U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

File: WAC-99-220-52887 Office: California Service Center Date: JAN 24 2003

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)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

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

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 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):
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> > (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 Service regulation 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 he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an engineering systems engineer. The petitioner has a Master's degree in his field from North Carolina State University. 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 that, he claims, meets the following criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted evidence that he received the second place 1997 Institute of Industrial Engineering (IIE) Graduate Research Award and the 1998 Norman Dudley Award. The petitioner submitted a copy of the Norman A. Dudley Award itself, issued by Taylor and Francis, Ltd., the publishers of *International Journal of Production Research* in recognition of an article on 5-axis machining published in the journal. The petitioner's Master's degree advisor, Dr. Yuan-Shin Lee, co-authored the winning article with the petitioner and is a co-recipient of the award. Dr. Lee asserts that the award, "is awarded to the author(s) of the paper judged to have the potential for making the greatest contribution to the advance of manufacturing practice."

In her request for additional documentation, the director requested evidence of the significance of the petitioner's awards. In response, the petitioner submitted a letter from the executive director of IIE asserting that the graduate research awards are open to all student members who are candidates for a master's degree. The petitioner also provided Internet materials regarding the awards which indicate that every university chapter may submit one thesis deemed to be the best for that year.

The petitioner also submitted a letter from John E. Middle, editor of the *International Journal of Production Research*. Mr. Middle asserts that the journal has 1800 subscribers, publishes 230 articles per year, has a 40 percent acceptance rate, and draws authors from many different countries. Mr. Middle further asserts that the Norman Dudley Award was initiated in 1995 and is awarded annually "to the author/s of the paper describing original research that is judged to have the potential for making the greatest contribution to the advance of manufacturing practice." Finally, Mr. Middle indicates that nominations come from the editorial board and that an independent panel of British manufacturing professionals selects the winner.

The director first stated that the petitioner had only won scholastic awards for which only students at a specific school compete. In the next paragraph, however, the director concluded that the record lacked sufficient evidence of the significance of the awards and that the use of the words "national" or "international" in an award was, by itself, insufficient to establish the significance of the awards. On appeal, the petitioner correctly notes that his awards were not limited to a specific school.

While the petitioner's awards were not limited to his fellow students at North Carolina State University, only graduate students competed for the IIE Graduate Research Award. As the petitioner did not compete with national or international experienced experts in the field, this award cannot be considered evidence of the petitioner's national or international acclaim.

Similarly, only published authors in the *International Journal of Production Research* compete for the Norman Dudley Award. While Mr. Middle provides the number of subscribers, articles, and acceptance rate for the journal, the record does not reflect how these numbers compare with other

engineering journals. Without evidence that publication in the journal is something to which the top engineers aspire, the petitioner cannot demonstrate that the Norman Dudley Award is an award for which the top experts in the field compete. Moreover, the award is for research that has the *potential* to make a great contribution to the field. In order to be indicative of sustained national acclaim, an award must be for an achievement with demonstrated value, not one with the potential to be considered important at some point in the future.

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.

The petitioner submitted evidence of his associate membership in the Society of Manufacturing Engineers (SME) and his membership in the Institute of Industrial Engineers (IIE). In her request for additional documentation, the director requested evidence of the minimum requirements for these associations. In response, the petitioner failed to submit such documentation. The director did not address this criterion in her decision and the petitioner does not address this criterion on appeal.

It remains, the record does not reflect that these organizations require outstanding achievements of their general membership. As such, the petitioner has not established that he meets this criterion.

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.

While the petitioner never claimed to have met this criterion, the director concludes that the petitioner's articles do not meet this criterion because the articles were co-authored and because the petitioner had not demonstrated that the journals are considered "major media." The petitioner does not address this issue on appeal.

The petitioner's articles were authored by him and not about him and the petitioner specifically submitted them as evidence for the scholarly articles criterion discussed below. As the petitioner specifically submitted his articles as evidence relating to another criterion, it is unclear why the director chose to address the petitioner's articles under this criterion and failed to specifically discuss the criterion for which they were submitted. Nevertheless, we concur that the petitioner does not meet this criterion.

