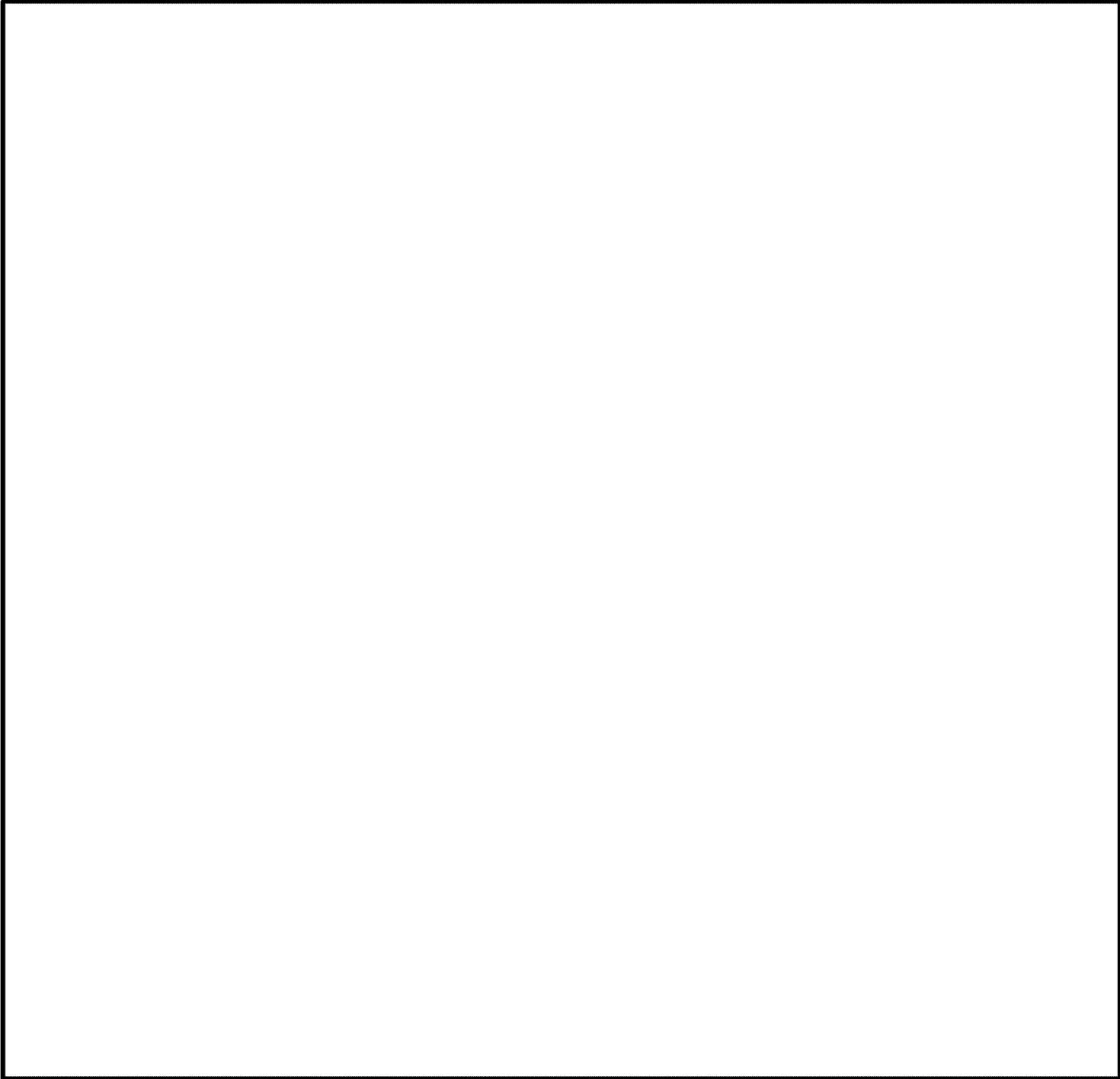


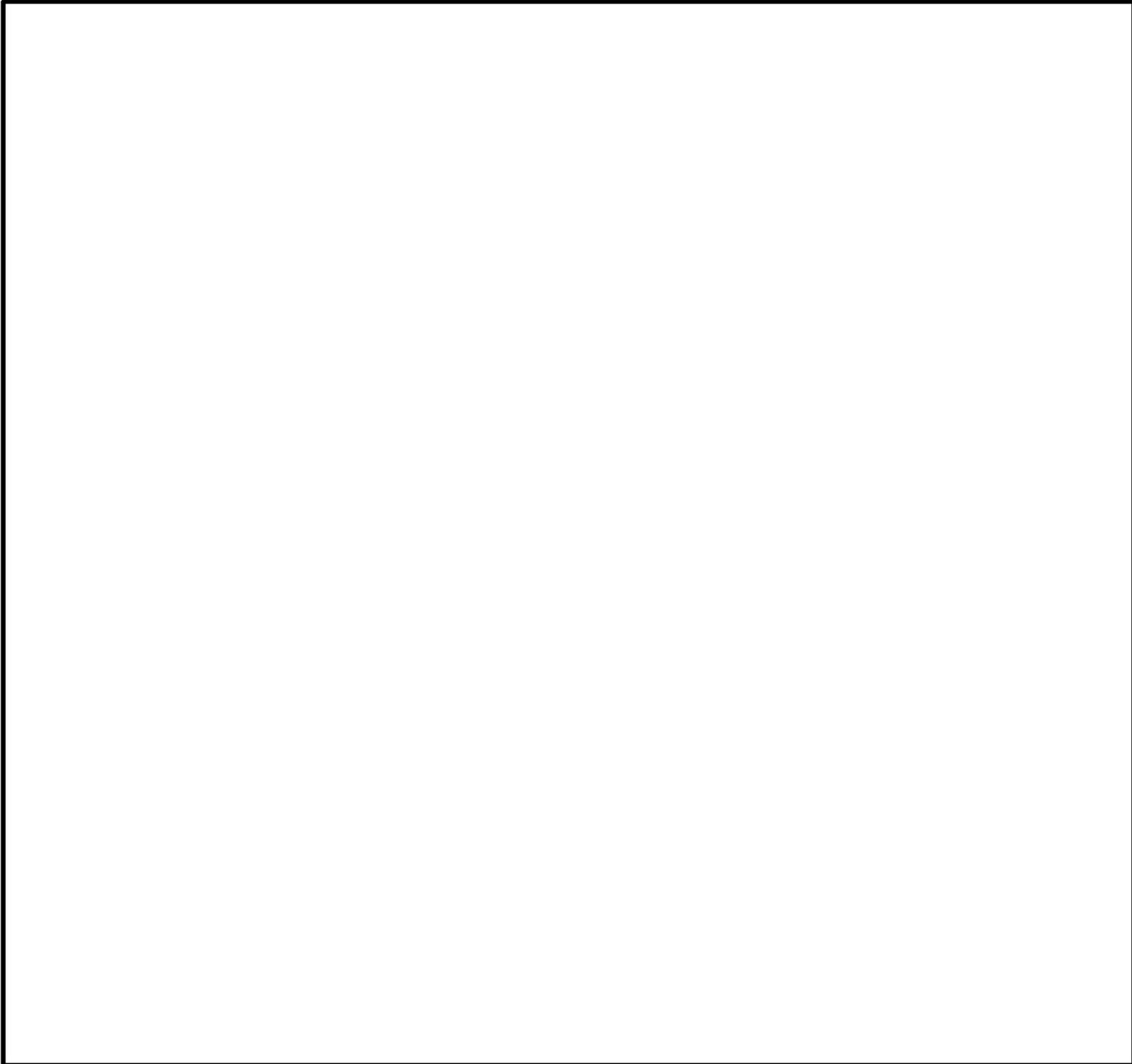
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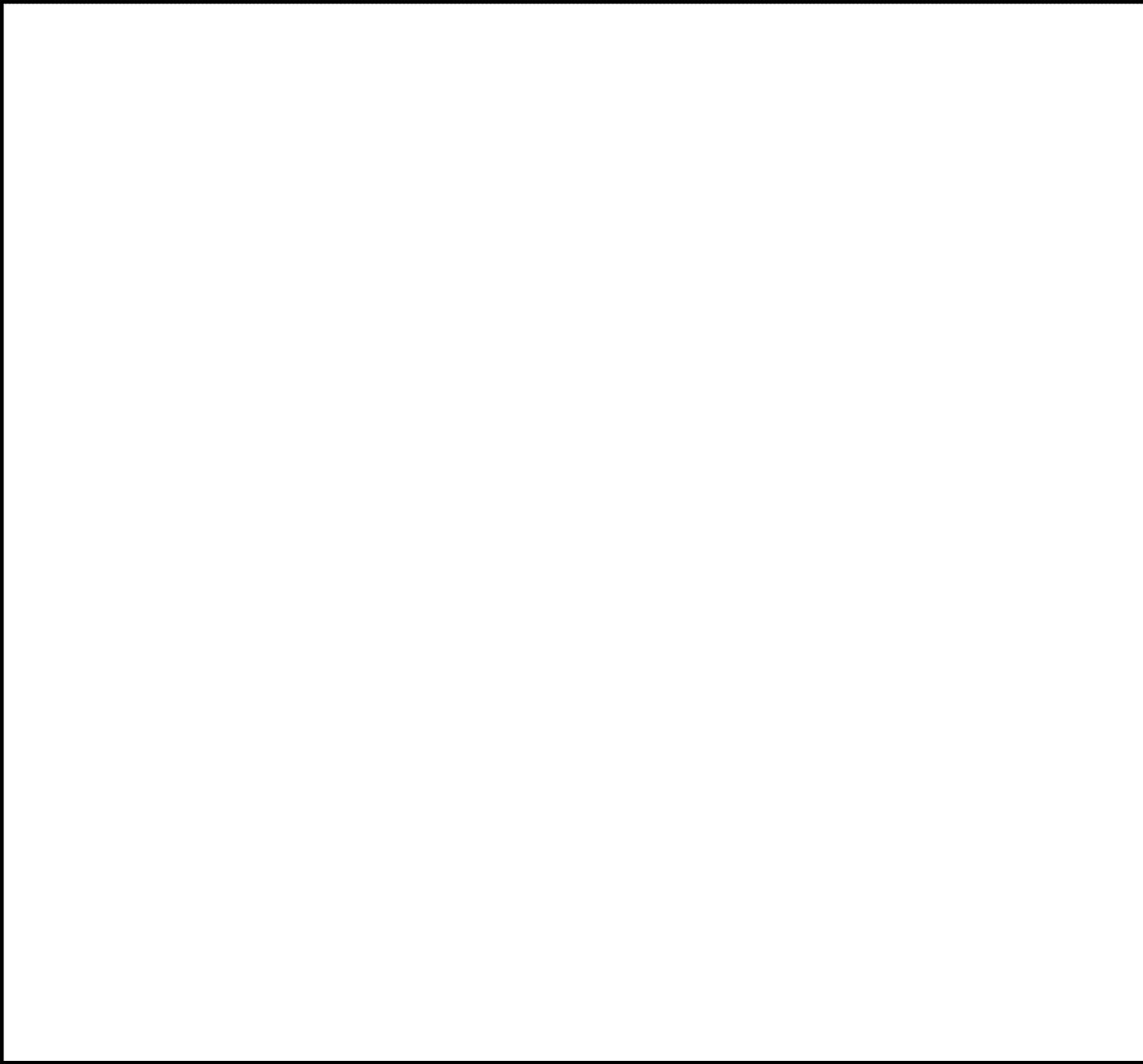
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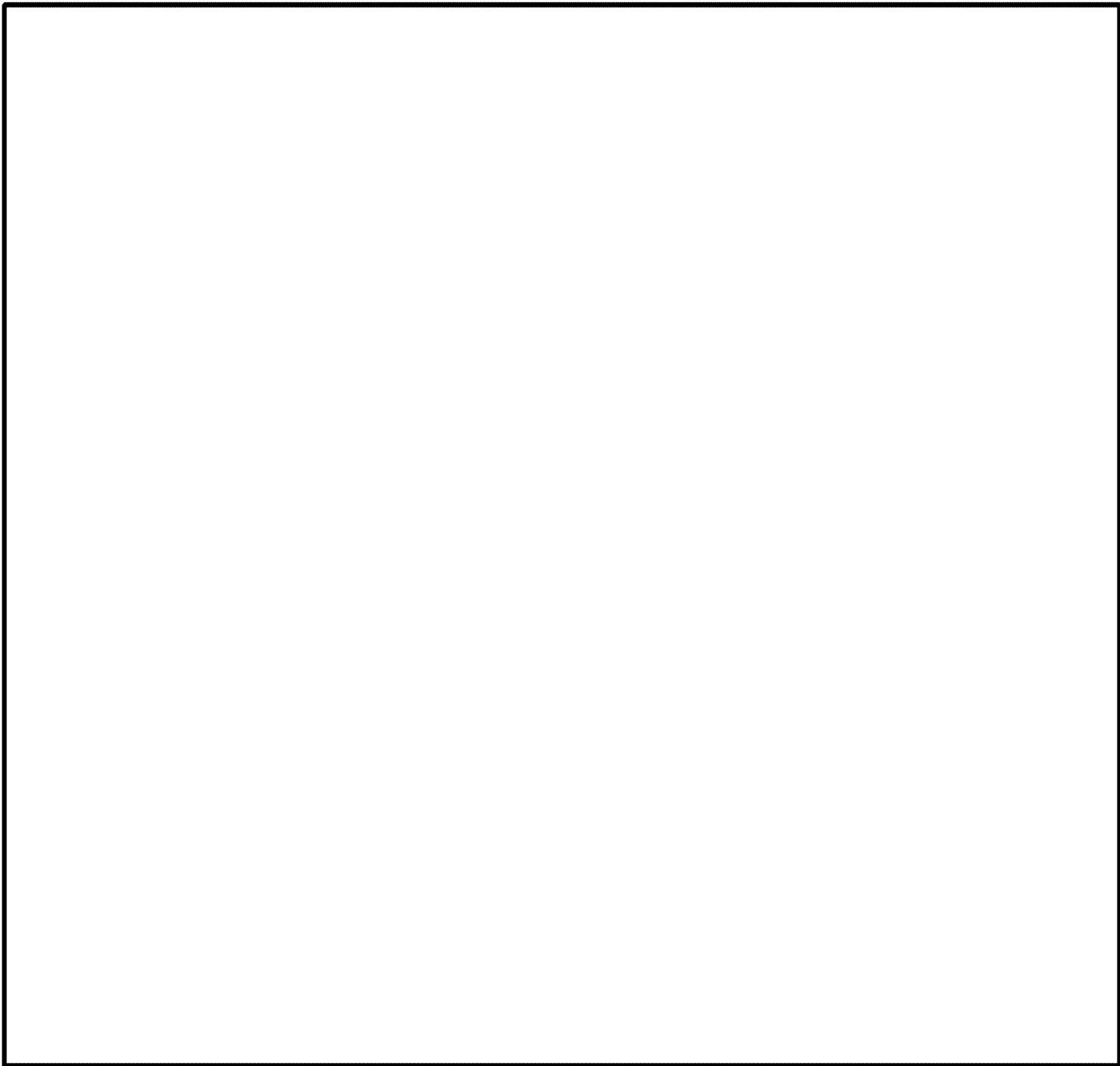
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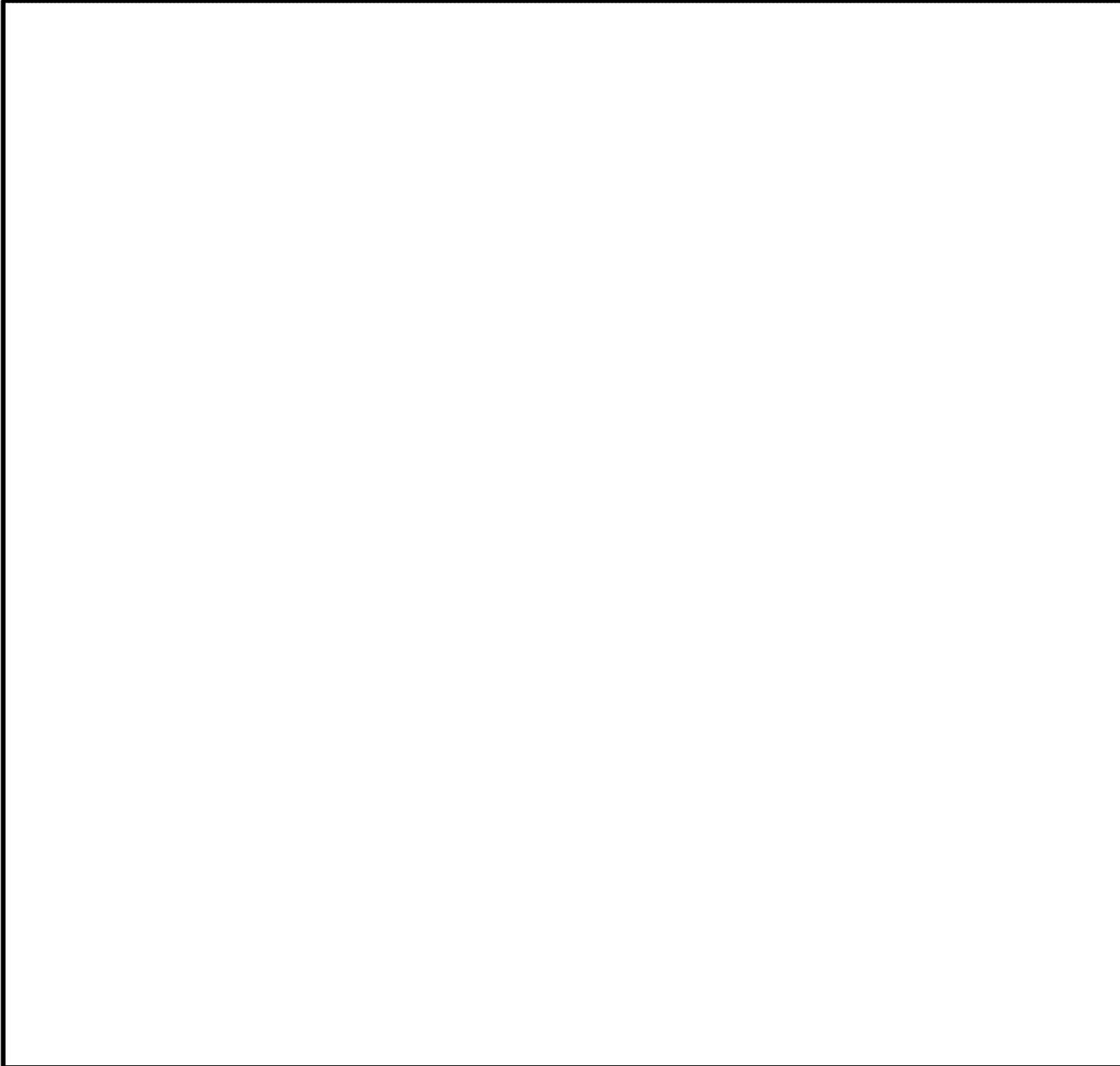
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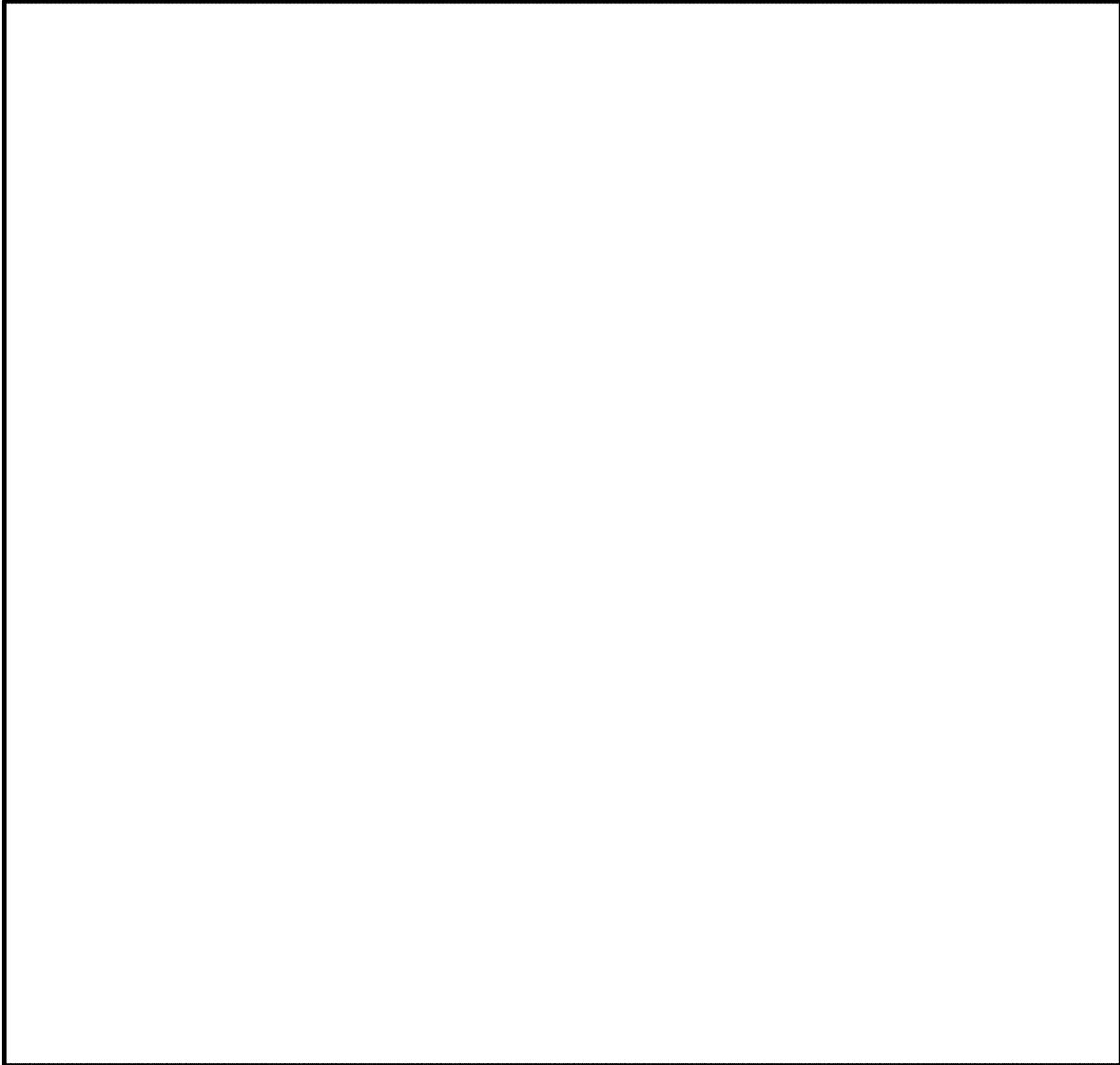
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Attachment to Form I-797

