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

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[Redacted]

FILE: [Redacted]  
LIN 04 106 52470

Office: NEBRASKA SERVICE CENTER

Date: JUN 14 2007

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Acting Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a seafood importing and distribution firm. It seeks to employ the beneficiary as a product manager / sales representative. As required by statute, the petition was accompanied by certification from the Department of Labor (DOL). The director denied the petition because she determined that the petitioner failed to demonstrate that the beneficiary had the required educational credentials as stated on the approved labor certification. The director concluded that the petitioner had not established that the beneficiary was eligible for the visa classification sought.

On appeal, the petitioner, through counsel, submits additional evidence and asserts that the beneficiary has the necessary educational credentials to meet the qualifications set forth in the approved labor certification.

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 not available in the United States.

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

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. *See* 8 C.F.R. 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is November 13, 2001.

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, Citizenship and Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. The Application for Alien Employment Certification Form ETA-750A, items 14 and 15 set forth the minimum education, training, and experience that an applicant must have for the position of product manager / sales representative. They contain the following information:

14. U.S. or foreign equivalent

Education	<i>College</i> 4	<i>College Degree required</i> Bachelor's Degree <i>Major Field of Study</i> Business or related field
Experience	Job Offered Yrs. 5 or	Related Occupation Yrs. 5 Related Occupation Sales/marketing/product management See Box 15

## 15. Other Special Requirements

Five [sic] experience with seafood industry sales/marketing/product management including sourcing and sales of finfish, shellfish & other seafood products for both domestic and Asian markets. Required sales experience includes working with US corporate customers having a minimum of \$75 million in annual sales. References required.

In this matter, the beneficiary's experiential qualifications are not in dispute, only his academic credentials. As evidence of the beneficiary's formal education, the petitioner submitted a copy of the beneficiary's grade transcript listing the courses and credits completed from the University of British Columbia. The transcript indicates that he attended the winter session of 1985-1986. A copy of the grade transcript from Simon Fraser University, British Columbia, was also provided, reflecting that the beneficiary was enrolled for the 1986-1987 academic year in the business administration program. A grade transcript from the British Columbia Institute of Technology (BCIT) was additionally provided. It indicates that the beneficiary was enrolled during the 1987-1988 and 1988-1989 academic years, culminating in the award of a Diploma of Technology. A copy of the diploma has been provided and reflects that the beneficiary received it in June 1989, completing a course of study in marketing management, advertising and sales promotion option.

The petitioner also submitted a credential evaluation report, dated February 25, 1997, from [REDACTED] of the Foundation for International Services, Inc. The evaluation cites the beneficiary's academic study at the University of British Columbia and determines that it represents the equivalent of one year of university-level credit from an accredited college or university in the United States. [REDACTED] also determines that the beneficiary's studies at Simon Fraser University during the 1986-1987 academic year is the equivalent to the completion of one year of university-level credit from an accredited college or university in the United States. [REDACTED] additionally determines that the beneficiary's completion of a course of study at the British Columbia Institute of Technology and subsequent Diploma of Technology in Marketing Management Advertising and Sales Promotion Option awarded in June 1989 represents the equivalent to an associate's degree (two years) in marketing management with a concentration in advertising and sales from an accredited community college in the United States.

Following an examination of the beneficiary's certificate of competency as a Fishing Master Class III, copies of candidates record of examinations, a radio operator's license, and the beneficiary's resume detailing his work history, together with his academic studies, [REDACTED] concludes that:

The [beneficiary] has the equivalent of four years of lower division, university-level credit from an accredited college or university in the United States and has, as a result of his educational background and employment experiences (3 years of experience = 1 year of university-level credit), an educational background the equivalent of an individual with a bachelor's degree in management science with an emphasis in marketing from an accredited college or university in the United States.

In response to the director's request for additional evidence relating to the beneficiary's academic qualifications, the petitioner, through counsel, provided a second evaluation, dated March 30, 2005, from Dr. [REDACTED] of Morningside Evaluations and Consulting. Reviewing the academic credentials of the beneficiary, [REDACTED] determines that the beneficiary completed two semesters of coursework at the University of British Columbia, two semesters of coursework at Simon Fraser University and the equivalent

of three years of coursework in a two year program at the British Columbia Institute of Technology. Cumulatively, ██████████ concludes that the beneficiary has “attained the equivalent of a Bachelor of Arts degree in Marketing from an accredited institution of higher education in the United States.”

The petitioner also provided a letter, dated April 25, 2005, from ██████████, the registrar at the British Columbia Institute of Technology, who stated that it is “our opinion that the beneficiary’s studies at BCIT, combined with his other university studies, represents the equivalent of the necessary four years of Canadian post secondary education at the general business bachelor’s level.” He further stated that some students from BCIT had been accepted into the graduate program at Simon Fraser University. An additional letter, dated April 21, 2005, from the international student advisor at “City University” in Bellevue, Washington, is also contained in the record. It congratulates the beneficiary for being admitted to the MBA program based on his completion of four years of university level studies culminating in his Diploma of Technology from BCIT.

Finally, the petitioner supplied a listing of applicants who were not hired and the reasons for rejection, as well as copies of its reduction in recruitment request directed to the DOL and a copy of the notice of posting, which both reflect that the certified position was described as requiring either a bachelor’s degree or equivalent qualifications.

The director denied the petition on August 6, 2005. The director found that the evidence submitted did not meet the requirements of the approved labor certification because the beneficiary does not possess a U.S. bachelor’s degree or a foreign equivalent degree as required by the ETA 750 and applicable regulations. The director determined that neither the terms of the labor certification nor the applicable regulations permit CIS to allow the acceptance of an equivalence in the form of a combination of formal education and/or employment experience. The director also determined that the petitioner’s request for consideration of the beneficiary as a skilled worker is not applicable as the petitioner had not established that the beneficiary met the educational requirements of the ETA 750.