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

The petitioner asserts that he meets this criterion through his proposal of "a new cutter path generation algorithm for 5-axis sculptured surface machining." This proposal was the subject of the petitioner's award-winning thesis published in the *International Journal of Production Research*. The director concluded, "the breadth of witnesses is not illustrative of national or international

acclaim. The record contains no credible evidence that your reputation has traveled beyond the confines of [the] institutions [at which] you have studied and worked." The petitioner fails to address these concerns on appeal and, for the reasons discussed below, we concur with the director.

Dr. Yuan-Shin Lee, the petitioner's advisor at North Carolina State University, provides general praise of the petitioner's skills. Dr. Lee then discusses the petitioner's work at North Carolina State as follows:

> [The petitioner] worked with me on the development of a computer-aided manufacturing (CAM) system for multi-axis complex surface machining in his research. This work is in the area of Computer Aided Design and Manufacturing and he has had to utilize his knowledge of both design and manufacturing in order to facilitate their integration by developing his system. This technology developed can be widely used by the automotive, die/mold manufacturing, and aerospace industry. His research is significant and he has done an excellent job.
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> * * *
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> [The petitioner's] work has advanced the technology in multi-axis sculptured surface machining and reduced the manufacturing cost by optimizing cutter path generation.

Dr. Robert Young, a member of the petitioner's degree committee at North Carolina State University, asserts that the petitioner has made "outstanding contributions to sculptured surfaces machining in the areas of cutter path generation, simulation, verification and optimization," an area little researched due to its complexity, according to Dr. Young. Dr. Young further states that the petitioner's work "allows" improved manufacturing accuracy and reduced production times. Dr. Young explains that the petitioner's work is important because it relates to the production of ships, aircraft, and vehicles, which all have "contoured surfaces that are geometrically complex but must be accurate and smooth." More specifically, Dr. Young states:

> In particular, sculptured surface machining determines what can be designed because it determines what can be manufactured. As examples, the better we can machine the propeller on a nuclear submarine to its design specifications, the quieter it will move through the water and the more difficult it is to detect. On an airplane, machining ability is a limiting factor on wing design. On vehicles it is the limiting factor on body design. [The petitioner's] work has advanced the art in sculptured surface machining allowing more complex designs to be manufactured. Additionally, his work in cutter path optimization reduces the cost of these products by reducing the time required to machine them. Consequently, [the petitioner] is one of the top researchers in this area and his work is in our national interest because it is on the leading edge of machining for sculptured surfaces, a technology used by a wide-range of American industry.

We note that the "national interest" is a consideration in a lesser classification than the one sought by the petitioner.[1]

Dr. David Ben-Arieh, one of the petitioner's professors at North Carolina State University, provides similar information to that discussed above. Dr. Cormier, another professor at North Carolina State, also provides similar information, further asserting that the petitioner's work will allow U.S. manufacturing companies to compete by reducing the cost of replacing tools for upgrades and eliminating the cost of post-manufacturing hand polishing. Dr. Cormier concludes that only a "handful" of other researchers in the United States are capable of performing the type of work the petitioner performs with 5-axis machining.

Vaiti Nathan, president and Chief Executive Officer of Sirius System Corporation, where the petitioner was employed, writes that the petitioner's proposed cutter path generation algorithm for 5-axis sculptured surface machining will save 30 percent machining time for the manufacture of automobiles or aircraft. Mr. Nathan continues that at Sirius, the petitioner "developed several important algorithms for our NC Verify Super Turbo product. Those algorithms help the company winning more and more clients in the competition with other companies." Mr. Nathan further states that the petitioner's comparison algorithm, widely used by Sirius' clients, "is faster and more accurate than that of competitors. The algorithm will compare the manufactured part with the design part and show the out of tolerance areas." Finally, Mr. Nathan asserts that the petitioner was the primary developer and coordinator of the company's NC Optimizer that is now being tested in local machine shops.