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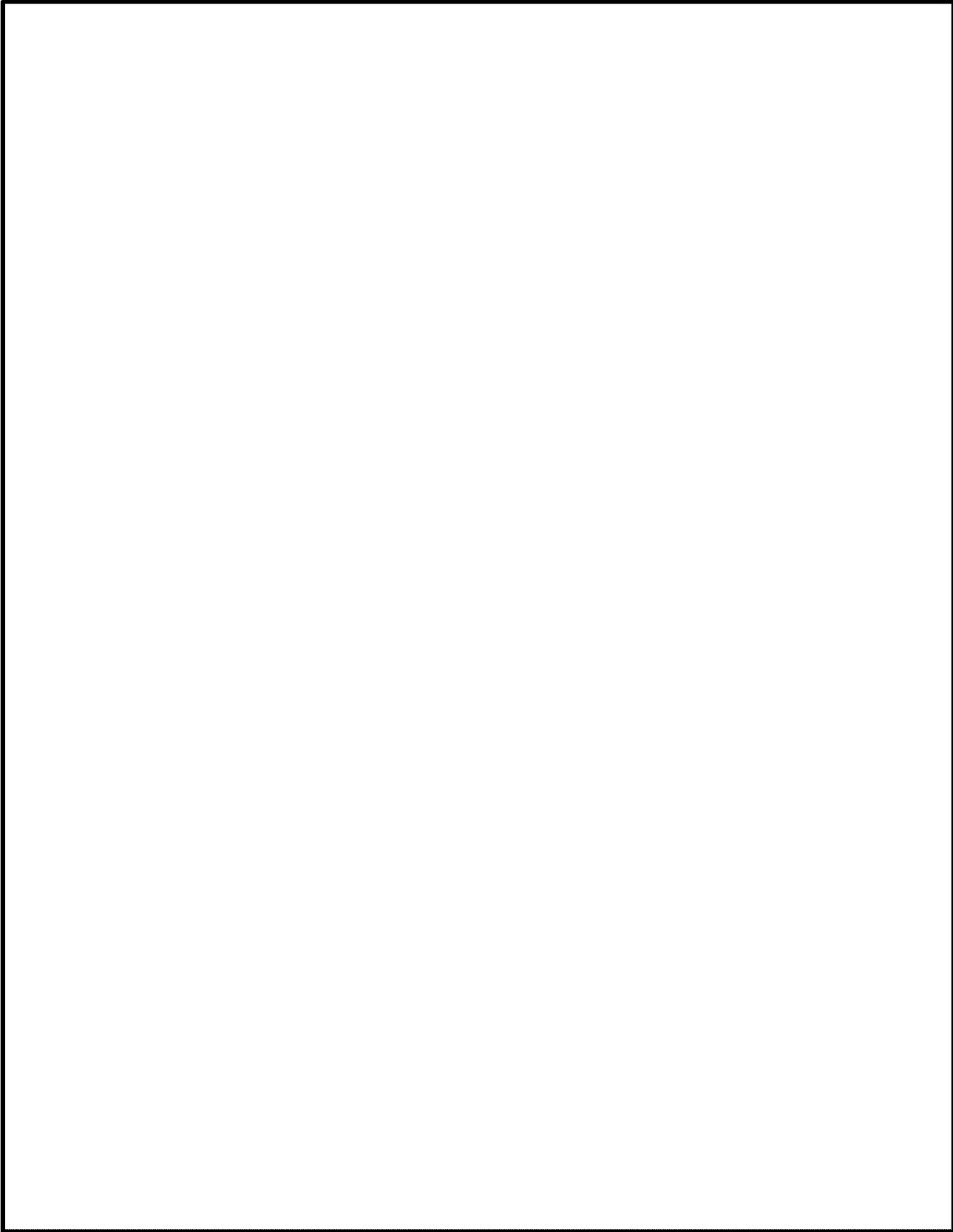


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Simon Nakajima

8/22/2017 11:05:00 AM



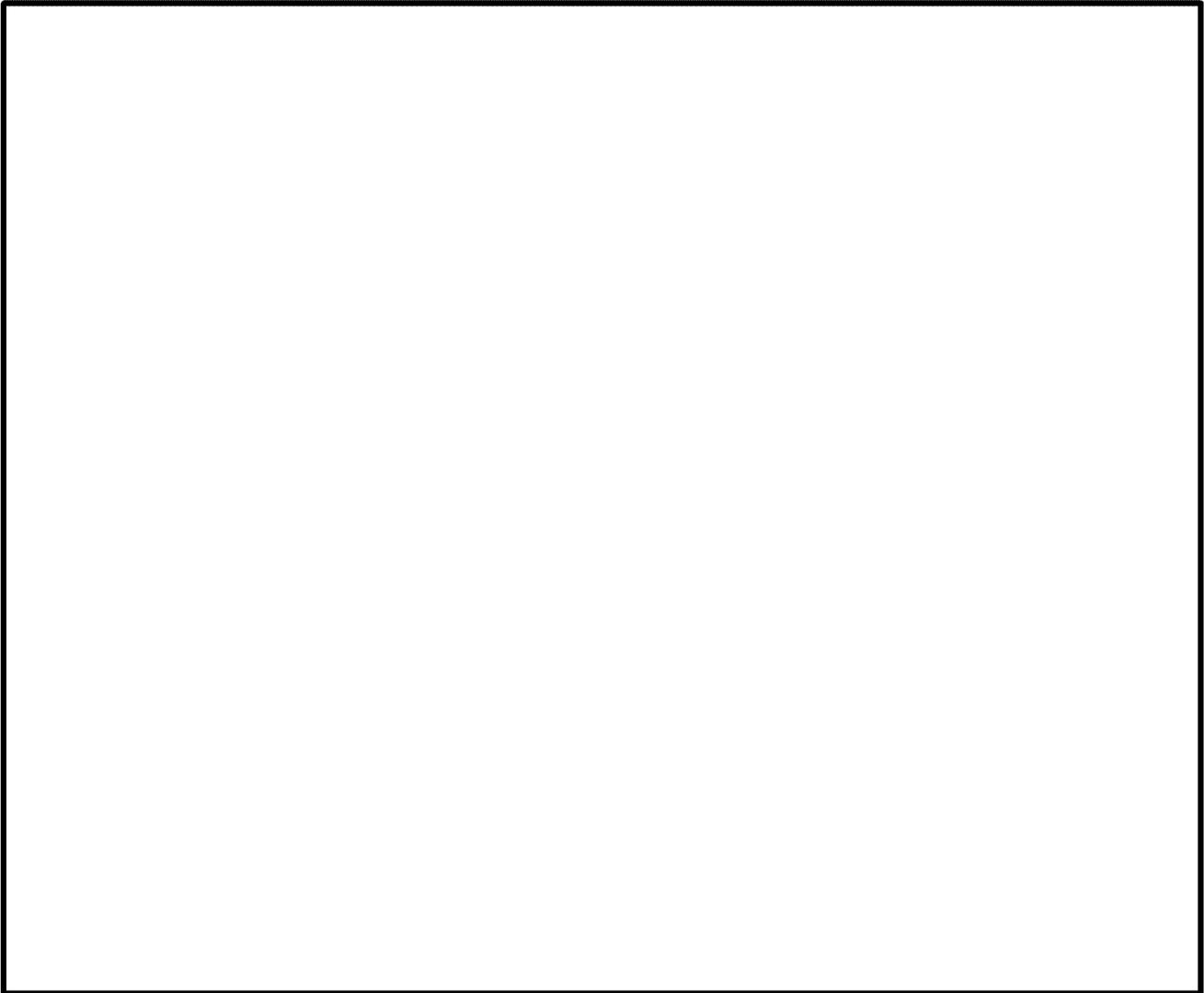
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Hersey, Lucas I

8/22/2017 11:05:00 AM



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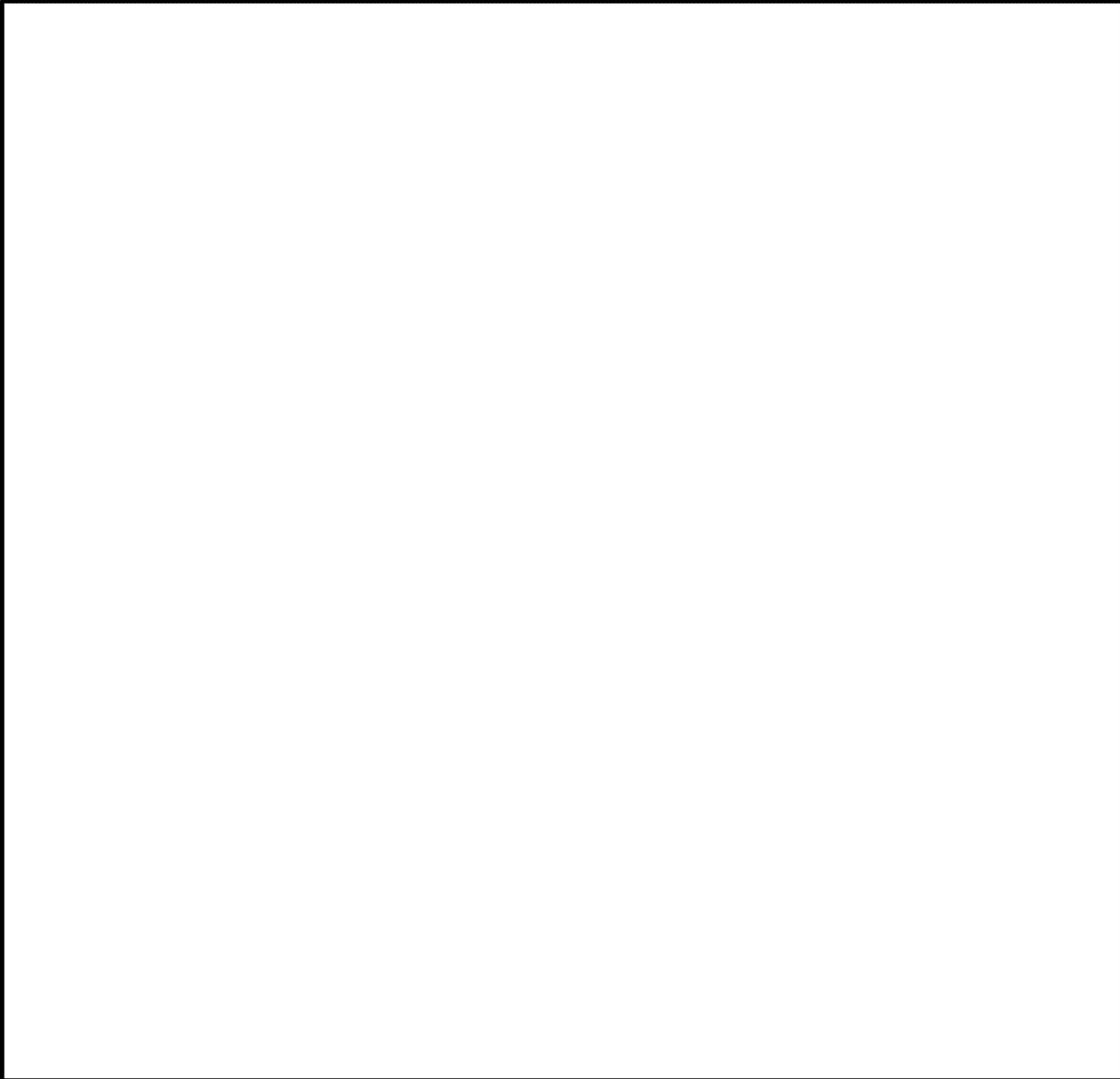
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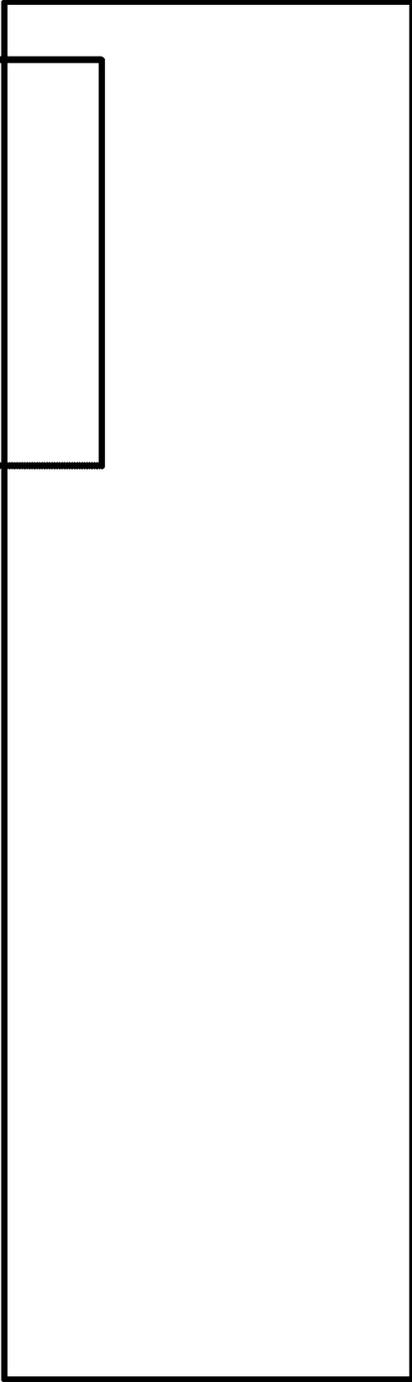
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Law Office of Thomas V. Allen

Thomas V. Allen, Esq.
George A. Allen, Esq.
Attorneys-At-Law
August 29, 2017



Premium Processing Services
USCIS
Vermont Service Center
30 Houghton Street
St. Albans, VT 05478-2399

(b)(6)

RE:



(Beneficiary)
(Petitioner)

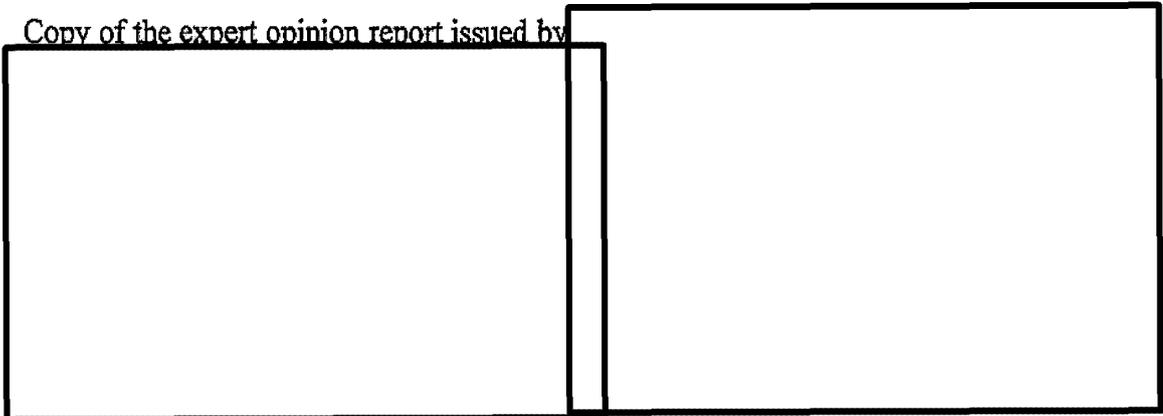
Brief in Response to Request for Evidence

Dear Sir/ Madam:

We represent the petitioner, [redacted] who had submitted this petition seeking to obtain permission for the employment of [redacted] as a temporary worker on H-1B nonimmigrant status, in the position of Business Development Manager.

In this connection, please find attached your Notice of Action, dated June 5, 2017 requesting further evidence along with the following documents:

1. Copy of the letter issued by the Petitioner confirming that job duties of the Beneficiary encompass a basic understanding of the occupation and contain routine tasks that require limited exercise of judgment (**Exhibit 1**);
2. Copy of the organization chart of the Petitioner's organization demonstrating the position of the Beneficiary (**Exhibit 2**); and
3. Copy of the expert opinion report issued by [redacted]



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[Redacted]

(Beneficiary)
(Petitioner)

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Brief in Response to Request for Evidence
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ABOUT THE PETITIONER

[Redacted] is a rapidly growing IT solutions and services company based in the United States. Since its inception, the core focus of the company has been to commit itself to delivering innovation. [Redacted] collaborates with its clients to help them realize their visions and create tangible value. With the deep industry expertise, broad global resources, and proven experience in technology products, we help our clients get the best return on their investment.

[Redacted] blends imagination, knowledge, experience and skills to meet each customer's unique challenge. Ours is a holistic approach, based on the appropriate use of the proper tools in skilled hands applied to meet the stated challenge. Any challenge may take a number of different tools. These tools are the services we provide.

At [Redacted] providing IT solutions is a craft. As with any craft, it is the skill and proficiency of the people that make the difference. It is assumed that the craftsmen possess and have mastered the latest tools & techniques. What matters is the finished work, the culmination, the inseparable blending of artist and artist's tools. Our broad global resource base combines skills and expertise that are highly diverse, technical, and business orientated. Our foundation of experience is built on successful execution of projects in industries such as healthcare, Retail, Banking & Finance, and Enterprise Business solutions, Logistics, Enterprise Infrastructure Security, and Enterprise Architecture.

[Large Redacted Area]

Services:

- Enterprise Security Services
- Enterprise Application Development

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(Beneficiary)
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Brief in Response to Request for Evidence
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- ERP Systems
- IT Infrastructure
- Business Intelligence (ETL/Reporting)
- Middleware Integration

LABOR CONDITION APPLICATION

The Service Center in the Notice of Action, requesting further evidence has stated that the Beneficiary’s duties do not correspond to the Level 1 wage description because they do not encompass a basis understating of the occupation and appear to contain more than routine tasks that require limited, if any, exercise of judgment.

USCIS relies on the “Prevailing Wage Determination Policy Guidance”¹ issued by the Department of Labor to argue that the job duties of the proffered position do not correspond to the Level 1 wage designation. The Prevailing Wage Determination Policy Guidance makes clear that a prevailing wage determination is made by **‘selecting one of the four wage levels for an occupation based on a comparison of the employer’s job requirements to the occupational requirements’** According to the Prevailing Wage Determination Policy Guidance

“All employer applications for a prevailing wage determination shall initially be considered an entry level I wage. [emphasis added]. The employer’s requirements for experience, education, training, and special skills shall be compared to those generally required for an occupation..... and shall be used as indicators that the job opportunity is for an experience (Level II, Level III) or fully competent (Level IV) workers and warrants a prevailing wage determination at a higher level.”

Therefore, as stated in the Prevailing Wage Determination Policy Guidance job duties are not the controlling element in determining the appropriate wage level. The employer’s requirement for experience, education, training and special skills, as compared to those generally required for an occupation are the elements to determine the correct wage level. USCIS has solely focused on the job duties to conclude that the wage level 1 designation does not correspond to the job duties of the proffered position.

JOB DUTIES FOR THE PROFFERED POSITION CORRESPOND TO THE WAGE LEVEL 1 DESIGNATION

a. Beneficiary’s job duties encompass a basis understanding of the occupation

The Petitioner has confirmed in the attached letter issued that even though duties of the proffered position require a Bachelor level preparation in Marketing or a related field, the specific functions

¹ See *Employment and Training Administration, Prevailing Wage Determination Policy Guidance*, Revised Nov. 2009. http://www.flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf

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are nonetheless limited and characterized by routine tasks that require limited exercise of discretion which justifies a wage level I classification. (Exhibit 1)

b. Beneficiary's job duties contain routine tasks the require limited exercise of judgment

The Petitioner has confirmed in the attached letter that the Beneficiary will work under the close supervision and receive specific instructions on required tasks and result expected from Beneficiary's supervisor Mr. [Redacted] who is employed a Senior Business Development Manager of the Petitioner. (Exhibit 1) Further, the attached letter from Petitioner confirms that Mr. [Redacted] will be evaluating the work of the Beneficiary. Mr. [Redacted] on a weekly basis to make certain that Mr. [Redacted] is properly accomplishing the job tasks. The evaluation will be conducted based on factors like problem solving, job knowledge, change management and responsiveness. The letter from Petitioner also specifies that the Beneficiary, Mr. [Redacted] will be required to submit weekly summaries of work related activities to Mr. [Redacted]. The weekly work summaries will consist of status of the tasks that were assigned for the current week and new tasks that are to be completed for the following week and Mr. [Redacted] will conduct one-to-one sessions with Mr. [Redacted] for reviewing the work summaries and recommend areas of improvement so that Mr. [Redacted] can work towards improving his productivity. Please be advised that this consistent with an entry level employee whose work is closely monitored and reviewed for accuracy and is in contrast to the duties of higher level wage Business Development Manager that exercise autonomy and developed decision-making skills.

It is not uncommon in the industry for Business Development Manager's begin their careers handling more generic duties and to be closely monitored by a more senior Business Development Manager. After a minimum of 0-2 years of work experience the Business Development Manager starting out his career will transition from engaging in Wage Level 1 support- and assistance-based activities to applying job skills independently to acquiring specialized job knowledge to regularly working on tasks that are varied and complex in positions at higher wage levels.

