculation as to the future significance of the beneficiary’s research carries no evidentiary value. The petitioner must demonstrate the beneficiary’s specific contributions that have already garnered international recognition in the field of endeavor.

The petitioner has submitted letters from the beneficiary’s former research supervisor at the University of Michigan, an advisor on the beneficiary’s graduate committee at UCSD, a professor from UCSD who “had interaction with [the beneficiary] as a teaching assistant,” the

petitioning entity's president, and a professor from Penn State who collaborated on research with the petitioning entity's president. Because all of these individuals have direct ties to the petitioner or the beneficiary, their letters cannot serve as evidence that the beneficiary has attained international recognition in his field for significant contributions. The witnesses' statements do not show, first-hand, that the beneficiary's individual work is attracting attention on its own merits, as we could expect from researchers whose findings were especially significant. Thus, the record does not show that the beneficiary's work is internationally recognized as being a significant contribution to his field.

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

The petitioner submits evidence of research articles co-authored by the beneficiary. Two of the articles were featured in *Computer Networks and ISDN Systems*. According to the *1998 Journal Citation Reports* published by the Institute for Scientific Information, *Computer Networks and ISDN Systems* impact factor ranked it number thirty three among "Computer Science, Information System" journals. Two additional articles were featured in *IEEE Computer Graphics & Applications* and *Multimedia Systems*. These two journals did not appear in the rankings from the Institute for Scientific Information provided by the petitioner. The petitioner submits information reflecting that *IEEE Computer Graphics & Applications* has a circulation of 6,451 (June 2000). No information was provided regarding the circulation of *Multimedia Systems*. The evidence provided by the petitioner indicates that the journals featuring the beneficiary's articles have a minimal degree of international circulation.

The publication of scholarly articles, however, is not automatically evidence of international recognition; we must consider the research community's reaction to those articles. Frequent citation by independent researchers throughout the field demonstrates more widespread interest in, and reliance on, the beneficiary's work. On appeal, the petitioner submits citation histories for three published articles co-authored by the beneficiary. Self-citation is a normal, expected practice. Self-citation does not, however, demonstrate the response of independent researchers.

The citation histories reveal that an article entitled "Toward Video-based Immersive Environments" (1997) has been cited five times, three times by independent researchers; an article entitled "ROBOGEST: Telepresence Using Hand Gestures" (1994) has been cited four times by independent researchers; and an article entitled "Reality Modeling and Visualization from Multiple Video Sequences" (1996) was independently cited twelve times.<sup>1</sup>

The number of independent citations simply does not rise to a level that would demonstrate international recognition. The fact that the beneficiary's work has been cited demonstrates that other scientists have found his research to be useful, but a scientist does not earn international

---

<sup>1</sup> The citation history for the article entitled "Reality Modeling and Visualization from Multiple Video Sequences" indicates twenty-two citations, but a closer examination of the articles listed reveals multiple listings of the same articles and one self-citation by [REDACTED]

recognition simply by providing useful and valid results. The impact and implications of a researcher's findings must be weighed. The record in this case generally describes the beneficiary's work rather than offering a valuation of its overall significance to the academic field.

The wealth of the petitioner's evidence, such as all of the beneficiary's cited publications and two of the approved patents, relates to research that was generated while the beneficiary was pursuing his doctorate and working in the Visual Computing Laboratory at UCSD. The Service regulation at 8 C.F.R. 204.5(i)(3)(ii), however, specifically states that experience in research while working on an advanced degree will only be acceptable if the alien has acquired the degree. Counsel acknowledges that the beneficiary did not obtain his Ph.D. from UCSD. Although this decision has considered all of the petitioner's evidence, including his work at UCSD, the regulations indicate that research toward a degree that is never completed does not count as qualifying experience. The evidence provided indicates that since obtaining employment with the petitioner, the beneficiary has been named as a co-inventor on one approved patent and co-authored one published article, "Content-centric Interactive Video on the World Wide Web." The petitioner provides no evidence that articles resulting from the beneficiary's research at the petitioning entity have been independently cited.

Counsel correctly notes that "neither the Act nor the Regulations specify a time limit for the originality of research." It remains, however, that the majority of the beneficiary's documented research accomplishments occurred while he was pursuing his doctorate at the Visual Computing Laboratory at UCSD. The beneficiary's contribution to new products developed by the petitioning entity simply does not rise to a level of international recognition. In sum, neither his work at USCSD nor his three years of qualifying research for the petitioning entity have been shown to earn the beneficiary international recognition as an outstanding researcher.

The petitioner has shown that the beneficiary is a talented researcher, who has won the respect of his collaborators, employers, and mentors, while possibly securing some minimal degree of international exposure for his work. The record, however, stops short of elevating the beneficiary to an international reputation as an outstanding researcher. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.