Adel Atta, who was a consultant on the NC Optimizer project, asserts that there is strong demand for such a product and provides general praise of the petitioner. Ms. Atta asserts without explanation that the petitioner is an "internationally renowned specialist in the field of Computer Aided Manufacturing, especially in the cutter path generation, verification, simulation and optimization."

The above letters are all from the petitioner's collaborators and immediate colleagues. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's national or international acclaim. The petitioner did not provide evidence from industry experts affirming that manufacturers have, in fact, adopted the petitioner's algorithms and attesting to their influence. Even so, we note that the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

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[1] Advanced degree professionals or aliens with exceptional ability may seek a waiver of the labor certification process in the "national interest." *See* section 203(b)(2)(B) of the Act.

We acknowledge that the petitioner's article in the *International Journal of Production Research* was selected from all of the articles published in that journal that year for an award. Nevertheless, as stated above, the award was based on the potential of the research to have a significant impact. Thus, the award is not recognition for having made a contribution that is already known to have influenced the field in a major way.

In light of the above, we concur with the director that the petitioner has not demonstrated that he has made any demonstrated contributions recognized outside his immediate circle of professors and colleagues.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submitted evidence that he has authored two published articles, including his award-winning article published in the *International Journal of Production Research*. As stated above, the director discussed these articles under the published materials criterion despite the petitioner's assertion that the articles were submitted in support of this criterion. Nevertheless, some of the director's language is applicable. For example, the director stated that engineers do not "earn widespread acclaim simply by producing useful or valid results. The impact and implications of an engineer's findings must be weighted." The petitioner failed to address this concern on appeal.

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 sustained acclaim; we must consider the research community's reaction to those articles.

The petitioner did not submit any evidence that his articles have been cited, let alone widely cited. Nevertheless, we cannot ignore that one of his articles won an award from the publisher and that the petitioner was selected for this award by a panel of British professionals. As such, we conclude that the petitioner meets this single criterion.

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

The petitioner claims to have played a leading or critical role for DP Technology Corporation, Sirius Systems Corporation, and Unigraphics Solutions Corporation. The petitioner characterizes DP Technology as a "mid-size CAM software company," Sirius as a "startup focused on simulation, verification and optimization," and Unigraphics as "a large, global CAD/CAM/CAE

software and service company and one of the top ten software companies worldwide." The director did not address this criterion in his decision and the petitioner does not address it on appeal. We will consider the evidence of record as it relates to this criterion.

The petitioner provides a job offer letter from DP Technology offering him the position of R&D software engineer. It is not clear that every R&D software engineer plays a leading or critical role for his employer. The petitioner also submitted internet materials indicating that, among its customers, DP Technology is considered "an intellectual giant of software because it has brought unheard-of sophistication to the control of the manufacturing process, from design to metal cutting." The materials focus on the program "Esprit" and indicate that users include Caterpillar, IBM, Texas Instruments, and Whirlpool. As the petitioner has not established that he played a leading or critical role for this company, however, we need not decide whether it has a distinguished reputation nationally.

As stated above, Vaiti Nathan, president and Chief Executive Officer of Sirius System Corporation, asserted that at Sirius, the petitioner "developed several important algorithms for our NC Verify Super Turbo product. Those algorithms help the company winning more and more clients in the competition with other companies." Mr. Nathan further states that the petitioner's comparison algorithm, widely used by Sirius' clients, "is faster and more accurate than that of competitors. The algorithm will compare the manufactured part with the design part and show the out of tolerance areas." Finally, Mr. Nathan asserts that the petitioner was the primary developer and coordinator of the company's NC Optimizer that is now being tested in local machine shops. While the petitioner submitted some of Sirius' pamphlets, they do not establish the company's national reputation. As such, even if we concluded that serving as the primary coordinator of a single project constituted a leading or critical role for the company as a whole, the petitioner has not provided any evidence that Sirius, a "startup" company, enjoys a distinguished reputation nationally.