The Petitioner has also attached herewith the organization chart of the Petitioner's organization demonstrating the position of the Beneficiary. (Exhibit 2)

It is also requested that USCIS should give due weightage to the attached expert opinion letter issued by

[Redacted]

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guidance. Hence, the corresponding tasks of an occupation requiring a bachelor's degree and up to two years of experience can still be complex, even if the wage remains at Level 1 and the position requires supervision. For example, it would be difficult to argue that an entry level doctor, lawyer or architect cannot qualify for H-1B visa classification. These occupations need underlying degrees in the specialty as a minimum for entry into the profession. Even if the lawyer is closely supervised, he or she still needs to perform complex tasks relating to the underlying Juris Doctor degree. The same logic ought to apply to other occupations that are readily classifiable under the H-1B visa such as engineers or computer systems analysts. The job duties at any wage level correspond to the knowledge that is acquired through a specialized degree such as a degree in engineering or computer science. Indeed, the wage level assigned to the occupation ought not determine whether it is eligible for H-1B visa classification.

Therefore, the Petitioner has correctly designated the wage level for the proffered position because (i) the job duties encompass a basis understanding of the occupation, (ii) the Beneficiary will perform routine tasks that require limited exercise of judgment, (iii) the Beneficiary will work under the close supervision and receive specific instructions on the duties and (iv) the Beneficiary's work will be closely monitored and reviewed by Petitioner's supervisor.

c. Separation of Powers between the USCIS and Department of Labors' adjudicative authorities

The USCIS by adjudicating the H-1B petitions based on the enforcement of wage issues is usurping into the powers of the Department of Labor (DOL) and is abusing and exercising the excessive use of its powers. The Department of Labor has certified the Labor Condition Application (LCA) associated with the current H-1B petition with Level I wages. The Petitioner is not violating the LCA requirement. Assuming there is any LCA violation, by violating the LCA wage requirement, the employer may be subject to monetary and other penalties as specified in the DOL regulations. The statutory scheme is quite explicit regarding the division of responsibility between the DOL, which regulates and enforces Section 212(n) of the Immigration and Nationality Act relating to labor condition applications, and USCIS, which regulates and enforces Section 214 of the Immigration and Nationality Act entitled "Admission of Nonimmigrants" and Section 101(a)(15)(H)(i)(b), which relates specifically to the H-1B visa. It is highly instructive to review the statutory scheme, the regulatory language and even the agencies' internal memoranda to establish beyond any doubt that issues relating to wages and hours are material only to the DOL.

The employer filing a H-1B petition must attest in the LCA to paying the higher of the actual or prevailing wage, to providing working conditions that will not adversely affect the working conditions of workers similarly employed, that there is no strike or lockout in the course of a labor dispute in the occupational classification at the place of employment, that the employer has provided appropriate notice to bargaining representatives or employees and that the employer has completed and made available a file for public examination. None of these issues are issues over

[Redacted] (Beneficiary) (b)(6)
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which USCIS has jurisdiction. Section 212(n) of INA provides the enforcement mechanism for failure of an employer to pay proper wages, which enforcement mechanism involves a hearing before the DOL. No role in the enforcement of these provisions is provided to USCIS other than USCIS being precluded from approving further petitions where the DOL notifies USCIS of a violation that results in the DOL debarring the employer.

The Office of Administrative Appeals and the USCIS in its various decisions and memoranda provide further support for the position that there is no role whatsoever for USCIS relating to wages and hours, that matters are not material to USCIS unless they affect the alien's H-1B status and that violations by the H-1B petitioner relating to wages and hours do not affect the alien's H-1B status:

The Office of Administrative Appeals in *Aditi Corporation* (LIN9924350365 (May 23, 2000)) has categorically mentioned that:

"Wage determinations and the enforcement of their payment with respect to the H-1B classification are the sole responsibility of the Department of Labor." The AAO also made clear that USCIS cannot engage in "exploration" of concepts that are not set forth as areas for USCIS concern in either the statute or the regulations.

In addition, the legal opinion of the legacy, INS Office of the General Counsel dated April 12, 1994 mentions:

"The language of the Act, as well as the accompanying legislative history, assigns all investigatory and adjudicatory responsibilities under §212(n) of the Act to the DOL... Nowhere in this language is the INS provided an adjudicatory role." The only role of the INS is to implement debarment of an employee when DOL makes a finding of a material misrepresentation".

In the Memorandum from Louis D. Crocetti, Jr., Associate Commissioner, Office of Examinations, dated November 30, 1995: "Wage determinations and enforcement of their payment with respect to the H-1B classification are the sole responsibility of DOL.

Hence, it is submitted that there is overwhelming evidence, that the enforcement of the wage requirement is an area which is solely assigned to DOL and not within the authority of USCIS. The USCIS cannot penalize the Petitioner for a discrepancy in the wages paid and penalize the Petitioner by denying the petition as the USCIS is overreaching its authority and would be acting in an arbitrary and capricious manner.



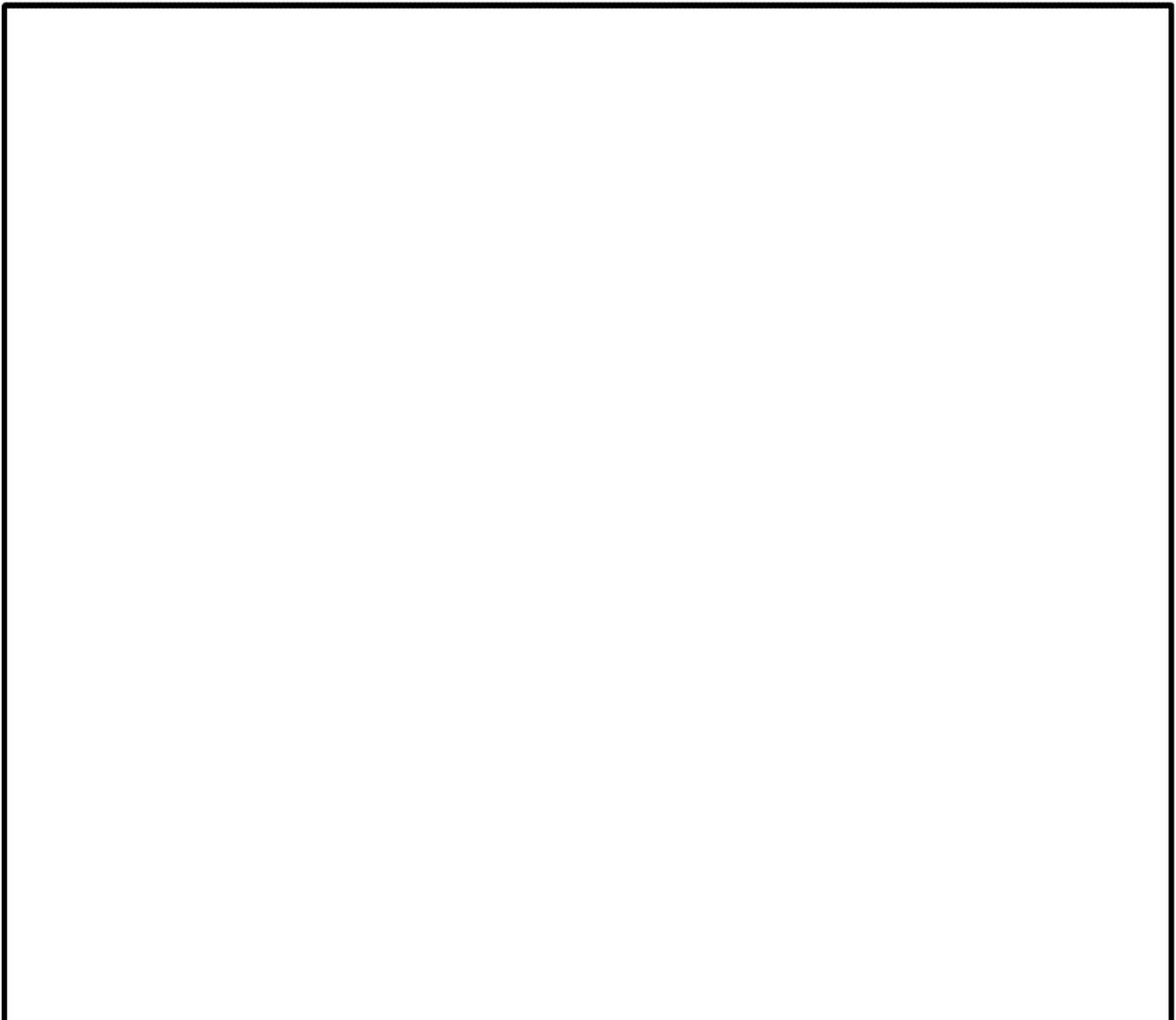
(Beneficiary) (b)(6)
(Petitioner)

Brief in Response to Request for Evidence
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- d. The wage level does not determine whether a position is a specialty occupation. Wage levels are to be used only to establish that the wage is appropriate for the particular occupation, based on the experience required, in the geographic location where the position will be located**

A specialty occupation is one that requires “theoretical and practical application of a body of highly specialized knowledge” and requires the “attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States. *Id.* 8 C.F.R. § 1184 (i)(1)(A)-(B). The regulation provides that an alien may not obtain an H-1B visa unless his employer has certified, among other things, that the alien will be paid at least “the prevailing wage level for the occupational classification in the area of employment.” *Id.* 8 U.S. Code § 1184 (t)(1). H-1B regulations only require an employer to pay a H-1B worker the higher of the actual wage or the prevailing wage in the area of intended employment. (20 CFR §655.731)

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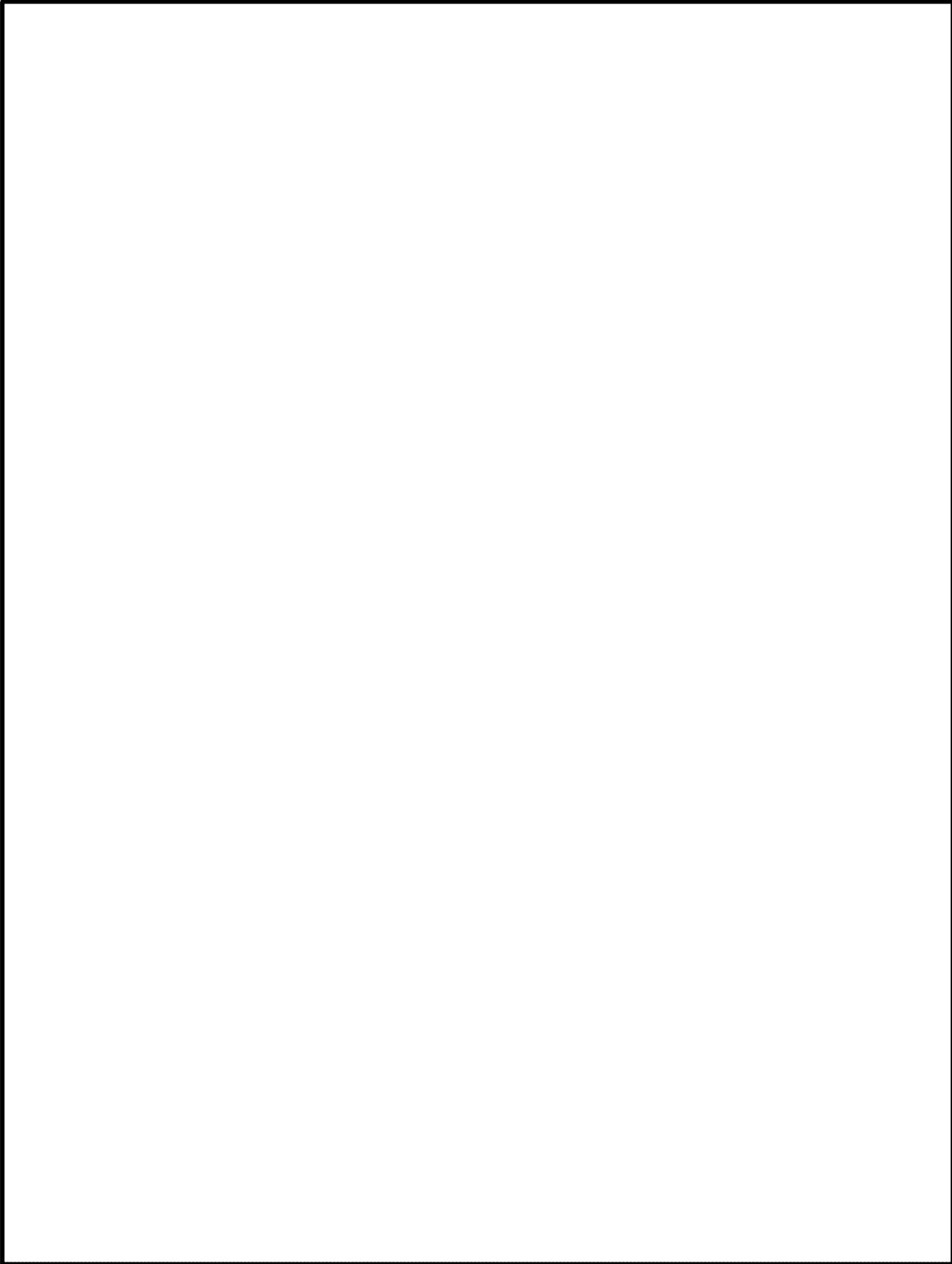




(Beneficiary) (b)(6)
(Petitioner)

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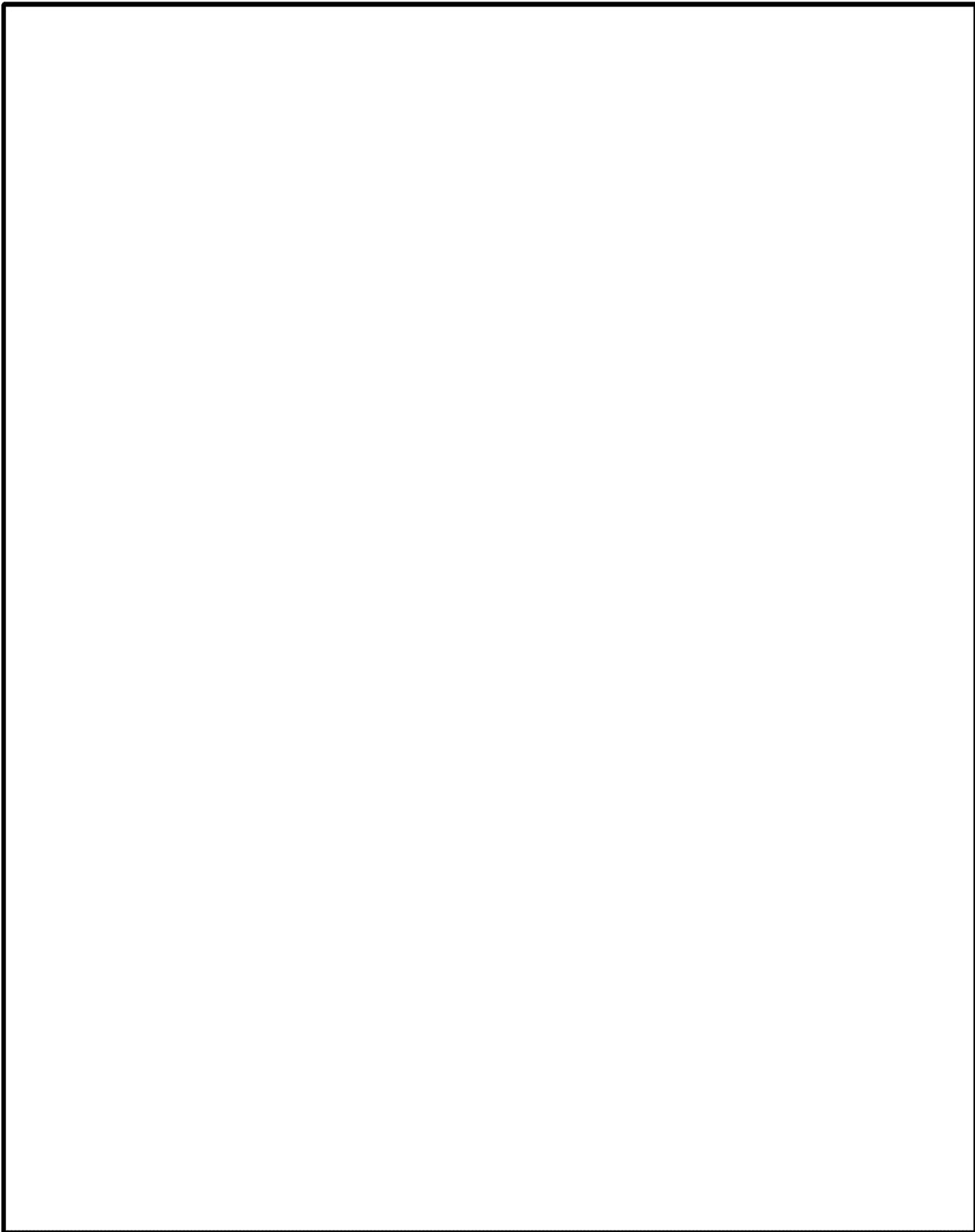


(Beneficiary)
(Petitioner)

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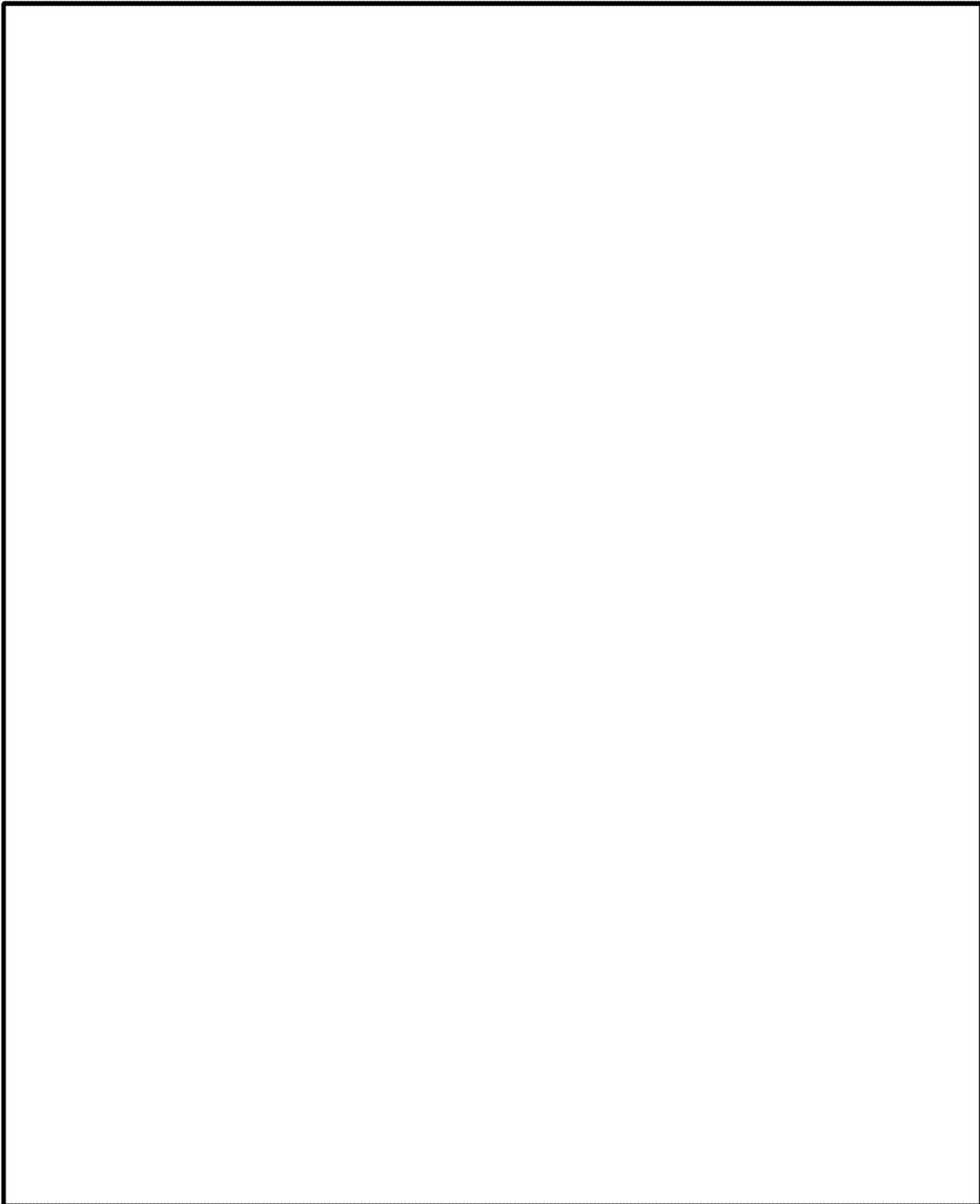
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(Beneficiary)
(Petitioner)