On appeal, counsel asserts that proper consideration was not given to the academic evaluations in recognizing that the beneficiary had attained the U.S. equivalent of a bachelor’s degree. She asserts that his diploma from BCIT could be considered a single source bachelor’s degree because it had recognized a credit transfer of 30 hours. Counsel further maintains that the beneficiary qualifies for a visa classification as both a professional under section 203(b)(3)(A)(ii) of the Act and as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Act.

It is noted that CIS is bound to follow the pertinent regulatory guidelines pursuant to 203(b)(3)(A)(ii) of the Act. CIS jurisdiction includes the authority to examine an alien’s qualifications for preference status and to investigate the petition under section 204(b) of the INA, 8 U.S.C. § 1154(b). This authority encompasses the evaluation of the alien’s credentials in relation to the minimum requirements for the job, even though a labor certification has been issued by the DOL. *Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9<sup>th</sup> Cir. 1983); *Stewart Infra-Red Commissary v. Coomey*, 662 F.2d 1 (1<sup>st</sup> Cir. 1981); *Denver v. Tofu Co. v. INS*, 525 F. Supp. 254 (D. Colo. 1981); *Chi-FengChang v. Thornburgh*, 719 F. Supp. 532 (N.D. Tex. 1989). CIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree, even where a classification may not require a bachelor’s degree. In this case, the ETA 750 states that the proffered position requires a U.S. bachelor’s or foreign equivalent, not a combination of certificates, lesser degrees, or work experience, which could be considered the equivalent of a bachelor’s degree in a particular field.

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).

The regulation at 8 C.F.R. § 204.5(1)(3)(ii)(C) also provides in pertinent part:

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 member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for an entry into the occupation.

The regulation at 8 C.F.R. § 204.5(1)(3)(ii) further states in pertinent part:

(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.

We find that “an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration or study” is applicable to what constitutes evidence of a degree. Because neither the Act nor the regulations indicate that a bachelor's degree must be a United States bachelor's degree, as noted above, CIS will recognize a foreign equivalent bachelor's degree to a United States baccalaureate. The above regulation uses the singular description of a foreign equivalent degree. Thus, the plain meaning of the regulatory language sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes. While we do not dispute that a baccalaureate degree may be earned, in part, through the recognition of credit transfers from other colleges or universities, we observe that the record indicates that the transcript from Simon Fraser University recognized that the beneficiary had transferred 30 hours of undergraduate work to be applied to that institution. We do not see a similar clear notation on the BCIT transcript although it is noted that the registrar's letter refers to “20 business related transfer credits.”

It is further noted that the [REDACTED] evaluation surmises that the beneficiary's diploma from BCIT is the U.S. equivalent of a two-year associate's degree and, that when combined with experience and the other two years of undergraduate studies may be equated to the U.S. equivalent of a bachelor's degree in management science with an emphasis in marketing. This evaluation employed the formula to equate three years of experience for one year of education, but that equivalence applies to non-immigrant H1B petitions, not to immigrant petitions. *See* 8 CFR § 214.2(h)(4)(iii)(D)(5). The other evaluation asserts that the beneficiary's credits attributable to his study at BCIT represented three years of coursework in a two-year program and that with

his academic studies at the other two institutions represent the U.S. equivalent of a bachelor of arts degree in marketing. 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, the 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).

That said, it is noted that the item 14 of the ETA-750A requires that an applicant for the position of product manager / sales representative to have 4 years of college and a bachelor's degree in business or a related field. Above these descriptions, and within the box containing instructions to state the "minimum education, training and experience" is the phrase "U.S. or foreign equivalent." Taken together with the petitioner's evidence related to the notice of posting and advertisements in connection with the labor certification process, which all contain the wording "Bachelor's Degree in Business or related field or equivalent," and not foreign equivalent "degree," it is reasonable in this particular circumstance, to find that the visa classification of "skilled worker" is applicable.<sup>1</sup> Thus, it may be concluded that the petitioner has established that the beneficiary is eligible for the skilled worker visa classification pursuant to section 203(b)(3)(A)(i) of the Act.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

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<sup>1</sup> The proffered position requires a bachelor's degree and five years of experience. Because of those requirements, the proffered position would appear to be for a professional. DOL assigned the occupational code of 15-167.018, sales manager, to the proffered position. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database at <http://online.onetcenter.org/link/summary/11-2022.00#JobZone> (accessed June 5, 2007) and its extensive description of the position and requirements for the position most analogous to the petitioner's proffered position, the position falls within Job Zone Four requiring "considerable preparation" for the occupation type closest to the proffered position. According to DOL, two to four years of work-related skill, knowledge, or experience is needed for such an occupation. DOL assigns a standard vocational preparation (SVP) range of 7-8 to the occupation, which means "[m]ost of these occupations require a four-year bachelor's degree, but some do not." Additionally, DOL states the following concerning the training and overall experience required for these occupations:

A minimum of two to four years of work-related skill, knowledge, or experience is needed for these occupations. For example, an accountant must complete four years of college and work for several years in accounting to be considered qualified. Employees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training.

*See id.*

The proffered position could also be properly analyzed as skilled worker since the normal occupational requirements do not always require a bachelor's degree but a minimum of two to four years of work-related experience. Therefore, CIS will examine the petition under the skilled worker category, which requires a showing that the alien has two years of training or experience and meets the specific education, training, and experience terms of the job offer on the alien labor certification application.

**ORDER:** The appeal is sustained. The petition is approved.