

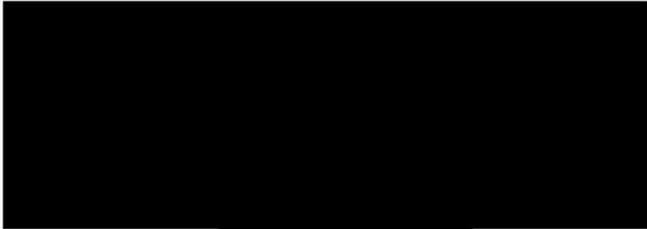
**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



**U.S. Citizenship  
and Immigration  
Services**

**B6**

**PUBLIC COPY**



FILE:

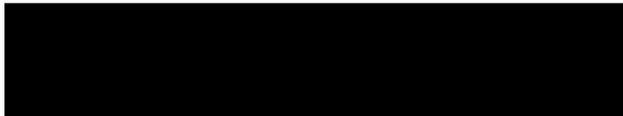
[Redacted]  
EAC 03 264 52612

Office: VERMONT SERVICE CENTER

Date: **JUL 19 2006**

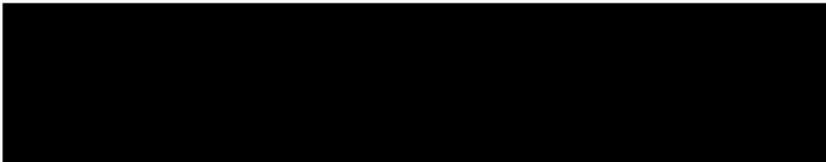
IN RE:

Petitioner:  
Beneficiary:



PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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, Chief  
Administrative Appeals Office

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

The petitioner is a promotional advertising firm organized as a corporation. It seeks to employ the beneficiary permanently in the United States as a marketing operations manager. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor accompanies the petition. The director determined that the petitioner had not established that the beneficiary has the college degree required by the preference classification for which the Alien Employment Certification accompanying the petition specified and denied the position accordingly.

On appeal, the counsel submits a brief.

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for granting preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

8 CFR § 204.5(l)(3)(ii) states, in pertinent part:

(A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for granting preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

The regulation at 8 C.F.R. § 204.5(l)(2) states, in pertinent part:

“*Professional* means a qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions.”

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states, in pertinent part:

*Professionals.* If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.

If the petition is for a professional pursuant to 8 C.F.R. §204.5(l), then, the petitioner must demonstrate that the beneficiary received a United States baccalaureate degree or an equivalent foreign degree prior to the priority date, the day the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. Here, the Form ETA 750<sup>1</sup> was accepted for processing on January 14, 1998.<sup>2</sup>

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship & Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). See also, *Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, Form ETA 750 A, item 14 describes the requirements of the proffered position and occupation of marketing operations manager as follows:

14.	Education (enter number of years) .....	
	Grade School	<u>8</u>
	High School	<u>4</u>
	College	<u>4</u>
	College Degree Required	<u>Business</u>
	Major Field of Study	<u>Marketing</u>
	Training	Blank
	Experience .....	
	Job Offered .....	
	Number –Years / Mos.	<u>2/0</u>
	Related Occupation .....	
	Number –Years / Mos.	<u>Blank</u>
	Related Occupation ... ..	
	Specify	<u>Blank</u>

Form ETA 750 A, item 15 described “Other Special Requirements” as follows: “IBM/compatible computer 1 year experience with Microsoft Office (including Microsoft Word, PowerPoint, Excel and access) software.” This requirement was deleted by the U.S. Department of labor regional office.

<sup>1</sup> The petitioners IRS Forms 1120S submitted for years 1997 and 1998 stated taxable incomes (Lines 21) of \$1,479,965.00 and \$907,315.00 respectively. There are W-2 Wage and Tax statements in the record of proceeding that demonstrate that the petitioner paid the beneficiary \$54,663.82, \$60,093.89, and \$62,321.60 in 2000, 2001 and 2001 respectively. The proffered wage is \$104,402.00.

<sup>2</sup> It has been eight years since the Alien Employment Application has been accepted and the proffered wage established. According to the employer certification that is part of the application, ETA Form 750 Part A, Section 23 b., states “The wage offered equals or exceeds the prevailing wage and I ... [the employer] guarantee that, if a labor certification is granted, the wage paid to the alien when the alien begins work will equal or exceed the prevailing wage which is applicable at the time the alien begins work.”

The employer who is the petitioner has prepared the above ETA 750 A as an essential part of the labor certification process used to support a preference visa petition that is employment based. The employer who desires to employ an alien in the United States must undertake a multiple step process as directed by the United States Department of Labor which, once approved, certifies the Alien Employment Application for the occupation based upon the above criteria. In the present case, the above requirements also state that the occupation of marketing operations manager requires four years of college degree resulting in a business degree in the major field of study of Marketing.