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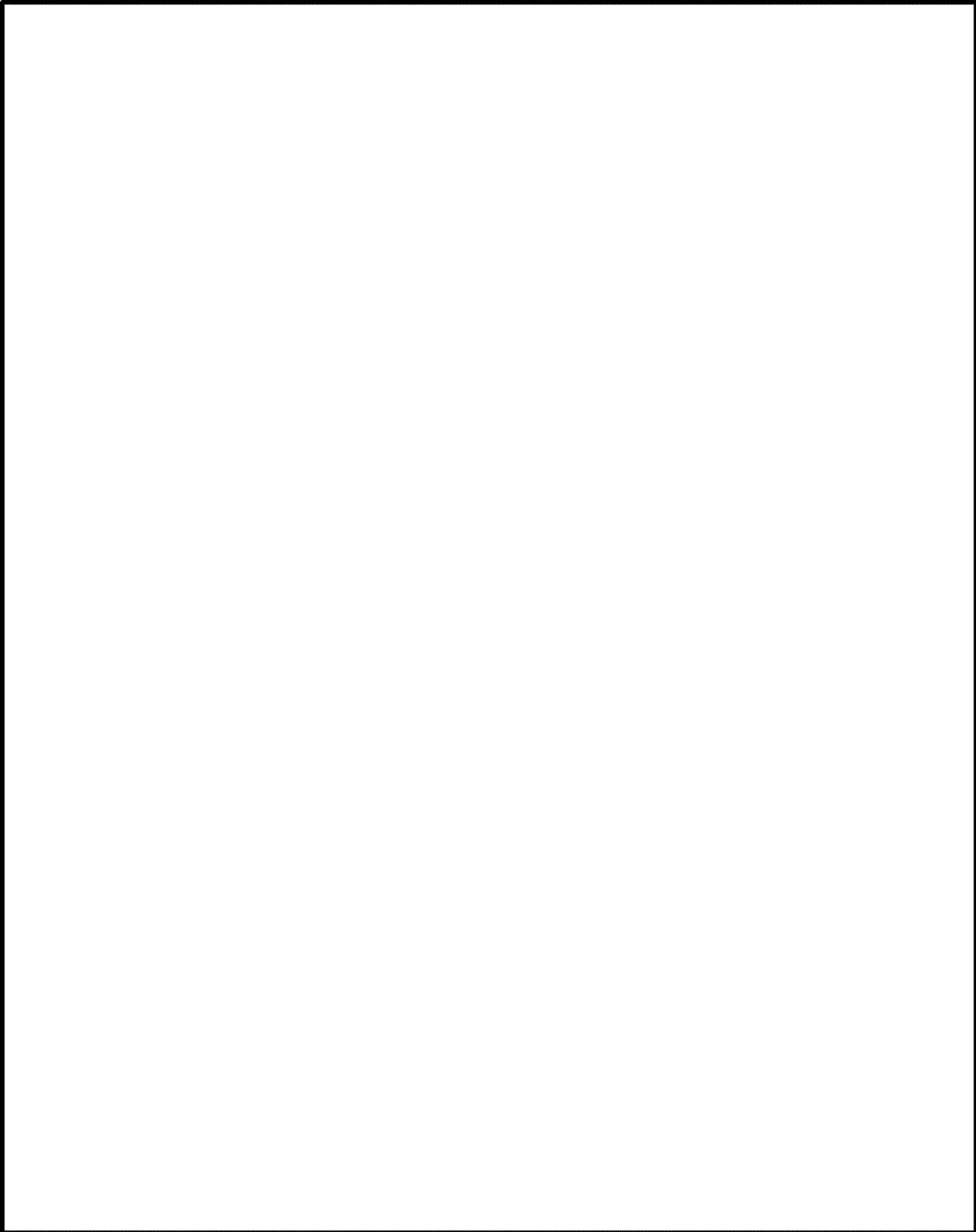
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(Beneficiary)
(Petitioner)

Brief in Response to Request for Evidence
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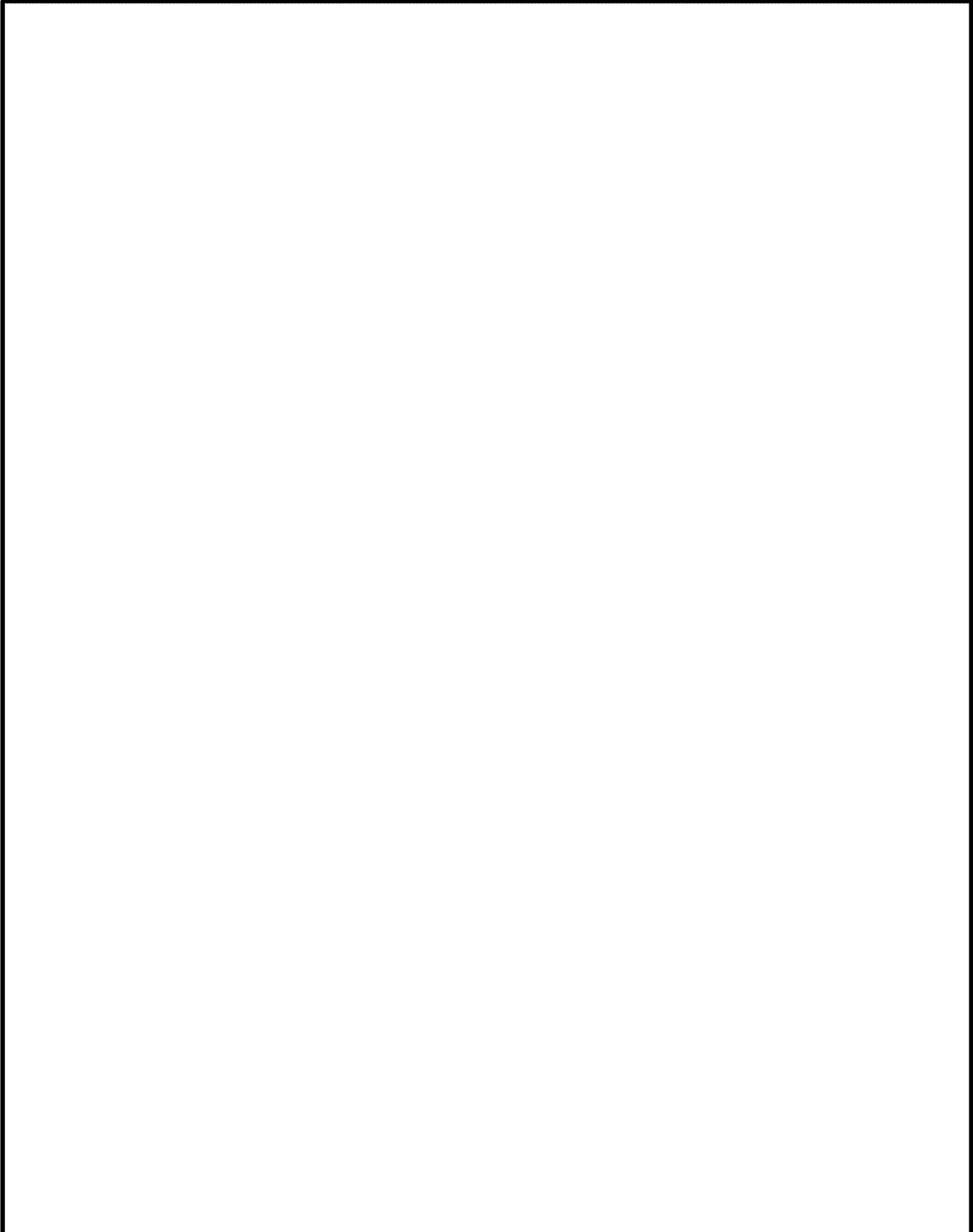
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(Beneficiary)
(Petitioner)

Brief in Response to Request for Evidence
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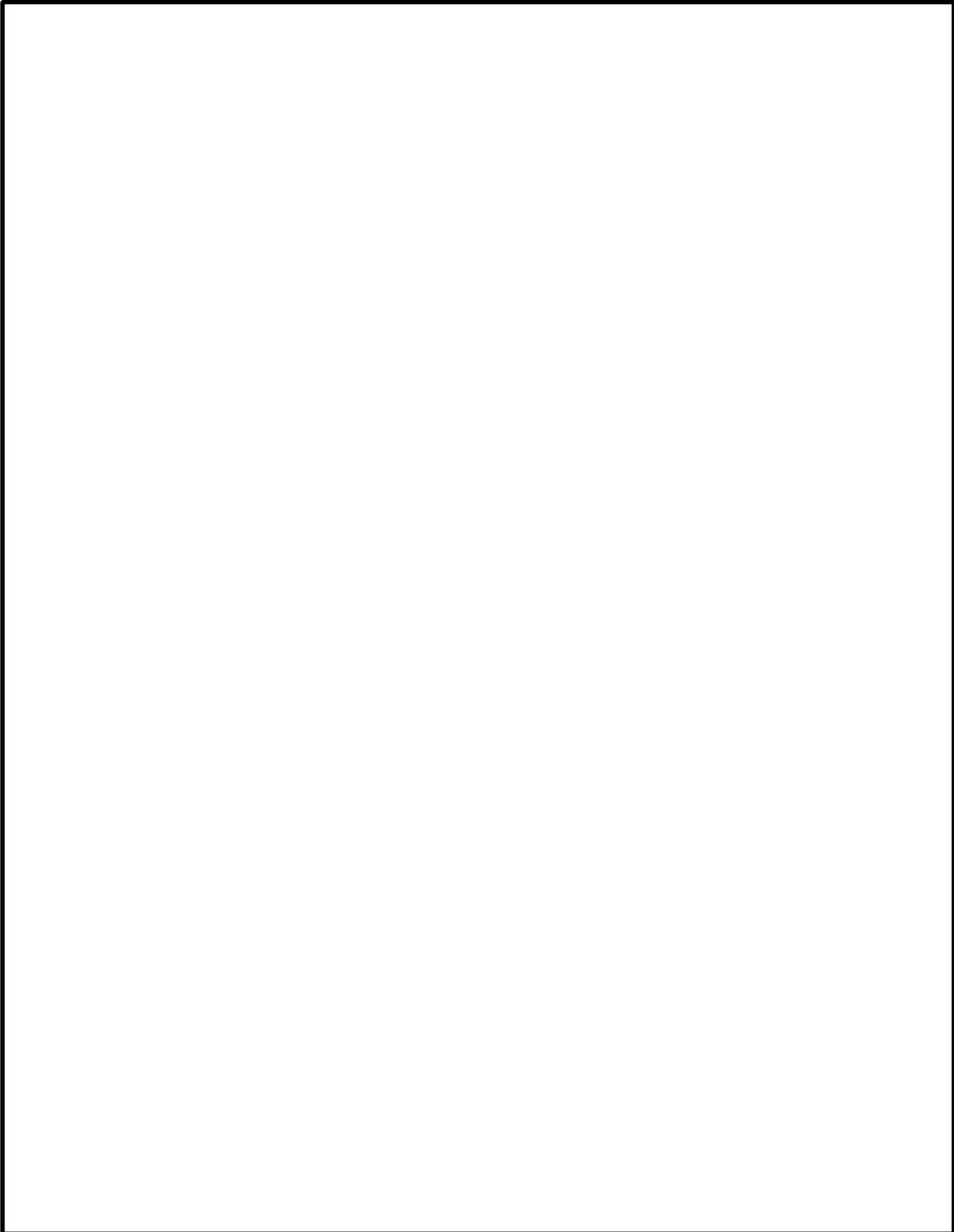
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(Petitioner)

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(Beneficiary)
(Petitioner)

Brief in Response to Request for Evidence
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Please oblige with an early and favorable disposition in the above matter. Thank you.

Very truly yours,

A handwritten signature in cursive script that reads "George Allen".

George A. Allen, Esq.
Attorney-At-Law

GAA/am
Enclosures
Via Overnight Mail

From: Bump, Micah N
To: [Symons, Craig M](#); [Groom, Molly M](#)
Cc: [Nakajima, Simon T](#); [Cox, Robert H](#); [Dalal-Dheini, Sharvari P \(Shev\)](#); [Choi, Heesun S \(Sunny\)](#); [Flippen, Jeanette P](#); [Hollowell, Julie S](#)
Subject: CIS Ombudsman Meeting with USCIS Director
Date: Wednesday, April 19, 2017 11:48:00 AM
Attachments: [TPs for CISOMB Director Mtg 041717 ALD edits.docx](#)

Hello Molly and Craig,

Attached please find ALD's comments/edits on the prepared talking points for tomorrow's meeting with the CIS Ombudsman. Please let us know if you have anything further before we return to OP&S.

Thanks,

Micah

Micah N. Bump
Associate Counsel
Department of Homeland Security
Citizenship and Immigration Services
20 Massachusetts Avenue, NW
Washington, D.C. 20529
Tel: (202)272-1405
Mobile: (202) 704-5095

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From: Raymond, Robert R **On Behalf Of** ALD
Sent: Monday, April 17, 2017 1:55 PM
To: Nakajima, Simon T; Cox, Robert H; Bump, Micah N; Choi, Heesun S (Sunny); Flippen, Jeanette P; Hollowell, Julie S; Dalal-Dheini, Sharvari P (Shev)
Cc: ALD
Subject: FW: CIS Ombudsman Meeting with USCIS Director

Simon, Robert, Micah, will one of you please take the lead? Thanks

Robert Raymond
Deputy Chief
Adjudications Law Division
Office of the Chief Counsel
United States Citizenship and Immigration Services
20 Massachusetts Avenue NW Room 4210
Washington DC 20529
Telephone +1 202 272 1434
Fax +1 202 272 1478
robert.r.raymond@uscis.dhs.gov

From: Gentry, Anthony E **On Behalf Of** OCC-Clearance
Sent: Monday, April 17, 2017 1:23 PM
To: ALD
Subject: FW: CIS Ombudsman Meeting with USCIS Director

ALD Box,

Per the OCC clearance process, please take the lead on review and clearance of this item on behalf of OCC. Please have the assigned ALD attorney provide their contact information to the client. Please copy the BOX on your response to the client.

Thanks.

Tony

From: Rather, Michael B
Sent: Monday, April 17, 2017 12:11 PM
To: Reyes, Arthur E
Cc: Levine, Laurence D; OCC-Clearance
Subject: RE: CIS Ombudsman Meeting with USCIS Director

Adding OCC-Clearance.

Michael B. Rather | Chief of Staff

Office of Policy and Strategy (OP&S)
U.S. Citizenship & Immigration Services (USCIS) | Department of Homeland Security (DHS)
20 Massachusetts Avenue NW - Suite 1200 | Washington, DC 20529
Office: 202-272-1489 | Mobile: 202-815-5920 | Email: michael.b.rather@uscis.dhs.gov

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From: Rather, Michael B
Sent: Monday, April 17, 2017 12:06 PM
To: Reyes, Arthur E
Cc: Levine, Laurence D
Subject: RE: CIS Ombudsman Meeting with USCIS Director

(b)(5)

Hi Arthur:



Take care!

Michael B. Rather | Chief of Staff

Office of Policy and Strategy (OP&S)
U.S. Citizenship & Immigration Services (USCIS) | Department of Homeland Security (DHS)
20 Massachusetts Avenue NW - Suite 1200 | Washington, DC 20529
Office: 202-272-1489 | Mobile: 202-815-5920 | Email: michael.b.rather@uscis.dhs.gov

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From: Reyes, Arthur E
Sent: Friday, April 14, 2017 12:22 PM
To: Rather, Michael B
Cc: Levine, Laurence D
Subject: FW: CIS Ombudsman Meeting with USCIS Director

(b)(5)

Good afternoon Mike and Larry,



Best regards,

Arthur Reyes

Arthur E. Reyes | Adjudications Officer | Liaison and Coordination
Branch, Customer Service and Public Engagement Directorate
U.S. Citizenship and Immigration Services, 111 Massachusetts Ave. NW, Washington, DC (BB) 202.207.8270 (M) 202.769.6727

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From: Arroyo, Susan K
Sent: Friday, April 14, 2017 10:52 AM
To: Reyes, Arthur E
Cc: Moreno, Miriam E
Subject: RE: CIS Ombudsman Meeting with USCIS Director

Arthur,

Attached are our responses. Let me know if you need anything else.

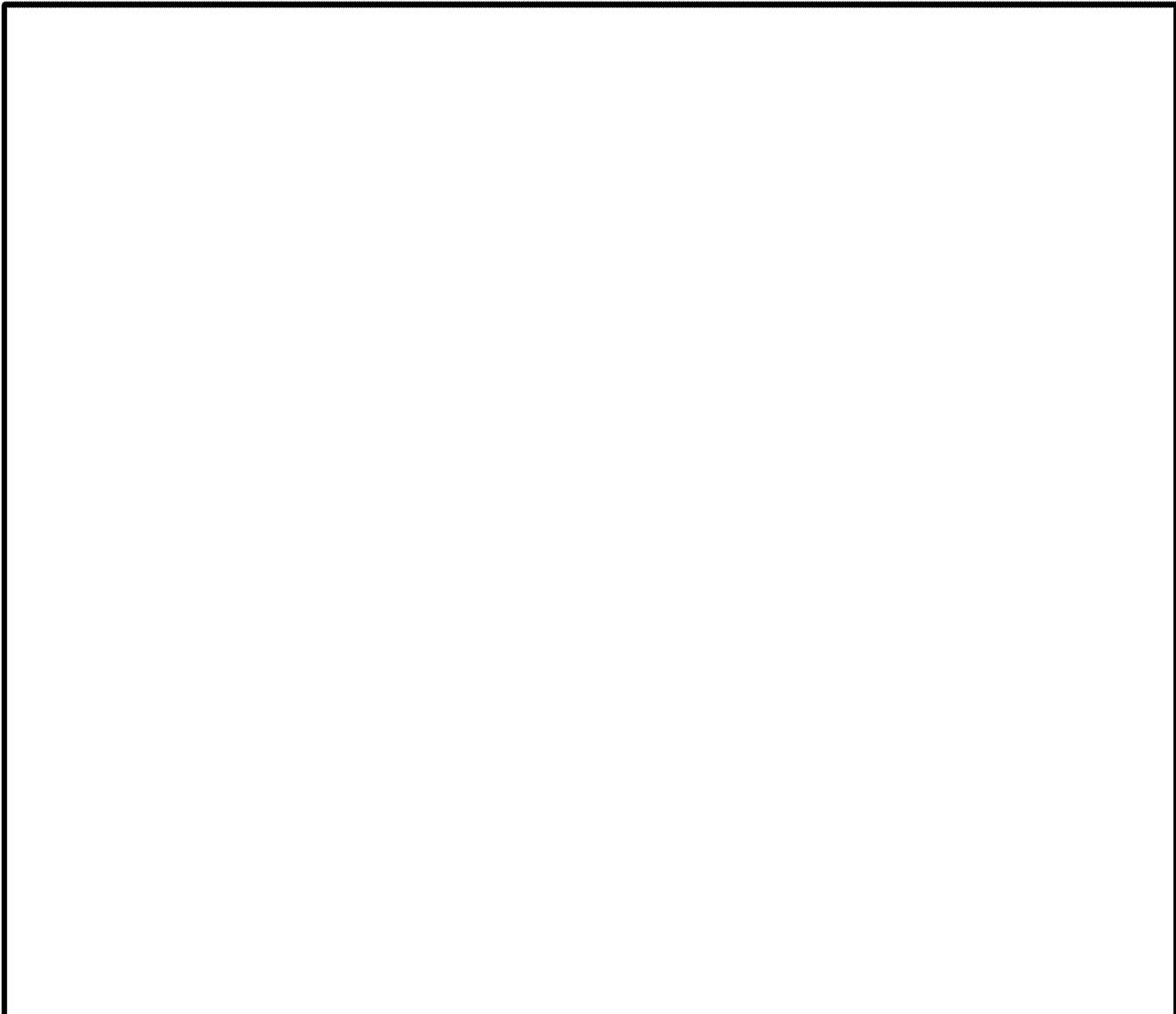
Susan Arroyo
Chief of Staff
Service Center Operations
DHS/USCIS
202-272-1094

[redacted] cell) (b)(6)

From: Reyes, Arthur E
Sent: Wednesday, April 12, 2017 9:57 AM
To: Rather, Michael B; Arroyo, Susan K; Muhletaler, Catherine; Kvortek, Lisette E; Button, Maria G (Gemma); OCOMM Clearance Taskers; Snaidman, Anne M
Cc: Levine, Laurence D; Moreno, Miriam E; Garner, Angela L; Salas, Bryan F; Chiorazzi, Anne; Stone, Mary M; Carter, Constance L
Subject: CIS Ombudsman Meeting with USCIS Director

(b)(5)

Good morning,





**Arthur E. Reyes | Adjudications Officer | Liaison and Coordination
Branch, Customer Service and Public Engagement Directorate
U.S. Citizenship and Immigration Services, 111 Massachusetts Ave. NW, Washington, DC (BB) 202.207.8270 (M) 202.769.6727**

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EB2 Workloads



I-129 – Petition for a Nonimmigrant Worker

- H-1B Initial Cap Filings
- H-1B EOS and Amendments
- H-1B Cap Exempt Filings (*CSC has sole jurisdiction of H-1B petitions filed by cap-exempt employers*)

I-129CW – Petition for a CNMI-Only Nonimmigrant Transitional Worker (*CSC has sole jurisdiction*)

I-539 – Concurrently filed Application To Extend/Change Nonimmigrant Status

I-765 – Application for Employment Authorization

- C26 – Employment authorization for Certain H-4 Dependent Spouses

Final Filing Tips



In general, if you are submitting evidence in response to this request, also submit the following:

RHC1

- An index of the evidence and include corresponding tabs for each section of evidence.
- Clear and legible copies of the evidence. If clear and legible copies are not possible, submit the original documents. RHC2
These originals will be returned, if requested.

(b)(5)

Slide 2



Filing Tips Continued



- **If you are requesting consulate notification, provide a duplicate copy of: Form I-129 (including LCA); initial evidence; and any evidence submitted in response to this request.**
- **If the beneficiary is in the United States and you are requesting a change of status or extension of stay, you may also choose to submit a duplicate copy of the Form I-129 and supporting evidence in case the beneficiary decides to seek a visa at a consular office abroad.**

Filing Tips Continued



Full English language translation(s) of all documents submitted to USCIS that are in foreign language(s). The translator must certify that the translations are accurate and complete and that the translator is competent to translate from the foreign language into English. Documentation not in English and not accompanied by a translation that meets the requirements described above cannot be considered.

H-1B CAP petition processing time and tips when filing H-1B petitions



USCIS generally processes cases in the order they are received. On May 11, 2017, CSC began adjudication of the FY 18 cap-subject H-1B petitions. USCIS is working hard to process most FY 18 CAP cases by September 30, 2017 and has prioritized these cases accordingly. For FY 18, CSC received 58,800 CAP cases.

-Tips: Make sure the petition is filled out completely, correctly, and includes all required signatures. Also, provide supporting documents to substantiate all claims.

