



U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

B5

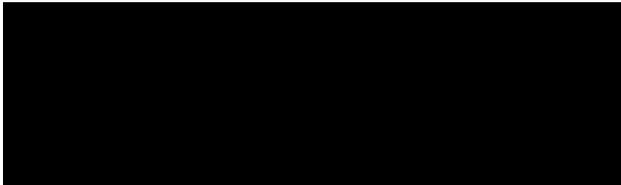


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: SEP 30 2005
WAC 04 109 51981

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

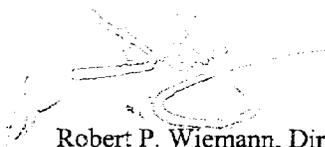
PETITION: Immigrant Petition for Alien Worker as Outstanding Professor or Researcher Pursuant to
Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a semiconductor manufacturer. It seeks classification of 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 manager of architecture and design.¹ The director determined that the petitioner had not established that the beneficiary has attained the outstanding level of achievement required for the category of outstanding professor or researcher.

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.

The regulation at 8 C.F.R. § 204.5(i)(3) states 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

¹ The job description provided sufficiently establishes that this is a research position.

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.

The sole issue to be considered in this proceeding is whether the beneficiary's scientific accomplishments are internationally recognized as those of an outstanding researcher in his field. The regulation at 8 C.F.R. § 204.5(i)(3)(i) states 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." Outstanding professors and researchers should stand apart in the academic community through eminence and distinction based on international recognition. The regulation at issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. 56 Fed. Reg. 30703, 30705 (1991). The petitioner must meet at least two of six stated criteria. The petitioner meets the following criteria:

Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members

The petitioner submitted evidence that the Institute of Electrical and Electronics Engineers (IEEE) elected the beneficiary to the grade of fellow in 1995, effective January 1, 1996, with the following citation:

For the advancement of the state of the art in data and voice communication systems and entrepreneurship that contributed to the adoption of asynchronous transfer mode switching by the computer networking industry.

The director requested evidence regarding the minimum requirements for membership. In response, the petitioner submitted materials from IEEE's website indicating that IEEE fellowship "is conferred by the Board of Directors upon a person with an extraordinary record of accomplishments in any of the IEEE fields of interest." The materials also indicate that IEEE issues a citation to new fellows "describing their accomplishments." Finally, the total number of fellows selected in one year may not exceed one-tenth of the voting membership.

The director concluded that the petitioner had not established the number of members, the beneficiary's "rank" compared to other members, the status of the association within the community or "any other conditions or requirements of membership." The director concluded that the petitioner had not established that IEEE was more than a professional association.

On appeal, the petitioner submitted additional materials from IEEE's website. These materials provide:

The grade of Fellow recognizes unusual distinction in the profession and shall be conferred only by invitation of the Board of Directors upon a person of outstanding and extraordinary qualifications and experience in IEEE-designated fields, and who has made important individual contributions to one or more of these fields.

The materials further indicate that self-nomination is not permitted and that nominations should be supported with a "tangible" record of outstanding accomplishments. Where patents are submitted as part of the "tangible" record, the nominator must "state engineering significance of items." Regarding selection:

The IEEE and its member societies cooperate each year to select a small group of outstanding professionals for recognition as IEEE Fellows. A senior IEEE member who has achieved distinction in his or her field can be named an IEEE Fellow only after being nominated for the honor. All such nominations undergo rigorous review before the IEEE Board of Governors votes to bestow the prestigious rank of fellow.

Typically, nominees must already be senior members. The nominees are evaluated as follows:

- o Individual contributions as an engineer or scientist, technical leader, or educator;
- o Technical evaluation by one IEEE society or council;
- o Tangible and verifiable evidence of technical accomplishment, such as technical publications, patents, reports, published product descriptions and/or services, as listed on the nomination form;
- o Confidential opinions of referrers who can attest to the nominee's work;
- o IEEE and non-IEEE professional activities, including awards, services, and offices held, committee memberships, and the like; and
- o Total years in profession.

The statistics provided reflect that as of March 2002, there were 392,500 members in all grades, and only 5,746 fellows. In 1999, IEEE elected only 43.6 percent of the education nominees and 40.1 percent of the industry nominations.

While IEEE may generally be a nonexclusive professional association, the petitioner has established that the grade of fellow is a membership that does require outstanding achievements. Thus, we find that the beneficiary does meet this criterion.