Along with Form ETA 750, Part A, set forth above; the employer also is required to submit Form ETA 750, Part B that is a "Statement of Qualifications of Alien." Part B identifies the alien, specifies her current and prospective address in the United States, her education including trade and vocation training, and lists her work experience.

The Form ETA 750 Part B prepared by the beneficiary states the following education history:

Block 11

Names and Addresses of Schools, Colleges, and Universities Attended (including trade or vocational training facilities)

University of the Philippines, Manila, Philippines

Field of Study	<u>Business Administration</u>
From ...[mo./yr]	<u>04/91 [sic 1981]</u>
To ...[mo./yr.]	<u>04/85</u>
Degrees or Certificates Received	<u>Bachelor Degree</u>

The director issued a request for evidence dated November 28, 2003. The director requested evidence that the beneficiary completed four years of college education, and obtained the required bachelor's degree in business with the major field of study being marketing as of January 14, 1998.

The request for evidence stated that if the beneficiary possessed a degree received outside the United States, then in that case, the petitioner should also submit a credentials evaluation report of the beneficiary's educational attainment. It also requested substantiation of the beneficiary's relevant industrial experience as marketing operations manager as of the priority date.

Counsel did not submit as evidence an education credential evaluation in response to the above request. Counsel submitted a letter from the beneficiary's prior employer dated January 10, 1997 recounting the beneficiary's prior job experience.

The director determined that the petitioner had not established that the beneficiary did not have the college degree required by the preference classification for which the Alien Employment Certification accompanying the petition specified, and denied the petition on October 12, 2004.

On appeal, the counsel submits a brief and he asserts that the "... Petitioner and beneficiary have given enough information and documentation initially and herein to meet that burden of proof."

As additional evidence to accompany the appeal, counsel submitted copies of the following documents: a credentials evaluation from [redacted] dated April 9, 2004; a Bachelor of Science in Business

Administration evidenced by a diploma from the University of the Philippines, and, the beneficiary's collegiate record (i.e. course/grade transcript) as well as documents relating to the labor certification process.

The subject Form ETA 750 Part A requires a degree from a college and the completion of four years of baccalaureate studies. CIS regulations do not provide that a combination of education and experience may be accepted in lieu of a four-year degree. While the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) do state that the "relevant post secondary education may be considered as training for the purposes of this paragraph;" there is no regulation that would allow for a converse, that the experience may be considered for education requirements. The record of proceeding demonstrates that the beneficiary has four years of college education and over two years job experience as the marketing manager for [REDACTED] of Orlando, Florida according to the letter dated January 10, 1997, from [REDACTED] submitted into evidence in response to the director's request for evidence.

Petitioner's clear intent is expressed in the certified Alien Employment Application. A four-year college "business" degree is required in the marketing field of study. Note that even if this petition were considered under the skilled worker regulations, the result would be the same. While it is clear that regulations governing the skilled worker classification do not contain a baccalaureate degree requirement, CIS is still bound by the regulations and above-cited case law to require the petitioner and beneficiary to meet the requirements specified on the ETA-750. *See* 8 C.F.R. § 204.5 (l)(3)(ii)(B). Regardless of classification, the ETA-750 contains the requirements that the beneficiary must have four years of college education culminating in a bachelor's degree specified, as a "business" degree is required in the marketing field of study.

An education credential evaluation by [REDACTED] dated April 9, 2004, stated that the beneficiary achieved the "...equivalent of a Bachelor's degree in Business Administration at an accredited institution in the United States."

CIS may, in its discretion, use as advisory opinions, statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). In this instance, by petitioner's credential evaluator, the beneficiary has a four-year college degree in Business Administration. This matter is not in dispute.

The director specifically stated that since the labor certification stated without qualification that the major field of study should be marketing, and, that the beneficiary must have a Bachelor's degree with a major in marketing to qualify under the labor certification for the job offered. An examination of the beneficiary's college transcript shows the attainment of college level courses in Marketing Management I and II, Marketing Research, and International Marketing as well as complimentary business administration courses that are directly related to a career in business and marketing.

An examination of the beneficiary's diploma in Business Administration does not indicate a major field of study, such as may be found in engineering, mathematics or physics for example. There is no additional or supplemental material concerning this question. It is credible to conclude from the evidence presented that a Business Administration degree does not specify a major field of study since it appears to have a variety of inter-related fields of study necessary for a career in business. Based upon all the evidence submitted, we conclude the beneficiary in fact has educational attainments in the marketing field of study.

The petitioner has submitted evidence to demonstrate that the beneficiary has a United States baccalaureate or an equivalent foreign degree in business in the marketing field of study. The instant petition, submitted pursuant to 8 C.F.R. §204.5(1), may be approved.

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.

**ORDER:** The appeal is sustained.