Tips for H-1B amended petitions



- Explain in the supporting letter the reasons why the amended petition is being filed (e.g. change in work location; change in job duties; or change in wages). Discuss what has changed.
- Amended petitions must be filed when there are material changes to the previously approved Form I-129 that *may* affect the beneficiary or the employer's eligibility. Evidence that the position is a specialty occupation; that the beneficiary is qualified for the position; or that an employer-employee relationship will exist, should be submitted.

Simeio-related amended petitions



- State in the supporting letter the work location(s) where the beneficiary was previously approved to work;
- State the work location(s) where the beneficiary actually worked and the period(s) the beneficiary worked at those location(s);
- Provide copies of all LCA(s) obtained for any new work location(s) that were not previously approved; and
- Provide supporting documents such as payroll records to show the beneficiary's work location(s).

Anticipated Questions



- AC21 (no deference for affiliation, 10 day grace, 60 day window)
- Rescission memo
- Deference computer programmer
- PP timeline
- Workload sharing/shifts
- New officers
- Pre-submitted questions are due 6/5/2017

[[[LETTERHEADER]]]

Dear Sir/Madam:

On [[[LETTER_CASE_RECEIPT_DT]]], you filed a Petition for a Nonimmigrant Worker (Form I-129) to classify the beneficiary under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (Act).

Section 101(a)(15)(H)(i)(b) of the Act relates to an alien:

...who is coming temporarily to the United States to perform services...in a specialty occupation described in section 214(i)(1)..., who meets the requirements for the occupation specified in section 214(i)(2)..., and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under 212(n)(1).

Further, section 214(i)(1) of the Act defines "specialty occupation" as:

...an occupation that requires--

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

"Specialty occupation" is defined at Title 8 Code of Federal Regulations (8 CFR), section 214.2(h)(4)(ii) as:

...an occupation which requires theoretical and practical application of a body of highly specialized knowledge in such fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Title 8 Code of Federal Regulations, section 214.2(h)(4)(iii)(A) requires a specialty occupation to meet one of the following criteria:

(1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

(3) The employer normally requires a degree or its equivalent for the position; or

(4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

To be consistent with section 214(i)(1) of the Act, U.S. Citizenship and Immigration Services (USCIS) interprets the term "degree" set forth in the criteria at 8 CFR 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the offered position.



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At issue is whether the offered position qualifies as a specialty occupation.

USCIS does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. USCIS considers the specific duties of the offered position, as well as the nature of the petitioning entity's business operations. With the initial filing, you submitted the following description of duties for the offered position:

- Support the development, planning and execution of sales strategy;
- Support the management of Key Accounts and key bookers;
- Prepare and execute sales activities (sales calls, sales weeks, trade shows);
- Update and maintain the sales database "Nexus;" (b)(5)
- Support in the [redacted]
- Support sales team in prospecting new agencies, accounts and untapped sales opportunities;
- Manage and coordinate office operations and procedures in order to ensure organizational effectiveness and efficiency;
- Develop and maintain databases for travel agents, member hotels, press and marketing partners as per [redacted] standards; (b)(5)
- Establish and maintain strong relationship with [redacted] global staff, offices and affiliates;
- Prepare and execute regional tactical promotional opportunities;

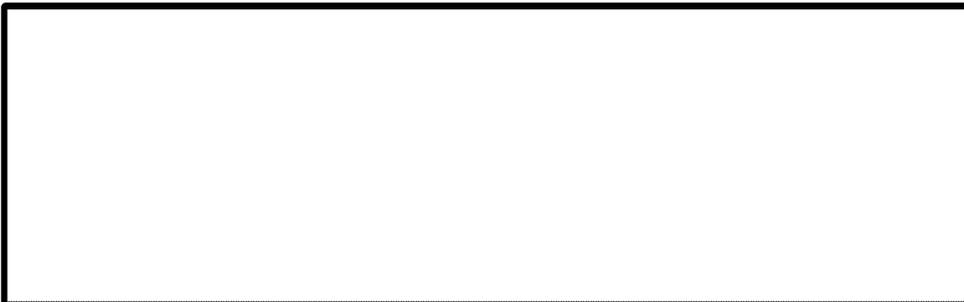
- Identify market opportunities to further expand [redacted] brand awareness to relevant target groups;
- Identify partnership opportunities for [redacted] within the Neue House community;
- Plan and coordinate events, partners and other brand opportunities to connect with the right target audience;
- Support establishment of the brand [redacted] to be a leading partner within the industry of the region;
- Represent member hotels of [redacted] to third parties;
- Identify potential owners, investors, developers to increase the member portfolio of [redacted] in the region;
- Conduct market scanning within the region by tapping into multiple sources of information;
- Analyze regional strategies, branding opportunities as well as revenue opportunities for Design Hotels and report on changing business trends;
- Create and execute transparent reporting to member hotels and the organization; and
- Manage regional revenue forecasts to ensure revenues are in line with budget.

(b)(5)

On October 28, 2016, USCIS issued a request for additional evidence to which a response was received on January 23, 2017. On April 26, 2017, USCIS denied your petition, but subsequently reopened your petition on Service motion.

On July 7, 2017, USCIS informed you in a second request for evidence that the evidence of record did not establish that the position required the theoretical and practical application of a body of highly specialized knowledge and which requires the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent, for entry into the occupation in the United States. You were requested to submit evidence showing that the proffered position qualifies as a specialty occupation. A list of suggested evidence was provided.

On August 17, 2017, USCIS received your response, which included:



(b)(6)

I. Discussion of 8 CFR section 214.2(h)(4)(iii)(A)(1)

Degree is Normally Minimum Requirement

In the evidence that you previously submitted, you indicated that that the proffered position is categorized within Standard Occupational Classification (SOC) 13-1161,

Market Research Analysts and Marketing Specialists. You also turned to and quoted the Department of Labor's Occupational Outlook Handbook (OOH) entry for Market Research Analysts.

As evidence that a baccalaureate or higher degree, or its equivalent, in a specific specialty, is normally the minimum requirement for entry into the particular position, you submitted an attorney response letter in response to the second request for additional evidence.

The attorney letter in response to the second request for additional evidence argues that USCIS's interpretation of the educational requirements for market research analysts in the OOH is not in line with our own interpretation of the statutory and regulatory framework. It also indicates that the determination by USCIS that the position does not qualify as a specialty occupation is not supported by "substantial evidence." The letter goes on to indicate that the varied degrees mentioned in the OOH are sufficiently closely related to market research as to ". . . constitute degrees in 'related areas' or 'fields.'" However, the evidence you have provided is insufficient to support this claim.

The most recent version of the OOH entry for Market Research Analysts states in part:

Market research analysts typically need a bachelor's degree in market research or a related field. Many have degrees in fields such as statistics, math, and computer science. Others have backgrounds in business administration, the social sciences, or communications.

Courses in statistics, research methods, and marketing are essential for these workers. Courses in communications and social sciences, such as economics or consumer behavior, are also important.

The OOH indicates that while a degree in market research may qualify an individual for such a position, a range of other fields are also sufficient and that many individual in this occupational category have degree is statistics, math, and computer science. The OOH also states that others may have backgrounds in business administration, the social sciences, or communications. The coursework further identified in the OOH as "important" for market research analyst positions is in the fields of communications and social sciences, such as economics and consumer behavior. While the OOH does indicate that a degree in market research may qualify an individual for such a position, it also indicates that degrees in various fields are acceptable for positions in this field.

In order for the academic specialties to be deemed closely related, the "body of highly specialized knowledge", the petitioner must demonstrate the similarities between the fields and courses of study. However, the attorney response letter has not given any evidence or analysis of how it was determined that the ". . . additional degrees mentioned by the OOH are sufficiently closely related to market research . . ."

The academic coursework, for example, of a baccalaureate degree in computer science is vastly different than the academic coursework normally associated with a baccalaureate degree in the social sciences, both of which are mentioned as appropriate prerequisites to perform the duties normally associated with a market research position. While there may be a few overlapping general courses, the curricula are not similar and neither you nor the attorney of record have offered an analysis of how these varied academic backgrounds offered by the OOH as an acceptable educational requirements are closely related. Although you claim that the acceptable degrees identified in the OOH are similar/related, there is insufficient evidence or analysis to support this finding. As previously indicated, the OOH does not indicate that a baccalaureate degree in a specific field of study is the minimum educational requirement for a market research analyst position. Degrees in disparate fields of study, such as market research, hospitality, and computer science, do not meet the statutory requirement that the degree be in *the* specific specialty (emphasis added).



(b)(5)

Based on the evidence submitted, you have not demonstrated that a baccalaureate or higher degree, or its equivalent, in a specific specialty, is normally the minimum requirement for entry into the position. As explained above, the OOH entry for Market Research Analyst indicates that a range of fields and specializations qualify an individual for a market research analyst position. While your attorney claims that the additional degrees mentioned by the OOH are sufficiently closely related to market research to constitute degree in related areas or fields, you have not submitted sufficient evidence to demonstrate that is the case.

Therefore, the evidence of record does not satisfy the criterion at 8 CFR 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree, or its equivalent, in a specific specialty, is normally the minimum requirement for entry into the particular position.

II. Discussion of 8 CFR section 214.2(h)(4)(iii)(A)(2)

Part 1 – Common to the Industry

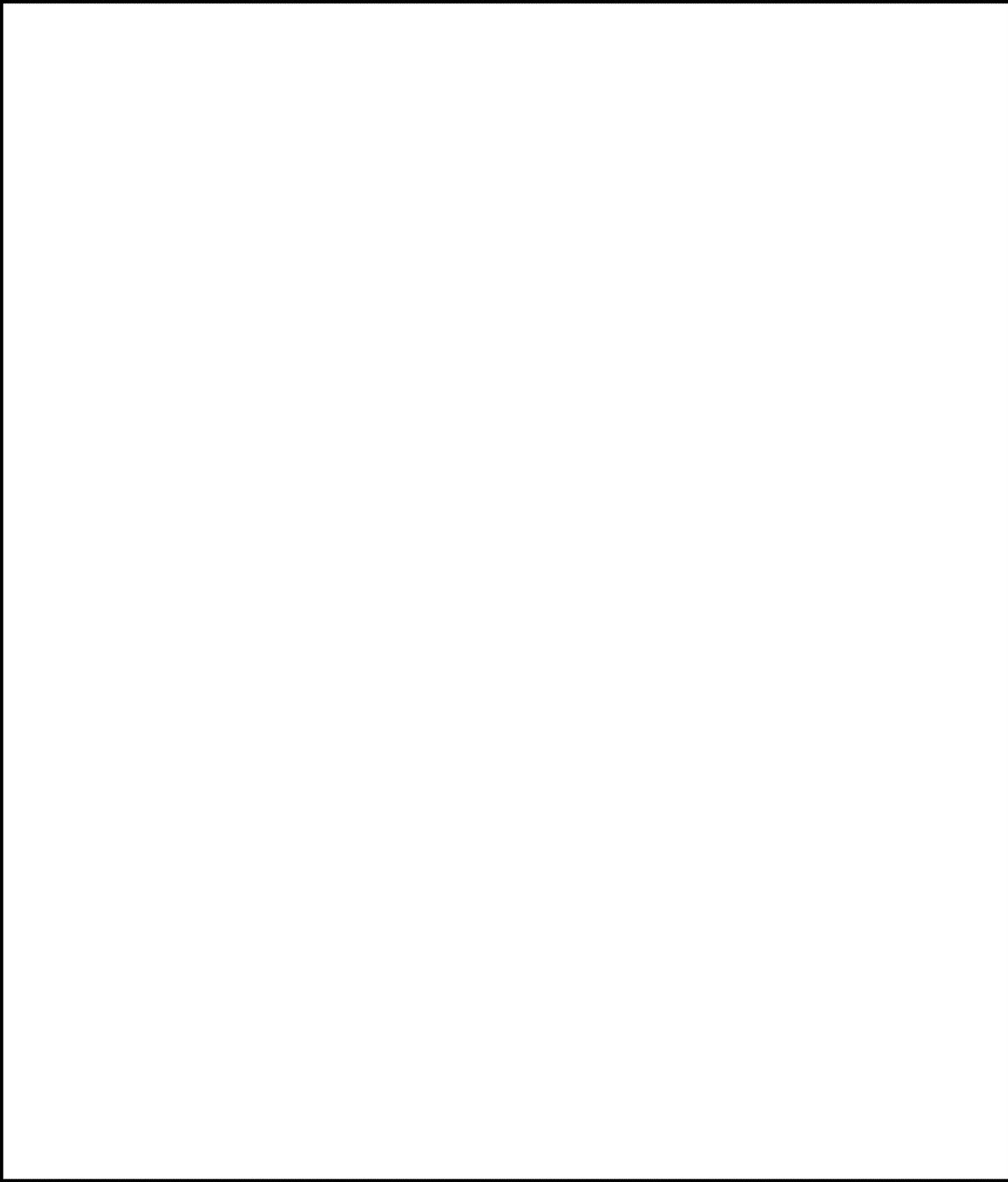


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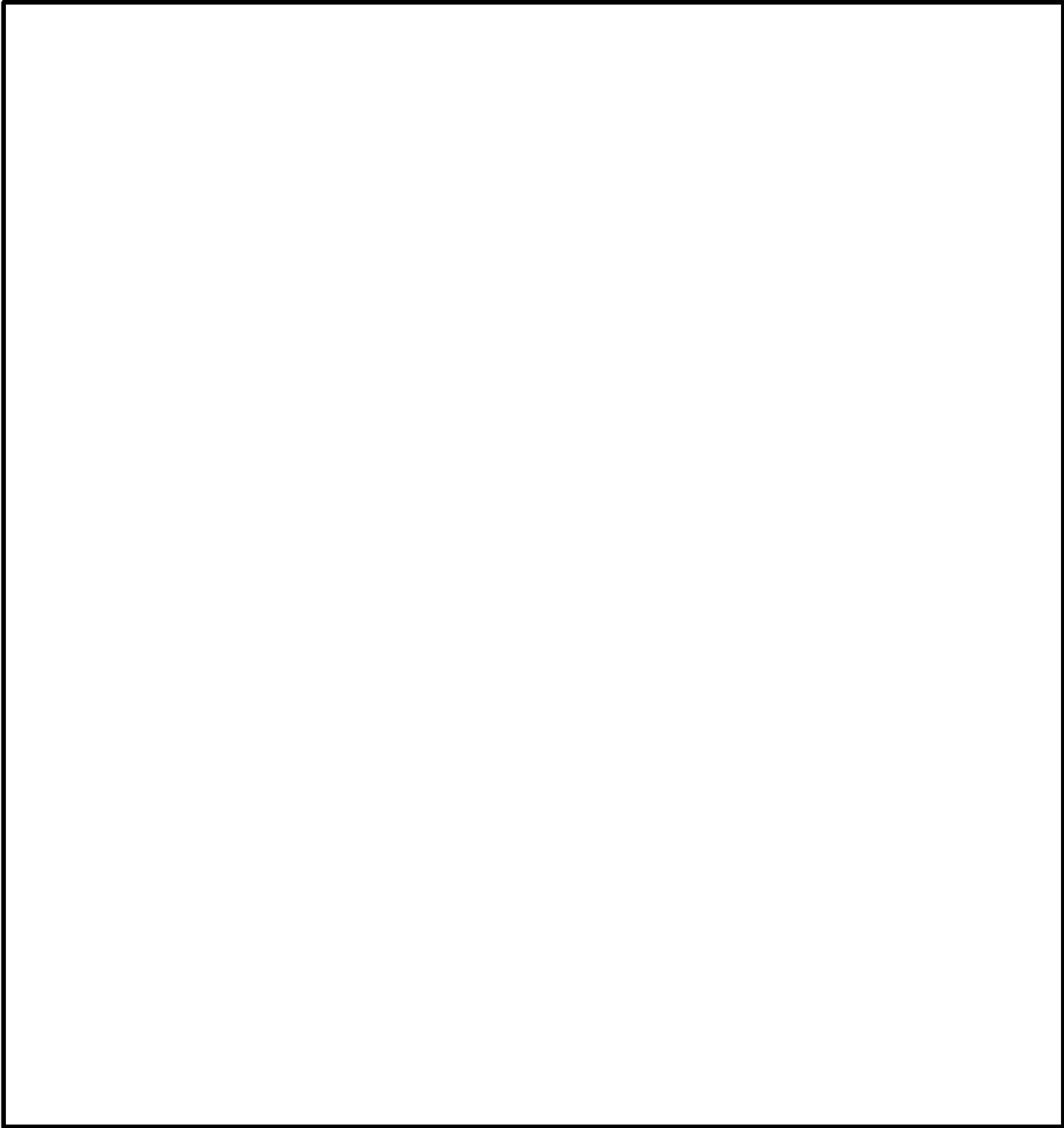
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(b)(5) (b)(6)



(b)(6)

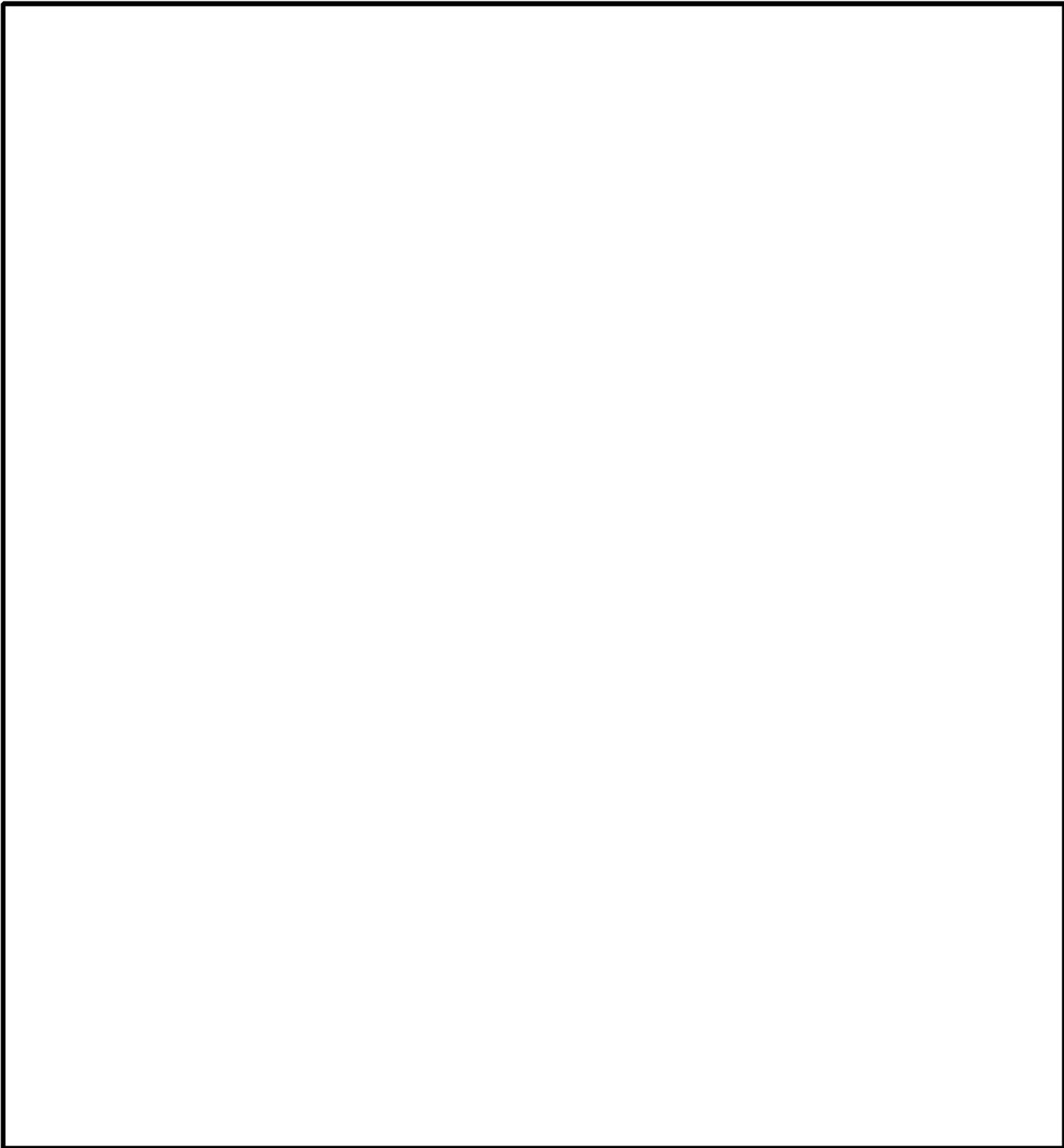
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Part 2 – So Complex or Unique