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

The petitioner relies on reference letters and the beneficiary's patents as evidence to meet this criterion. The director concluded that the letters from collaborators could not demonstrate that the beneficiary's work is recognized beyond his circle of colleagues and that the citations demonstrated only that the beneficiary's work is useful. On appeal, counsel reviews the reference letters and asserts that they are from leading authorities in the field and "should be given the same weight as letters written by unrelated persons." The petitioner submits two new letters and evidence that the beneficiary has authored 26 patents which have been cited in other patents a total of 319 times, with several of the beneficiary's patents receiving at least 40 citations each and little, if any, overlap.

Obviously, the petitioner cannot satisfy this criterion simply by listing the beneficiary's past projects, and demonstrating that the beneficiary's work was "original" in that it did not merely duplicate prior research. Research work that is unoriginal would be unlikely to secure the beneficiary a master's degree, let alone

classification as an outstanding researcher. Because the goal of the regulatory criteria is to demonstrate that the beneficiary has won international recognition as an outstanding researcher, it stands to reason that the beneficiary's research contributions have won comparable recognition. To argue that all original research is, by definition, "outstanding" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal."

In a similar vein, the evidence that the beneficiary holds several patents for his inventions establishes that he is a prolific inventor, but the very existence of the patents does not show that the beneficiary's inventions are more significant than those of others in his field. To establish the significance of the beneficiary's work, we turn to experts in his field, whose letters we discuss below, and the citations.

Director of Strategy and Architecture at [REDACTED] indicates that he worked closely with the beneficiary on the architecture of the [REDACTED] switch that featured two technological breakthroughs. Specifically, the ATM switch incorporated the first Network Processor and the Prizma switch. [REDACTED] then summarizes the beneficiary's career. Specifically, in the 1970's, the beneficiary designed "16 and 32 bit microprocessors in the IBM Advanced System Development Division." The beneficiary then "capitalized on this expertise to make a real breakthrough in designing the first industry Digital Signal Processor." In the 1980's, the beneficiary led "the Architecture of the most advanced, at the time, voice/data PBX." [REDACTED] continues:

Integrating Voice and Data has always been [the beneficiary's] long-term objective, culminating in the early 1990's, with the Architecture of the first true broadband switch, supporting a rich mix of multimedia traffic in both cell and packet form. This project, linking the most expert researchers at the time, enabled [the beneficiary] to create and support major new technological breakthroughs. One of them, the first Network Processor, while viewed with skepticism at the time, is nowadays an industry flagship initiative. Another one, developed in conjunction with Research, the Prizma switch, is the true leader in today's strategic industry.

The other letters submitted initially provide similar information. On appeal, the petitioner submits two new letters. [REDACTED] President of [REDACTED] and [REDACTED] for [REDACTED] asserts that the beneficiary is a "pioneer" of voice, data and video convergences. [REDACTED] Head of the Computer Engineering Program and Seattle Pacific University, asserts that, based on a review of the beneficiary's credentials, he has "been at the forefront of innovation in the field of Computer Engineering and has made major original contributions to that field."

While letters from colleagues are important in explaining the petitioner's role in various projects and do carry evidentiary weight, they cannot, by themselves, establish the petitioner's recognition beyond his immediate circle of colleagues. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review.

As the above letters are from the beneficiary's immediate circle of colleagues and independent experts who do not appear to have had any prior knowledge of the beneficiary or his work prior to being requested to provide a

reference, they cannot, by themselves, establish the beneficiary's international recognition. Claims that the beneficiary's inventions have been pioneering should be verifiable through evidence beyond the attestations of the beneficiary's colleagues. In this matter, the petitioner has submitted such evidence. The record reflects that beneficiary's patents have been frequently referenced in other patents. The record does not establish the significance of such references in general or how many references are considered significant in the telecommunications business. For example, the letter writers do not indicate how often their own patents have been cited. That said, we are satisfied that 319 such citations support the claims in the beneficiary's reference letters attesting to his international recognition.

As we conclude that the beneficiary meets the two criteria discussed above, we need not discuss counsel's far less persuasive assertions relating to other criteria.

The record indicates that the beneficiary meets at least two of the six criteria listed at 8 C.F.R. 204.5(i)(3)(i). Based on the evidence submitted, it is concluded 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 these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.