U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 02 239 52328 Office: CALIFORNIA SERVICE CENTER Date: OCT 1 2 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The matter will be remanded for further consideration.

The petitioner is a manufacturer of computer hardware and software. It seeks to employ the beneficiary permanently in the United States as a technical writer/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 requisite experience as stated on the labor certification petition and denied the petition accordingly.

On appeal, counsel submits a brief.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of 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 unavailable in the United States.

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 the granting of 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) defines "professional" and "skilled worker" as follows:

> *Professional* means a qualified alien who holds at least a United States baccalaureate degree and who is a member of the professions.
>
> *Skilled worker* means an alien who is capable, at the time of petitioning for this classification, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States. Relevant post-secondary education may be considered as training for the purposes of this provision.

The regulation at 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.

(C) *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. To show that the alien is a member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation.

Eligibility in this matter hinges on the petitioner demonstrating that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The petitioner must also demonstrate that the petition is in accord with statutory and regulatory requirements. The priority date of the petition is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. Here, the request for labor certification was accepted for processing on February 5, 2001.

The labor certification states that the position requires a bachelor's degree in English, Technical Writing or related field of study. At item 15 of the labor certification, that requirement is modified as follows: "This position requires a bachelor's degree in English, Technical Writing or in related field OR the educational equivalent OR equivalent combination of education and work experience." [Emphasis in the original.]

With the petition counsel submitted (1) a letter, dated September 6, 2000, from Novellus Systems, Inc., of Santa Jose, California, stating that the beneficiary worked for that company from March 1990 to July 1993, (2) a letter, dated October 6, 2000, from [redacted] of Richmond, British Columbia, Canada, stating that the beneficiary worked for that company from September 1993 to January 1995 as a technical writer, (3) a letter, dated September 18, 2000, from Epicdata, of Fraser, British Columbia, Canada, stating that the beneficiary worked for that company from October 1980 to February 1990 as a technical writer, (4) a copy of the beneficiary's résumé, (5) a copy of a certificate in Managing the Development of Technical Information awarded by the University of California at Santa Cruz to the beneficiary on December 11, 1996, (6) a letter, dated July 22, 2002, from counsel's office, stipulating that the petition was to be considered as a petition for a skilled worker, and (7) an educational evaluation dated August 20, 1997.

The educational evaluation provided with the petition states that the beneficiary's education and her progressively more responsible technical writing employment, taken together, are the equivalent of a bachelor's degree in technical writing from an accredited college or university in the United States.

On February 10, 2003, the California Service Center requested additional evidence pertinent to the beneficiary's qualifications. The Service Center requested that the petitioner submit evidence that the beneficiary has the requisite education/training listed on the Form ETA 750. The Service Center noted that evidence of education/training should be submitted on the institution's letterhead or stationery and should indicate the courses

taken, the credits received, as well as any certificates or degrees conferred. That request also stated that the proffered position requires a bachelor's degree and instructed the petitioner to provide evidence of that degree.

Counsel's office responded with a letter, dated February 20, 2003. That letter stated that the request by the Service Center was in error, that the evidence with the petition demonstrates that the beneficiary has "the U.S. equivalent of a Bachelor's degree in Technical Writing." [sic]

On April 2, 2003, the director denied the petition, finding that the evidence submitted did not demonstrate that the beneficiary has the bachelor's degree required for a professional position or that the proffered position itself qualifies as a position for a skilled worker, as it doesn't require two or more years of training or experience.

On appeal, counsel asserts that the position qualifies as a position for a skilled worker because the job necessarily requires two years of training or experience. Counsel points to the language on the Form ETA 750 as support for the proposition that the position necessarily requires in excess of two years of postsecondary education or, in the alternative, in excess of two years of experience. Counsel points to 8 C.F.R. § 204.5(l)(2) as support for the proposition that postsecondary education can be counted as experience.

Counsel is correct. The three job categories described at 8 C.F.R. § 204.5(l), Skilled Worker, Professional, and Other Worker, were clearly intended to be exhaustive. That is, any position is expected to fit into at least one of those categories. The proffered position in the instant case requires either a bachelor's degree, which ordinarily requires four years of postsecondary education, or some combination of education and experience, which would require more than four years. In any event, the position would necessarily, by the terms of the labor certification, require more than two years of experience or postsecondary education.

Beyond the decision of the director, however, this office notes that the petitioner never provided the requested evidence of the petitioner's education. The February 10, 2003 request for evidence stipulated that evidence of the beneficiary's education or training should be submitted on the institution's letterhead or stationery and should indicate the courses taken, the credits received, and any certificates or degrees conferred. The petitioner has submitted evidence that the petitioner possesses a certificate in Managing the Development of Technical Information, but no indication of what courses, if any, were required in order for the beneficiary to attain that certificate.

Nothing in the file indicates that the evaluator who issued the evaluation report pertinent to the beneficiary's education and experience knew what classes the beneficiary took to receive her certificate in Managing the Development of Technical Information. This office cannot understand, therefore, how the evaluator was able to accord any weight to the beneficiary's coursework. The record does not indicate whether the evaluator might have found the beneficiary's employment experience, without her education, to be the equivalent of a bachelor's degree in technical writing. By the terms of the Form ETA 750, however, the beneficiary may qualify for the proffered position through education or a combination of education and experience. The Form ETA 750 does not admit the possibility of the beneficiary qualifying for the proffered position through experience alone.

The petition was not denied on that basis, however, and this office is unwilling, therefore, to dismiss the appeal on that ground. The matter will be remanded for additional consideration of that issue. The petitioner may submit

additional evidence pertinent to the beneficiary's coursework or additional evidence that the beneficiary's education and employment experience are sufficient to qualify her for the proffered position.

This office further notes that one of the beneficiary's employment verification letters does not comply with the requirements of 8 C.F.R. § 204.5(l)(3)(ii)(A), which states that,

> 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.

The letters from Novellus, dated September 6, 2000, does not include the beneficiary's job title during her work for that company. The director may request additional evidence pertinent to the beneficiary's employment. The director may also further investigate and consider any other aspect of this matter as necessary to render a new decision.

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 met that burden.

ORDER: The petition is remanded for further consideration and action in accordance with the foregoing.