According to the petitioner, at Unigraphics he works on the "frontline of computer aided engineering technology development, delivering cutting-edge knowledge to the customers." The petitioner also claims to work with customers to define design requirements, evaluate requirements for new functionality, propose design alternatives for team evaluation, identify best-in-class techniques, recommend optimal approaches for implementation, provide vision/future directions for one or more models within a product area, and develop systems using various software operating systems. The petitioner further asserts that Unigraphics has 9,200 business customers in 20 countries. In support of the petitioner's claim, he submits the job offer letter from Unigraphics offering him a position as an Engineering Systems Engineer and materials from the company's website and *Business Week*'s website reflecting Unigraphic's inclusion on *Business Week*'s list of the top ten software companies worldwide.

In response to the director's request for additional documentation, the petitioner submitted an unsigned memorandum from John Whetstone at Unigraphics authorizing Krista Holeman to pursue permanent residency for the petitioner. Mr. Whetstone asserts that the petitioner is only one of two software engineers in his area and that his knowledge and experience "put him in a unique position to provide technical leadership and provide [Unigraphics] with a valuable expertise in an area that

is one of the cornerstones of our Computer Aided Engineering product line." The petitioner also provides an e-mail from David Williams at Unigraphics asserting that the company's legal team advises against providing recommendation letters for self-petitioners. Finally, the petitioner provides a products and operations organizational chart for Unigraphics reflecting that the petitioner is one of nine members of the workflow team under Lee Rowlands. The workflow team is one of five teams that works on Cypress Development, a project headed by Jayesh Kotak who works for David Williams, head of the iMAN-Cypress Site. Another organizational chart reflects that the petitioner is one of eight members of one of two structures teams headed by Paul Benson. Structures is one of four teams under Analysis which is under Production Support which is under Design and Analysis. While Unigraphics as a whole may have a distinguished reputation, the petitioner, as a member of a nine-member workflow team and an eight-member structures team at the bottom of the organizational chart, does not appear to play a leading or critical role for the company as a whole.

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

The petitioner claims to meet this criterion through his salary at Unigraphics Solutions Corporation. The petitioner claims his annual salary is $60,000 with benefits totaling another $15,000. The petitioner submitted a pay stub from Unigraphics reflecting gross pay for that pay period of $2,500. In her request for additional documentation, the director requested evidence that the petitioner's salary was high in comparison to others in the field. Specifically, the director requested evidence such as a statistical comparison of the salaries in the field.

In response, the petitioner submitted the requested materials from the Economic Research Institute reflecting that the annual mean salary for the petitioner's position in 1999, when the petition was filed, was $40,539. The petitioner also submitted additional pay stubs reflecting that as of October 15, 2000, the petitioner had earned $51,212.69 during that year.

The director concluded "there was no evidence submitted that you had commanded [a] higher salary or higher remuneration known to command higher amount (millions) of dollars for services that invites [a] comparison [of] these figures, compared to other Engineering System Engineers in the field for a sustained period." On appeal, the petitioner notes that he submitted the evidence specifically requested by the director.

The director's point in the above-quoted sentence is not entirely clear. If the director is suggesting that an alien must earn millions of dollars to meet this criterion, we do not agree. The director does not refer to any evidence in the record suggesting that the highest paid experts in the petitioner's field earn millions of dollars. In addition, if the director rejects evidence she specifically requested she should provide an explanation of why the data in the requested evidence is problematic. Despite our concerns with the director's discussion of this criterion, we concur that the petitioner has not established that he meets this criterion. While his salary is above the annual mean salary for his position, the petitioner must demonstrate that he earns a significantly high salary as compared with other highly compensated members of his field. As

the petitioner has only demonstrated the mean salary for his position, and not the high-end salaries in the field, we cannot determine if his salary is significantly high. Moreover, he provided data from Orange County, California. A petitioner must demonstrate that his salary is significantly high as compared with experts nation-wide.

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 petitioner has distinguished himself as an engineer 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 indicates that the petitioner shows talent as an engineer, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. 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.