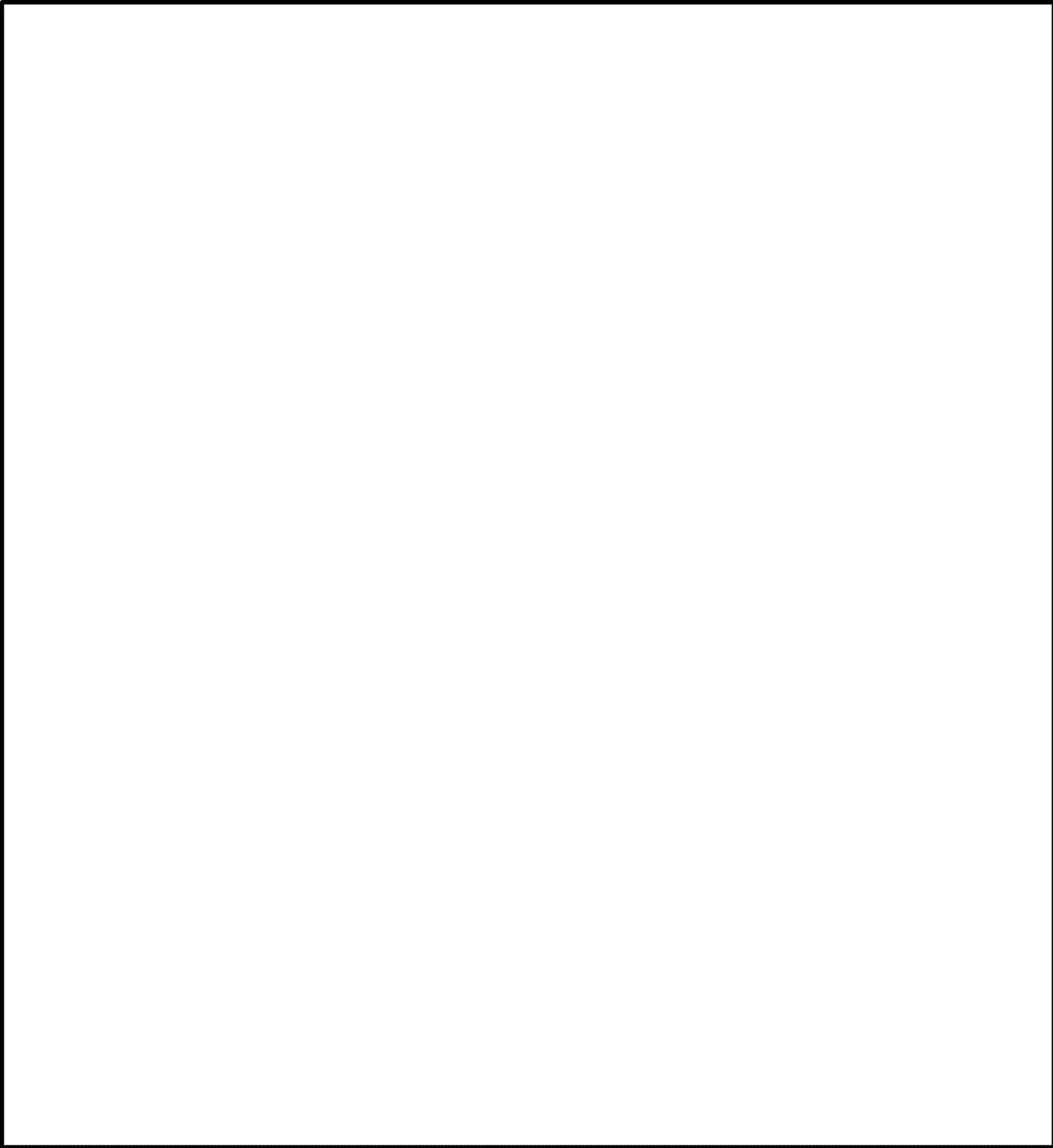
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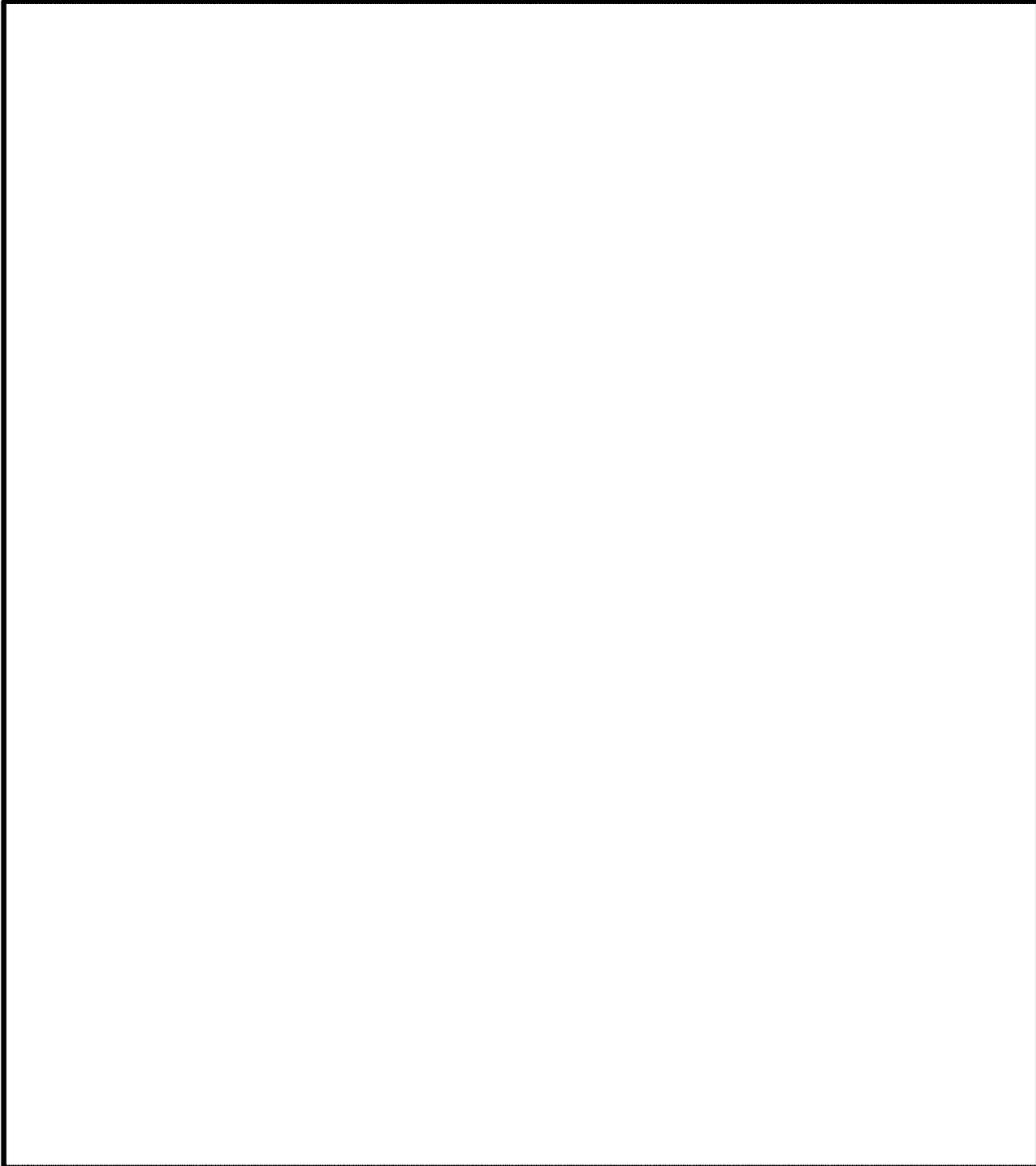


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(b)(5)



(b)(5) (b)(6)



If you disagree with this decision, or if you have additional evidence that shows this decision is incorrect, you may appeal this decision by filing a completed Form I-290B, Notice of Appeal or Motion. You may also include a brief or other written statement in support of your appeal. The appeal must be filed within 33 days from the date of this notice. If an appeal or a motion is not filed within 33 days, this decision is final.

You must send your completed Form I-290B and supporting documentation with the appropriate filing fee to:

USCIS 290B
PO Box 21100
Phoenix AZ 85036

To obtain the Form I-290B, visit www.uscis.gov/forms. For the latest information on filing location, fee, and other requirements, refer to the Form I-290B instructions; review 8 CFR 103.3 or 103.5; call our National Customer Service Center at 1-800-375-5283; or visit your local USCIS office.

The Small Business Regulatory Enforcement and Fairness Act established the Office of the National Ombudsman (ONO) at the Small Business Administration. The ONO assists small businesses with issues related to federal regulations. If you are a small business with a comment or complaint about regulatory enforcement, you may contact the ONO at www.sba.gov/ombudsman or phone 202-205-2417 or fax 202-481-5719.

Sincerely, [[[SIGNATURE]]]

July 7, 2017

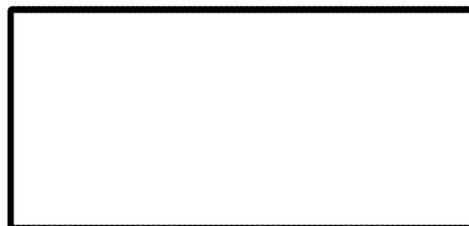
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
75 Lower Welden St
St. Albans, VT 05479



U.S. Citizenship
and Immigration
Services



(b)(6)



I-129, Petition for a Nonimmigrant Worker

REQUEST FOR EVIDENCE

IMPORTANT: THIS NOTICE CONTAINS YOUR UNIQUE NUMBER. THIS PAGE MUST BE SUBMITTED WITH THE REQUESTED EVIDENCE. MAIL THIS NOTICE AND YOUR RESPONSE TO THE ADDRESS ABOVE.

You are receiving this notice because U.S. Citizenship and Immigration Services (USCIS) requires additional evidence to process your form. Please provide the evidence listed on the attached page(s). Include duplicate copies if you are requesting consular notification. **Your response must be received in this office by October 2, 2017.**

Please note that you have been allotted the maximum period allowed for responding to a Request For Evidence (RFE). The time period for responding cannot be extended. 8 CFR 103.2(b)(8)(iv). Because many immigration benefits are time sensitive, you are encouraged to respond to this request as early as possible, but no later than the deadline provided above. If you do not respond to this notice within the allotted time, your case may be denied. The regulations do not provide for an extension of time to submit the requested evidence.

You must submit all requested evidence at the same time. If you submit only some of the requested evidence, USCIS will consider your response a request for a decision on the record. 8 CFR 103.2(b)(11).

If you submit a document in any language other than English, the document must be accompanied by a full and **complete** English translation. The translator must certify that the translation is accurate and he or she is competent to translate from that language to English. **If you submit a foreign language translation in response to this request for evidence, you must also include a copy of the foreign language document.**

Processing of your form or benefit request will resume upon receipt of your response. If you have not heard from USCIS within **60 days of responding**, you may contact the USCIS National Customer Service Center (NCSC) at **1-800-375-5283**. If you are hearing impaired, please call the NCSC TDD at

1-800-767-1833.

S

The Petitioner

Documentation submitted with your petition indicates that your company provides hospitality consulting/marketing services.

On April 7, 2016, you filed a Petition for a Nonimmigrant Worker (Form I-129). April 26, 2017, your petition was denied. USCIS has reopened your petition on Service motion pursuant to Title 8, Code of Federal Regulations (CFR), 103.5(a)(5) and is reconsidering the denial of your petition.

You have not established your eligibility for the desired classification and USCIS cannot reach a favorable decision.

Specialty Occupation

A specialty occupation is one that requires the theoretical and practical application of a body of highly specialized knowledge and which requires the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent, as a minimum, for entry into the occupation in the United States.

USCIS does not use the job title, by itself, when determining whether a particular position qualifies as a specialty occupation. The specific duties of the offered position, combined with the nature of the petitioning entity's business operations, are factors that USCIS considers.

To qualify as a specialty occupation, the position must meet at least one of the following criteria:

1. Bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree.

USCIS interprets the term degree in the above criteria to mean not just any degree, but a degree in a specific field of study that is directly related to the proffered position.

To satisfy this requirement, you initially submitted:

- A list of proffered job duties;
- A printout of your company's overview from your website
- A copy of your company's press kit from 2014.

On October 28, 2016, USCIS issued a request for additional evidence to establish the proffered position as a specialty occupation. On January 23, 2017, USCIS received your response, which included the following evidence addressing this issue:

- A response statement; and



- Several job announcements for positions such as operations analyst, revenue management strategy analyst, sales operations analyst, hotel market research analyst, commissions analyst, and operations analyst- accounting.

The evidence you submitted is insufficient; discussion of the deficiencies in the record is below.

The cover letter provided in your response to the request for evidence claims that the evidence of record establishes the proffered position is a specialty occupation under 8 CFR 214.2(h)(4)(iii)(A)(1)-(4).

As evidence the position qualifies under 8 CFR 214.2(h)(4)(iii)(A)(1), a bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position, you provided a response statement. Your statement indicated that the beneficiary will assume the position of Business Analyst – The Americas and that the position requires a minimum of a bachelor's degree in market research, hospitality management or related field. You also indicated that the position is categorized with Standard Occupational Classification (SOC) 13-1161, Market Research Analysts and Marketing Specialists. The response statement then turns to and quotes the Department of Labor's Occupational Outlook Handbook (OOH) entry for market research analysts. Your statement emphasizes the following excerpt:

Market research analysts typically need a bachelor's degree in market research or a related field. Many have degrees in fields such as statistics, math, and computer science. Others have backgrounds in business administration, the social sciences, or communications. Courses in statistics, research methods, and marketing are essential for these workers. Courses in communications and social sciences, such as economics psychology and sociology, are also important. Some market research analyst jobs require a master's degree. Several schools offer graduate programs in marketing research, but many analysts complete degrees in other fields, such as statistics and marketing, and/or earn a Master of Business Administration (MBA). A master's degree is often required for leadership positions or positions that perform more technical research.

As noted in previous correspondence, USCIS routinely consults and relies on the OOH as an authoritative source for information about the duties and educational requirements of particular occupations. A majority of duties described in the record are comparable, as you indicated, to those of a market research analyst. You have provided the excerpt from the OOH regarding the educational requirements for market research analysts. It is noted that some of the language that was cited above is not a direct quote from the most current version of the OOH available on the internet, which states:

Market research analysts typically need a bachelor's degree in market research or a related field. Many have degrees in fields such as statistics, math, and computer science. Others have backgrounds in business administration, the social sciences, or communications.

Courses in statistics, research methods, and marketing are essential for these workers. Courses in communications and social sciences, such as economics or consumer behavior, are also important.

Some market research analyst jobs require a master's degree. Several schools offer graduate programs in marketing research, but many analysts complete degrees in other fields, such as statistics and marketing, and/or earn a master's degree in business administration (MBA). A master's degree is often required for leadership positions or positions that perform more technical research.

However, the version you cited is largely in line with the current language from the OOH.

Your response statement indicated that USCIS did not properly interpret the information from the OOH, in that an employer could require a bachelor's degree in different specialties for the position of market research analyst, depending on the petitioner's industry.

The plain language reading of the OOH indicates that while employees may need a bachelor's degree in market research, it further states that related fields are also sufficient and that many individuals in this occupational category have degrees in statistics, math, and computer science. The OOH also states that others may have backgrounds in business administration, the social sciences, or communications. The coursework further identified in the OOH as "important" for market research analyst positions is in the fields of communications and social sciences, such as economics and consumer behavior. While the OOH does indicate that individuals performing the duties of a market research analyst may need a bachelor's degree in market research, it also indicates that degrees in various fields are acceptable for positions in this field. The evidence you submitted does not demonstrate how these various fields are sufficiently related by a body of highly specialized knowledge. Therefore, the evidence of record does not satisfy this criterion because the position does not require a bachelor's or higher degree or its equivalent in a specific field of study that is directly related to the proffered position as a minimum requirement for entry on the position.

As evidence the position qualifies under 8 CFR 214.2(h)(4)(iii)(A)(2), the degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the particular position is so complex or unique that it can be performed only by an individual with a degree, you submitted a response statement and several job postings.

As indicated above, your response statement claimed that USCIS did not properly interpret the information from the OOH, in that an employer could require bachelor's degrees in different specialties for the position of market research analyst, depending on the petitioner's industry. To establish the degree requirement in your company's industry in parallel positions among similar organizations, you submitted several job announcements [redacted] Your response statement indicated that, "[n]one of the enclosed job postings list the requirement of a Bachelor's Degree without specifying a particular field." (b)(6)

The job announcements provided were for the positions of operations analyst with [redacted]

[redacted] (b)(6)
[redacted] The limited descriptions of the duties offered for these other positions, and the fact that many of the job duties offered in these other positions are not in line with the duties of the offered position are not sufficient to establish a degree requirement in a specific specialty is common to the industry in parallel positions in similar organizations.

[redacted] indicates the individual would be responsible for financial planning and budget preparation, which are not job duties outlined for your proffered position. While most of the announcements require a bachelor's degree, USCIS interprets the regulatory degree requirement to require a degree in a specific specialty related to the position, and these announcements do not demonstrate that a degree in a specific specialty is required. (b)(6)

The conclusion that none of the job announcements list a bachelor's degree requirement without specifying a particular field does not demonstrate that market research analyst is a specialty occupation because the different positions each require a bachelor's degree in various unrelated fields of study. For example, the operations analyst position with [redacted] states it requires a bachelor's degree in business, finance and/or accounting. The revenue management strategy analyst position with [redacted] requires a bachelor's degree in statistics, math, finance, economics, computer science, or a related field. The hotel market research analyst with [redacted] requires a bachelor's degree, "preferably in finance, business, or related field." The commissions analyst with [redacted] requires a bachelor's degree in accounting, finance, or a related business area. All of the announcements show a degree requirement in a range of multiple fields of study, and some will accept individuals with a bachelor's degree in business administration. A degree requirement in a generalized field, such as business administration, without further specification is not sufficient to establish a position as a specialty occupation. There must be a close correlation between the coursework/studies and the position itself. Therefore, these job announcements do not show that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations and they are not sufficient to satisfy the first part of the criterion.

As evidence that the position is so complex or unique that it can only be performed by an individual with a degree in a specific specialty, the second part of this criterion, you submitted a description of the proffered job duties and in your response statement identified two job duties that you claim are highly specialized and complex.

The description of the proffered job duties states:

- Support the development, planning and execution of the sales strategy;
- Support the management of Key Accounts and key bookers;
- Prepare and execute sales activities (sales calls, sales weeks, trade shows);
- Update and maintain the sales database [redacted];
- Support in the [redacted] RFP process;
- Support sales team in prospecting new agencies, accounts, and untapped sales opportunities;
- Manage and coordinate office operations and procedures in order to ensure organizational effectiveness and efficiency;
- Develop and maintain databases for travel agents, member hotels, press and marketing partners as per [redacted] standards;
- Establish and maintain strong relationship with [redacted] global staff, offices, and affiliates;
- Prepare and execute regional tactical promotional opportunities;
- Identify market opportunities to further expand [redacted] brand awareness to relevant target groups;
- Identify partnership opportunities for [redacted] within the Neue House community;
- Plan and coordinate events, partners and other brand opportunities to connect with the right target audience;
- Support establishment of the brand [redacted] to be a leading partner within the industry of the region;
- Represent member hotels of [redacted] to third parties;
- Identify potential owners, investors, developers to increase the member portfolio of [redacted] [redacted] in the region;
- Conduct market scanning within the region by tapping into multiple sources of information;
- Analyze regional strategies, branding opportunities as well as revenue opportunities for [redacted] [redacted] and report on changing business trends;



(b)(6)

- Create and execute transparent reporting to member hotels and the organization; and
- Manage regional revenue forecasts to ensure revenues are in line with budget.

Your response statement grouped together several job duties the beneficiary would perform under two bullets and claimed that they are highly specialized and complex in nature and would require a baccalaureate degree in market research, hospitality management, or a related field to perform, which would establish the position as a specialty occupation. The response statement described these duties as:

- Identify market opportunities to further expand [redacted] brand awareness to relevant target groups; Identify potential owners, investors, developers to increase the member portfolio of [redacted] in the region; Conduct market scanning within the region by tapping into multiple sources of information and
- Develop and maintain databases for travel agents, member hotels, press and marketing partners as per [redacted] standards; Update and maintain the sales database [redacted]

Your response statement explains that the first requires formal training in hospitality marketing, services marketing and management, and education in financial concepts and financial management. You state this training and education is necessary to make informed decisions based on specialized data and that without this background, a Business Analyst would not be able to make successful recommendations in this position. Your response also states that extensive educational training, especially related to customer information, is vital to completion of the second set of duties and that a lack of experience in these specific databases would result in a Business Analyst being ill equipped to navigate and effectively manage [redacted] information. You state that as a result, a baccalaureate degree in market research, hospitality management, or a related field is the minimum requirement for entry into the position.

The job duties outlined are no more complex or unique beyond the duties normally associated with any market research position (your internal job title of Business Analyst – The Americas), as described in the OOH, which indicates that an individual does not require a bachelor's degree in a specific specialty, or its equivalent, to perform the duties of the position. The conclusions made regarding the two bulleted lists of duties to be performed are simple and lacking analysis on how the conclusions were made. Statements that the training and education in hospitality marketing, services marketing and management, and education in financial concepts and financial management are required to properly perform the duties of the position are lacking in detail as to the course of study leading to a specific degree. You have not demonstrated how the job duties described require the practical application of a body of highly specialized knowledge, which would require a bachelor's or higher degree or its equivalent in a specific specialty in order to perform. The record does not contain sufficient analysis or details to establish how the curriculum of a course of study in a specific field is necessary to perform the duties of the offered position.

Your response statement grouped together several job duties the beneficiary would perform under two bullets and claimed that they are highly specialized and complex in nature, and would require a baccalaureate degree in market research, hospitality management, or a related field to perform, which establishes the position as a specialty occupation. There is an inherent fault in the conclusion made here. The academic coursework associated with a degree in market research does not compare to that of a degree in hospitality management. The record does not contain further evidence of any commonalities or overlapping academic courses that would allow a conclusion that these two academic fields are related and that there is a close correlation between the studies of both of these academic fields and the position. Since the curriculum associated with these two academic fields are not similar, and you have made statements that a degree in either of these fields of study would be acceptable, this evidence is not sufficient to establish the position as a specialty occupation, requiring a bachelor's or

higher degree or its equivalent in a specific specialty.

The conclusions made regarding the two bulleted lists of duties to be performed are simple and lacking analysis on how the conclusions were made. Statements that the training and education in hospitality marketing, services marketing and management, and education in financial concepts and financial management are required for to properly perform the duties of the position are lacking in detail as to the course of study leading to a specialty degree and does not establish how the curriculum is necessary to perform the duties. Therefore, the evidence of record is insufficient to establish the second part of this criterion, that the particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

As evidence the position qualifies under 8 CFR 214.2(h)(4)(iii)(A)(3), that the employer demonstrate that it normally requires a bachelor's degree in a specific specialty, you submitted a response statement to the previously issued request for additional evidence. Your response statement indicated that, "...the position of Business Analyst – The Americas requires a minimum of a Bachelor's Degree in a specific specialty: market research, hospitality management or a related field."

Based on your own statement, you have not demonstrated that the position qualifies as a specialty occupation, because you indicated that an individual with a degree in multiple fields of study, market research, hospitality management, or a related field, would be appropriate/acceptable in order for an individual to perform the duties of the position of business analyst at your company. In addition, you have not demonstrated what your company normally requires for this position, because the record contains no further evidence to demonstrate your past hiring practices for the proffered position; therefore, you have not satisfied this criterion.

Finally, as evidence the position qualifies under 8 CFR 214.2(h)(4)(iii)(A)(4), that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent, you submitted an initial list of proffered job duties with your petition, a response statement emphasizing several job duties grouped together under two bullets to establish your claim, and a list of projects the beneficiary will be assigned to work on.

As previously discussed, the specialization and complexity of the proffered job duties have not been described in sufficient detail to demonstrate how their nature is more specialized and complex than those duties normally associated with other market research analyst positions (your internal job title of Business Analyst – The Americas). As discussed above, the evidence does not indicate that a bachelor's degree in a specific specialty or its equivalent is a standard minimum requirement to perform the duties of market research analyst positions.

The job duties offered, as initially submitted and through the bulleted list in your response statement, lack specificity and detail to support your claim that they are specialized and complex and that the knowledge required to perform them is usually associated with a bachelor's degree in a specific specialty or its equivalent. As you have indicated, there are several courses that may be beneficial in preparing an individual to perform certain duties of the position, however, the evidence of record is not sufficient to establish that an established curriculum of coursework leading to a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the proffered job duties.

The record contains a list of anticipated projects the beneficiary would work on as a business analyst – The Americas. The projects included the following:

- Research Existing Business Structure;

- Identify Improvement Opportunities;
- Identify Business Opportunities; and
- Facilitate Deliverables Acceptance.

There are several key tasks identified as part of each of these projects; however, the description of these projects and related tasks are vague and not sufficiently detailed. The descriptions provided do not establish that that these tasks are more specialized and complex than positions within the occupational category that are not usually associated with at least a bachelor's degree or its equivalent in a specific specialty. Therefore, the evidence of record is not sufficient to establish eligibility under this criterion.

You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to:

- A detailed statement to:
 - explain the beneficiary's proposed duties and responsibilities;
 - indicate the percentage of time devoted to each duty;
 - state the educational requirements for these duties; and
 - explain how the beneficiary's education relates to the position.
- A copy of a line-and-block organizational chart showing your hierarchy and staffing levels. The organizational chart should:
 - list all divisions in the organization;
 - identify the proffered position in the chart;
 - show the names and job titles for those persons, if any, whose work will come under the control of the proposed position; and
 - indicate who will direct the beneficiary, by name and job title.
- Job postings or advertisements showing a degree requirement is common to the industry in parallel positions among similar organizations.
- Letters from an industry-related professional association indicating that they have made a bachelor's degree or higher in a specific specialty a requirement for entry into the field.
- Copies of letters or affidavits from firms or individuals in the industry that attest that similar organizations routinely employ and recruit only degreed individuals in a specific specialty. Any letter or affidavit should be supported by the following:
 - the writer's qualifications as an expert;
 - how the conclusions were reached; and
 - the basis for the conclusions supported by copies or citations of any material used.
- Copies of your present and past job postings or announcements for the proffered position showing that you require applicants to have a minimum of a bachelor's or higher degree in a specific specialty or its equivalent.
- Documentary evidence of your past employment practices for the position, including copies of:
 - employment or pay records; and
 - degrees or transcripts to verify the level of education of each individual and the field of study for which the degree was earned.
- An explanation of what differentiates your products and services from other employers in the same industry and why a bachelor's level of education in a specific field of study is a prerequisite for entry into the proffered position. Be specific and provide documentation to support any explanation of complexity.
- Copies of documentary examples of work product created by current or prior employees in similar positions, such as:
 - reports;
 - presentations;



- evaluations;
- designs; or
- blueprints.
- Additional information about your organization, highlighting the nature , scope, and activity of your business enterprise, along with evidence to establish the beneficiary will be employed with the duties you have set forth, such as:
 - business plans, reports, presentations, etc., to describe your business;
 - contractual agreements or work orders from each company who will utilize the beneficiary's services to show the beneficiary will be performing specialty occupation duties;
 - promotional materials;
 - advertisements;
 - press releases;
 - patents; or
 - articles
- Any evidence you believe will establish that the position qualifies as a specialty occupation.





August 16, 2017

BY FEDERAL EXPRESS

USCIS Vermont Service Center

ATTN: H-1B RFE Response

75 Lower Welden St.

St. Albans, VT 05479

(b)(6)

**RE: Request For Evidence - Form I-129 H-1B Visa Nonimmigrant
Petition for Alien Worker**

**Petitioner:
Beneficiary:
USCIS Receipt No.:**



This response to the attached Request For Evidence dated July 7, 2017 is submitted in support of the petition of Design Hotels, Inc. for H-1B classification on behalf of Mr. [redacted] [redacted] whom the Petitioner wishes to employ on a temporary basis. The following items are enclosed in duplicate:

1. Request For Evidence dated July 7, 2017; and
2. Exhibits 1-5.

The Proffered Position as Specialty Occupation

The proffered position of Business Analyst [redacted] meets the standards of a specialty occupation set out at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1), (2) & (4).

It is a prerequisite for classification of a foreign worker as an H-1B nonimmigrant that he or she be offered a job in a “specialty occupation” as defined in as defined in 8 U.S.C. § 1184(i). 8 U.S.C. § 1101(a)(15)(H)(i)(b). To qualify as a specialty occupation, a position offered to the beneficiary of an H-1B petition must meet one of the following criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A):

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(b)(6)

- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

(1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position

As to whether a position categorized within the Standard Occupational Classification (SOC) 13-1161, Market Research Analysts and Marketing Specialists, qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) due to a baccalaureate or higher degree being the normal minimum requirement for entry into the position, the Request for Evidence states:

The plain language reading of the OOH indicates that while employees may need a bachelor's degree in market research, it further states that related fields are also sufficient and that many individuals in this occupational category have degrees in statistics, math, and computer science. The OOH also states that others may have backgrounds in business administration, the social sciences, or communications. The coursework further identified in the OOH as “important” for market research analyst positions is in the fields of communications and social sciences, such as economics and consumer behavior. While the OOH does indicate that individuals performing the duties of a market research analyst may need a bachelor's degree in market research, it also indicates that degrees in various fields are acceptable for positions in this field. The evidence you submitted does not demonstrate how these various fields are sufficiently related by a body of highly specialized knowledge. Therefore, the evidence of record does not satisfy this criterion because the position does not require a bachelor’s or higher degree or its equivalent in a specific field of study that is directly related to the proffered position as a minimum requirement for entry on the position.

USCIS’s determination that the job offered is best described as a Market Research Analyst, and acknowledged as one that requires a degree, but that the offered position does not require a baccalaureate level of education in a specific specialty as a normal, minimum for entry into the occupation, is not in accordance with the agency’s own interpretation of the statutory and regulatory framework. USCIS’s claim that per the OOH, Market Research Analyst does not require a bachelor's degree in a specific specialty as a minimum for entry is unsupported by substantial evidence because the OOH plainly states that “Market research analysts typically need a bachelor’s degree in market research or a related field. Many have degrees in fields such as statistics, math, and computer science. Others have backgrounds in business administration, the social sciences, or communications.” By virtue of this language, a position categorized within the Market Research Analyst classification satisfies the abovementioned criterion for a specialty occupation.

Further, the additional degrees mentioned by the OOH are sufficiently closely related to market research as to constitute degrees in “related areas” or “fields.” Both the USCIS and its predecessor, the Immigration and Naturalization Service, have long recognized that a job which requires a bachelor’s or higher degree in a certain field or in a related area or field qualifies as a specialty occupation, a practice from which USCIS has offered no rational explanation for departing.

(b)(5)



Finally, with regards to the proffered position, the originally submitted petition stated that “a minimum of a bachelor’s degree in market research, hospitality management or a related field” is required for the position of Business Analyst - [REDACTED]. Of the stated specialties, market research is listed by the OOH as a bachelor’s degree specialty which may be required for the proffered position’s SOC Code. Due to the listed job duties, and the field in which the petitioner and the proffered position operate, a bachelor’s degree in the specific field of hospitality management is indeed directly related to the proffered position.

(b)(6)

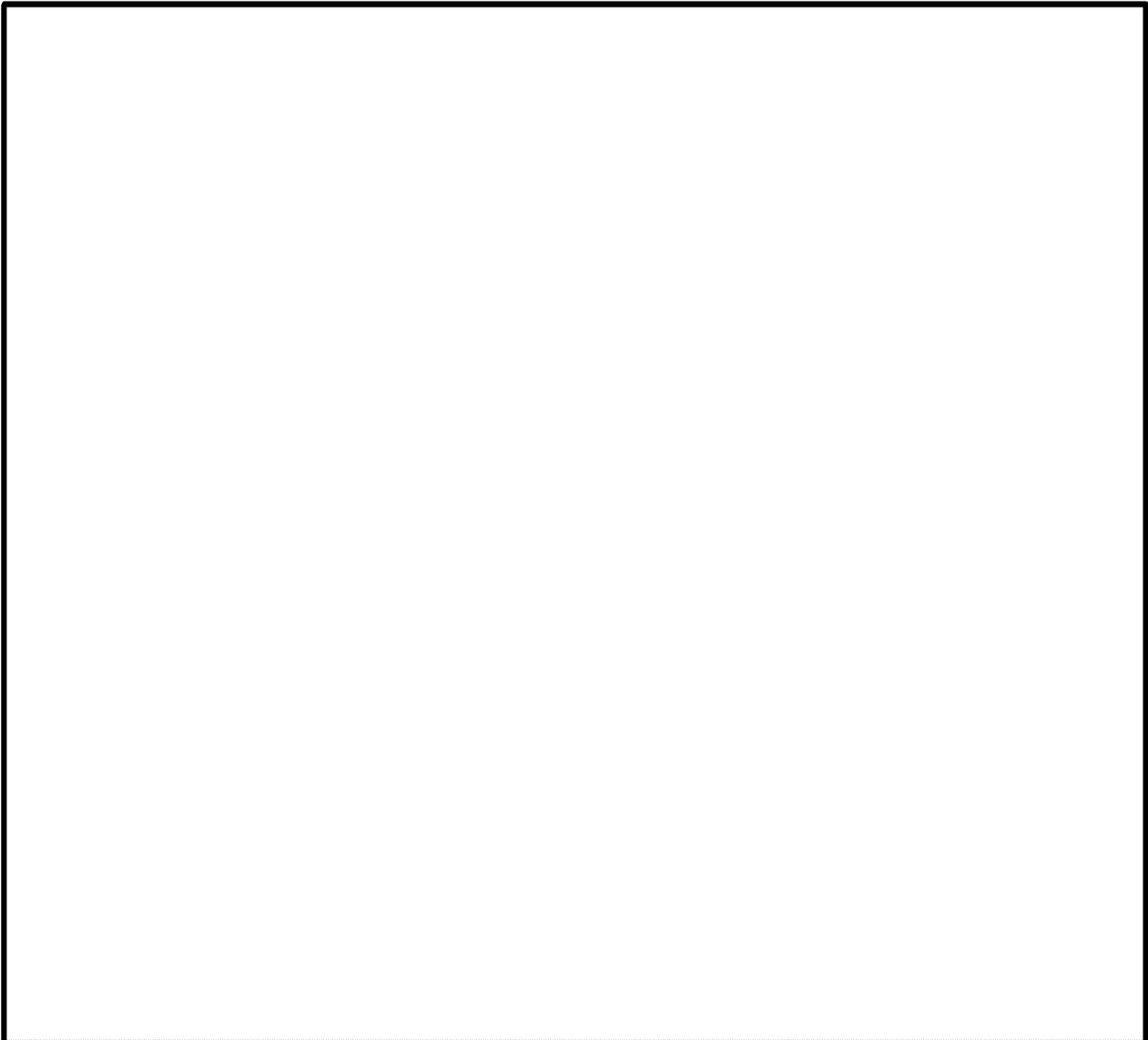
(b)(6)

The proffered position of Business Analyst – [redacted] by virtue of its specific educational requirements and categorization within the Market Research Analyst classification, is a specialty occupation as defined by the relevant regulations and statute.

(2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree

Upon your approval, Mr. [redacted] will assume the position of Business Analyst – [redacted] [redacted]. The position of Business Analyst – The Americas requires a minimum of a Bachelor's Degree with **market research, hospitality management or a related field.**

The Request for Evidence states, "You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to... Copies of letters or affidavits from firms or individuals in the industry that attest that similar organizations routinely employ and recruit only degreed individuals in a specific specialty."



(b)(6)

[Redacted]

[Redacted]

Based upon my extensive experience in the hotel management industry I can attest that a Bachelor's degree or higher in market research, hospitality, or a related field is the industry standard for an entry level position as a Business Analyst. The financial and managerial skills gained in pursuit of a Bachelor's degree in market research, hospitality, or a related field are necessary to successfully carry out the typical duties of a Business Analyst, which include preparing and executing regional tactical promotional opportunities, identifying partnership opportunities, supporting establishment of the company brand to be a leading partner within a particular region, and conducting market scanning within a region by tapping into multiple sources of information.

[Letter of
Exhibit 2.]

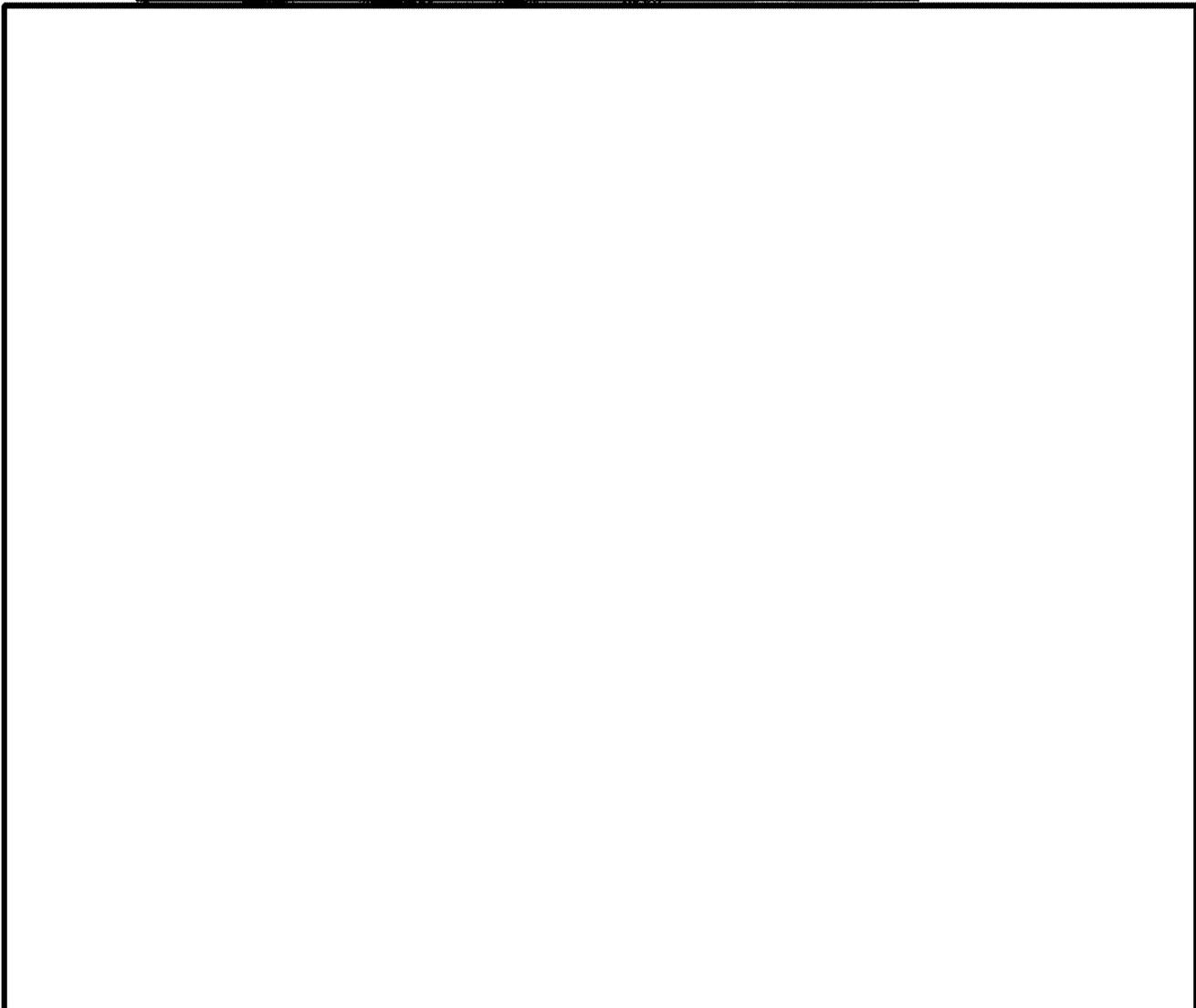
[Redacted]

[Redacted]

(b)(6)

Based upon my extensive research on hotel management practices around the globe, I can attest that a Bachelor's degree or higher in market research, hospitality, or a related field is normally the minimum requirement for an entry position as a Business Analyst in the hotel management industry. Business Analysts for a multinational hotel corporation like [REDACTED] will typically be tasked with planning and executing sales strategy, supporting the management of large client accounts, supporting the sales team in bringing on board new partners and clients, identifying potential owners, investors, and developers to increase the member portfolio of the hotel company, and managing regional revenue forecasts to ensure revenues are in line with budget requests, among numerous other responsibilities.

The successful performance of these duties requires not only the financial and management background provided by a bachelor's degree or higher in market research, hospitality, or a related field but also the skills to analyze business opportunities and market trends in a field as multifaceted, nuanced, and susceptible to shifting global economic and political conditions as the hotel management industry. In the course of my lengthy career, I have never encountered a Business Analyst or individual in a similar position in the hotel management industry without at least a Bachelor's degree in market research, hospitality, or a related field.



(b)(6)

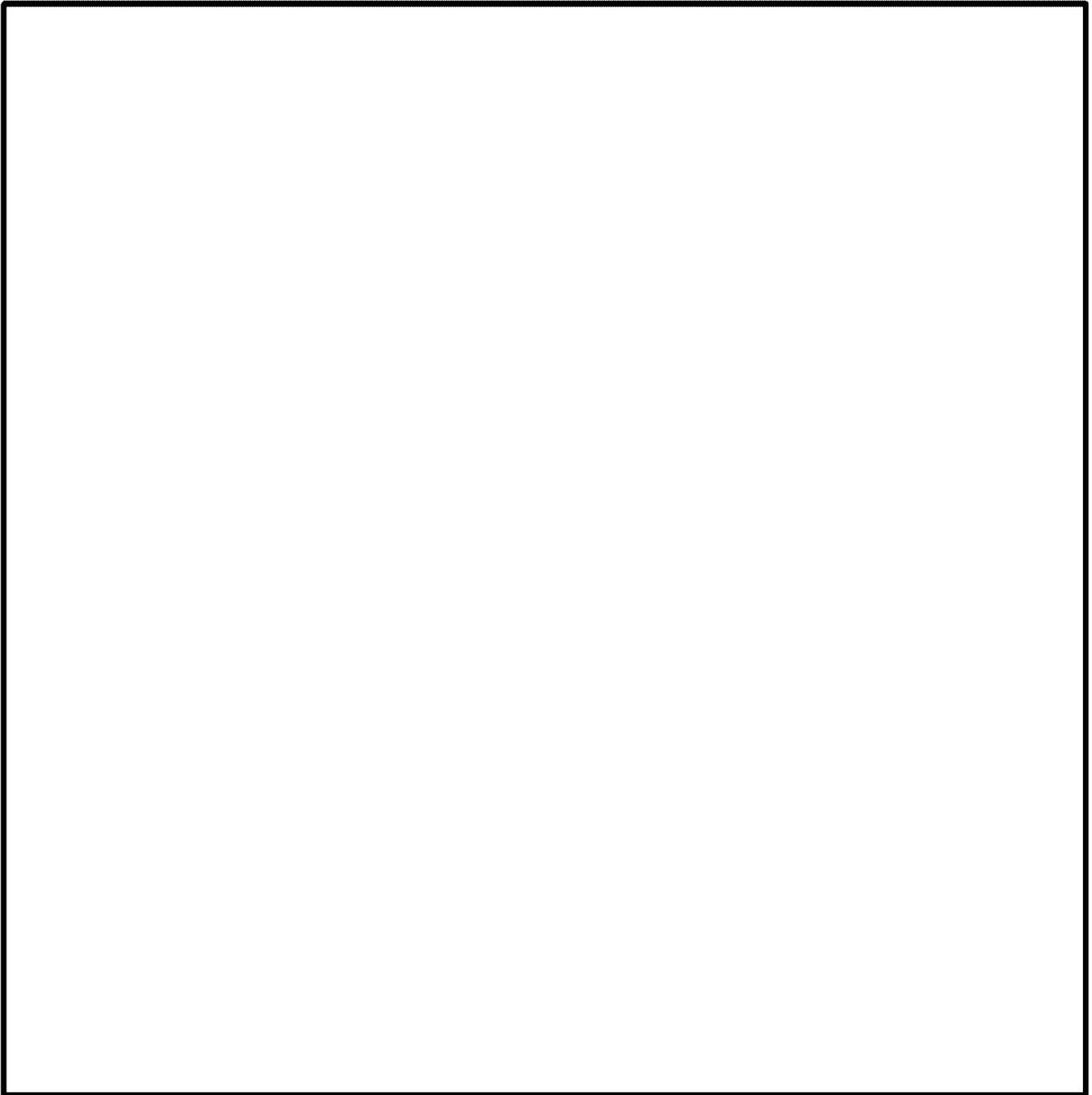
Analyst, Mr. [redacted] will be responsible for strategically deciding the development of our hotel portfolio in the region and developing relationships with existing member hotels, the travel trade, media and other potential partners based on data analysis of potential and existing member hotels in the Americas. **A Bachelor's degree or higher in market research, hospitality, or a related field is standard within the hotel management industry, and I am not aware of any other hotel management corporation that does not have a similar requirement. In keeping with the standard of our competitors, a Bachelor's degree in market research, hospitality, or a related field is a minimum and mandatory requirement to be considered for a Business Analyst position with Design Hotels.**

It is my sincere hope that Mr. [redacted] H-1B petition will be granted so that he may employ his education and skill set to grow [redacted]

[Large redacted area]

(b)(6)

(b)(6)



For more information regarding the Business Analyst position at [redacted] and its placement within the hierarchy of the company, please refer to a copy of a line-and-block organizational chart showing the company's staffing levels, identifying all divisions within the company, the proffered position, and confirming the direction of the Business Analyst by the Vice President [redacted] at **Exhibit 6**.

As evidenced by the above statements submitted by executives in the hospitality industry and academic experts, the requirement of a bachelor's degree in market research, hospitality management, or a related field for the position of Business Analyst is standard throughout the industry among similar organizations in the field.

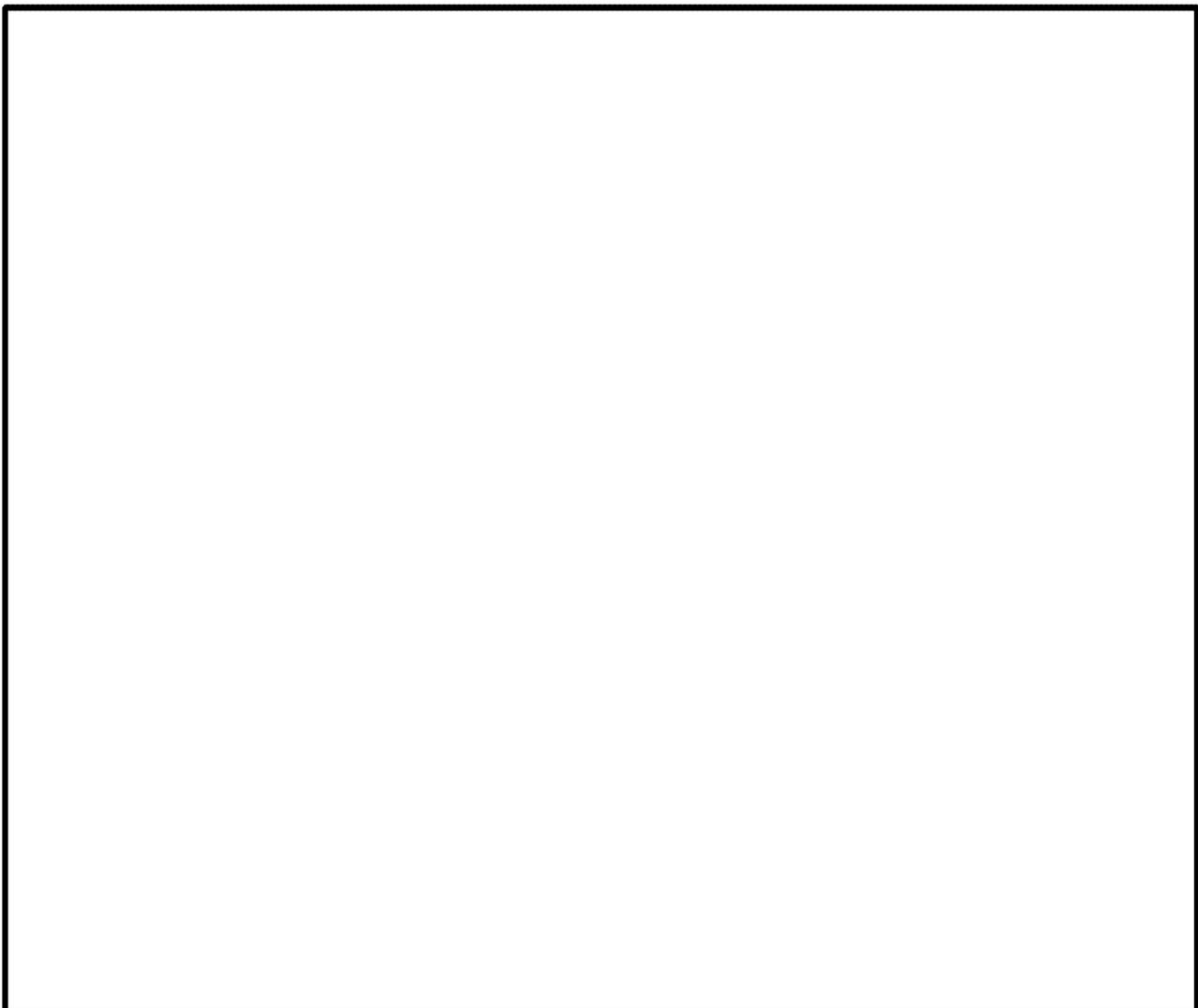
(b)(6)

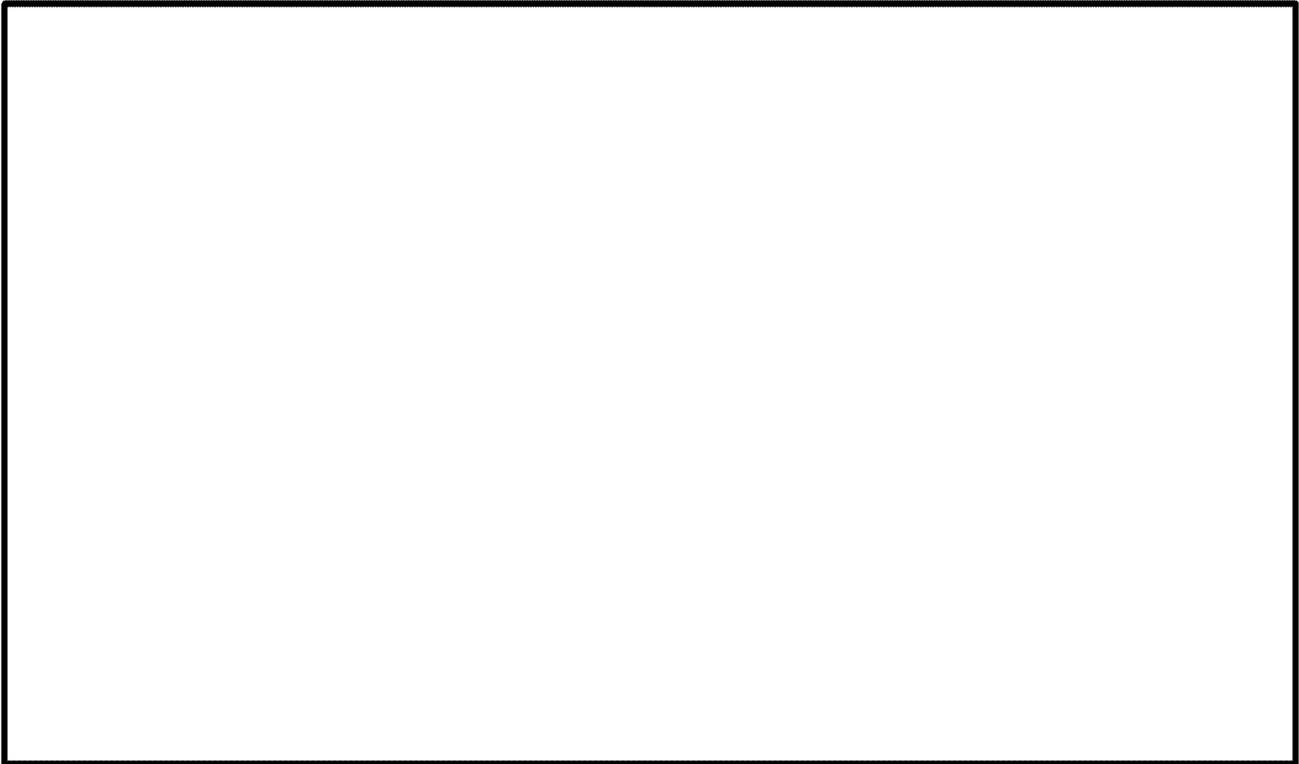
(4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree

The duties of the position of Business Analyst – The Americas are highly specialized and complex, such that a baccalaureate degree in market research, hospitality management, or related specific specialty is necessary to perform them.

The Request for Evidence states, “the specialization and complexity of the proffered job duties have not been described in sufficient detail to demonstrate how their nature is more specialized and complex than those duties normally associated with other market research analyst positions (your internal job title of Business Analyst – The Americas).”

USCIS’s conclusion that [redacted] failed to establish that the position offered Mr. [redacted] is so complex and unique that it can be performed only by an individual with a degree is unsupported by substantial evidence. Contrary to USCIS’s claims, nothing in the record indicates that the knowledge required to perform the responsibilities of the position can be attained by work experience, coursework short of a college degree, or a combination of both.





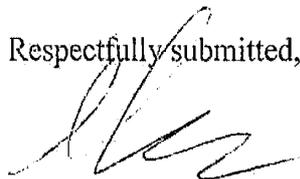
Because of the highly specialized and complex nature of the above duties, a baccalaureate degree in market research, hospitality management or a related field is a necessary prerequisite for the position of Business Analyst - [REDACTED]. As a result, the proffered position is a specialty occupation in accordance with the applicable regulations.

CONCLUSION

Based upon the foregoing and the attachments, we respectfully request that our petition for H-1B status on behalf of Mr. [REDACTED] be approved to enable him to assume the position of Business Analyst - [REDACTED] for a temporary period.

Thank you for your expeditious adjudication of this petition.

Respectfully submitted,



Mauricio Martinez, Esq.
Ellenoff Grossman & Schole, LLP

Exhibit 1

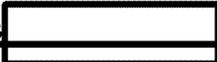
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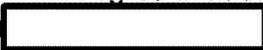
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security

Vienna, March 1st, 2017

Dear Sir or Madam:

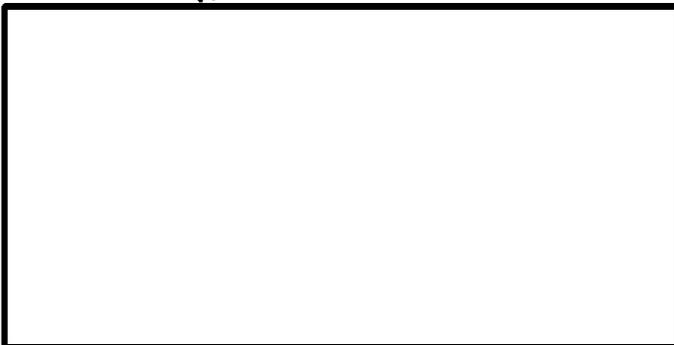
My name is  and I write to voice my support for the H-1B petition of



In my position, I am responsible for determining the minimum qualifications for Business Analysts and individuals in comparable positions in  region. Without exception, I require individuals in these positions to possess at minimum a Bachelor's degree in market research, hospitality, or a related field. My counterparts in other  require the same qualifications for Business Analysts.

Please contact me if further information is required.

Sincerely,



(b)(6)

Exhibit 2



U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security

August 11, 2017

Dear Sir or Madam:

My name is [redacted] and I write to offer my support for [redacted] H-1B petition, filed on behalf of [redacted]. Specifically, I would like to address standard academic qualifications for Business Analysts in the hotel management industry.



Based upon my extensive experience in the hotel management industry I can attest that a Bachelor's degree or higher in market research, hospitality, or a related field is the industry standard for an entry level position as a Business Analyst. The financial and managerial skills gained in pursuit of a Bachelor's degree in market research, hospitality, or a related field are necessary to successfully carry out the typical duties of a Business Analyst, which include preparing and executing regional tactical promotional opportunities, identifying partnership opportunities, supporting establishment of the company brand to be a leading partner within a particular region, and conducting market scanning within a region by tapping into multiple sources of information.

Please contact me if additional information is required.

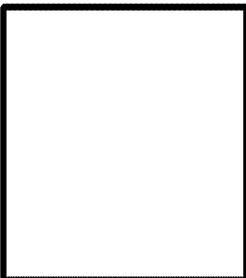


Exhibit 3



August 3, 2017

**U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security**

Dear Sir or Madam:

My name is [redacted] and I write to offer my support for the H-1B petition of [redacted] submitted on behalf of [redacted]. In particular, I would like to offer clarification regarding the academic qualifications required of a Business Analyst in the hotel management industry.



Based upon my extensive research on hotel management practices around the globe, I can attest that a Bachelor's degree or higher in market research, hospitality, or a related field is normally the minimum requirement for an entry position as a Business Analyst in the hotel management industry. Business Analysts for a multinational hotel corporation like [redacted] will typically be tasked with planning and executing sales strategy, supporting the management of large client accounts, supporting the sales team in bringing on board new partners and clients, identifying potential owners, investors, and developers to increase the member portfolio of the hotel company, and managing regional revenue forecasts to ensure revenues are in line with budget requests, among numerous other responsibilities.

The successful performance of these duties requires not only the financial and management background provided by a bachelor's degree or higher in market research, hospitality, or a related field but also the skills to analyze business opportunities and market trends in a field as multifaceted, nuanced, and susceptible to shifting global economic and political conditions as the hotel management industry. In the course of my career, I have never encountered a Business Analyst or individual in a similar position in the hotel management industry without at least a Bachelor's degree in market research, hospitality, or a related field.

Please contact me if further information is required.
Sincerely,



Exhibit

4

[Redacted]

(b)(6)

U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security

8/2/2017

To Whom It May Concern:

My name is [Redacted] and I write in support of the H-1B petition submitted by [Redacted]

[Redacted]

Please do not hesitate to contact me if additional information is required.

[Redacted]

(b)(6)

Exhibit 5



(b)(6)

Friday, August 11, 2017

U.S. Citizenship and Immigration Services

Dear Sir or Madam,

I am providing the following letter in connection with the H1-B petition filed on behalf of [REDACTED]

[REDACTED] The purpose of this letter is to attest my expertise in the hospitality industry and, further, to attest the complexity of the job duties for the position of Business Analyst in the [REDACTED] and why a bachelor's degree in market research, hospitality management or a related field is necessary to be able to perform these duties.

I am providing this evaluation based on my 20 years of experience as a hospitality professional working in Europe, and the Americas and Asia. Throughout my professional career, I have

[REDACTED]

Based on the foregoing statement of my academic and professional credentials, I am regarded as an expert in the international hospitality industry and particularly in innovation in business development. I can attest that a Bachelor's degree or higher in market research, hospitality management, or a related field is the industry standard for a position as a Business Analyst employed by a hotel or hospitality company.

(b)(6)

(b)(6)



I am available to answer any questions you may have regarding this letter and trust that it will assist you in your adjudication of the petition filed on behalf of 

Sincerely,



(b)(6)

From: [Nakajima, Simon T](#)
To: [Bump, Micah N](#)
Cc: [Cox, Robert H](#)
Subject: FW: Internal guidance regarding computer programmer memo
Date: Wednesday, May 31, 2017 4:55:50 PM
Attachments: [Final Guidance on PM-602-0142.msg](#)

fyi

From: Nicklaw, Nicole C
Sent: Wednesday, May 31, 2017 3:33 PM
To: Cox, Robert H
Cc: Nakajima, Simon T
Subject: RE: Internal guidance regarding computer programmer memo

Hi Robert,

We sent out the final guidance to the centers on May 1, 2017 via email. I attached the email guidance for your reference.

Let me know if you need anything else on this.

Thanks,
Nicole

From: Cox, Robert H
Sent: Wednesday, May 31, 2017 3:10 PM
To: Nicklaw, Nicole C
Cc: Nakajima, Simon T
Subject: Internal guidance regarding computer programmer memo

Hi Nicole,

Can you forward a copy of the final internal guidance regarding the computer programmer memo that SCOPS sent to the centers? I have a copy of a draft, but couldn't find a copy of the finalized internal guidance. Also, what date was that sent to the centers?

Thanks,
Robert

From: Dalal-Dheini, Sharvari P (Shev)
To: Nakajima, Simon T; Cox, Robert H; Bump, Micah N
Subject: FW: Media query/Washington Examiner/FW: Question re: H1B memo
Date: Monday, April 03, 2017 4:50:34 PM

Just for your amusement. Oh and DS called me to ask about the memo. I told him it made me miss having him around.

From: Symons, Craig M
Sent: Monday, April 03, 2017 4:47 PM
To: Parascandola, Ciro A; Dalal-Dheini, Sharvari P (Shev); Gwathmey, Carolyn S (CeCe); Cummings, Kevin J
Cc: Consaul, Arwen E; Levine, Laurence D; Nuebel Kovarik, Kathy; Risch, Carl C; Busch, Philip B
Subject: RE: Media query/Washington Examiner/FW: Question re: H1B memo

[Redacted]

(b)(5)

From: Parascandola, Ciro A
Sent: Monday, April 03, 2017 4:45 PM
To: Dalal-Dheini, Sharvari P (Shev); Gwathmey, Carolyn S (CeCe); Cummings, Kevin J
Cc: Consaul, Arwen E; Levine, Laurence D; Nuebel Kovarik, Kathy; Symons, Craig M; Risch, Carl C; Busch, Philip B
Subject: RE: Media query/Washington Examiner/FW: Question re: H1B memo

(b)(5)

[Redacted]

Ciro Parascandola

Deputy Chief, Business and Foreign Workers Division
USCIS Office of Policy and Strategy, DHS
Office: 202-272-1366; [Redacted]

(b)(6)

This email, along with any attachments, is intended solely for the use of the addressee(s) and may contain information that is sensitive or protected by applicable law. Unauthorized use or dissemination of this email and any attachments is strictly prohibited. If you are not the intended recipient, please notify the sender and delete or destroy all copies. Thank you.

From: Dalal-Dheini, Sharvari P (Shev)
Sent: Monday, April 03, 2017 4:39 PM
To: Gwathmey, Carolyn S (CeCe); Cummings, Kevin J
Cc: Consaul, Arwen E; Levine, Laurence D; Nuebel Kovarik, Kathy; Parascandola, Ciro A; Symons, Craig M; Risch, Carl C; Busch, Philip B
Subject: RE: Media query/Washington Examiner/FW: Question re: H1B memo

(b)(5)

[Redacted]

From: Gwathmey, Carolyn S (CeCe)
Sent: Monday, April 03, 2017 4:30 PM
To: Cummings, Kevin J
Cc: Consaul, Arwen E; Levine, Laurence D; Nuebel Kovarik, Kathy; Parascandola, Ciro A; Symons, Craig M; Risch, Carl C; Dalal-Dheini, Sharvari P (Shev); Busch, Philip B
Subject: RE: Media query/Washington Examiner/FW: Question re: H1B memo

[Redacted]

(b)(5)

Any chance you can assist with that one too?

Thanks, CeCe

PAO | Media Relations Division | USCIS

Office: (202) 272-8569 | Cell: [Redacted] (b)(6)

From: Cummings, Kevin J
Sent: Monday, April 03, 2017 4:27 PM
To: Gwathmey, Carolyn S (CeCe)
Cc: Consaul, Arwen E; Levine, Laurence D; Nuebel Kovarik, Kathy; Parascandola, Ciro A; Symons, Craig M; Risch, Carl C; Dalal-Dheini, Sharvari P (Shev); Busch, Philip B
Subject: RE: Media query/Washington Examiner/FW: Question re: H1B memo

[Redacted]

(b)(5)

From: Gwathmey, Carolyn S (CeCe)
Sent: Monday, April 03, 2017 3:47:53 PM
To: Cummings, Kevin J
Cc: Consaul, Arwen E
Subject: Media query/Washington Examiner/FW: Question re: H1B memo

Kevin,
Can OP&S please assist with this query below?

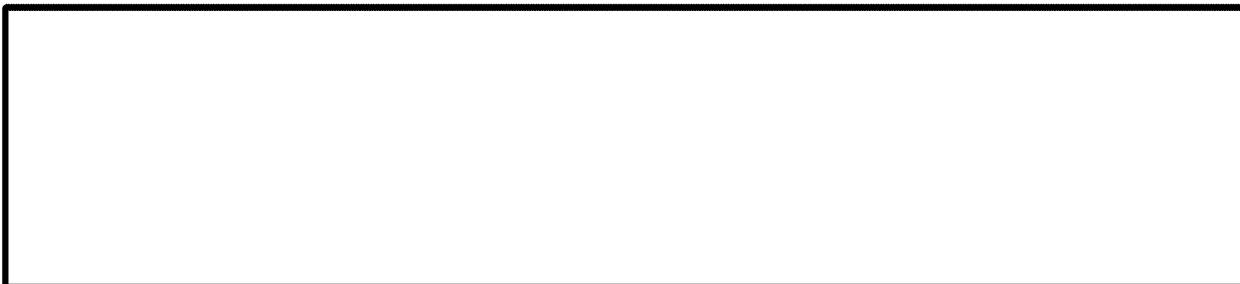
Thanks, CeCe

Carolyn Gwathmey
Public Affairs Officer
Media Relations Division | U.S. Citizenship and Immigration Services | DHS
Office: (202) 272-8569 | Cell: [Redacted] (b)(6)
carolyn.s.gwathmey@uscis.dhs.gov

From: Joel Gehrke [<mailto:jgehrke@washingtonexaminer.com>]
Sent: Monday, April 03, 2017 1:58 PM
To: USCIS.Media
Subject: Question re: H1B memo

Hello --

(b)(5)



Thank you.

Joel Gehrke



(b)(6)

From: Bump, Micah N
To: [Nakajima, Simon T](#)
Cc: [Choi, Heesun S \(Sunny\)](#)
Subject: FW: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am
Date: Wednesday, April 12, 2017 11:36:00 AM

Want to call Claudia together now?

From: Salem, Claudia S
Sent: Wednesday, April 12, 2017 11:34 AM
To: Kustra, Bonnie C; Hinds, Ian G; Cox, Robert H; Nakajima, Simon T; Bump, Micah N
Cc: Zengotitabengoa, Colleen R; Groom, Molly M; Choi, Heesun S (Sunny); Zill, Katherine F
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

(b)(5)



From: Kustra, Bonnie C
Sent: Tuesday, April 11, 2017 12:42:01 PM
To: Hinds, Ian G; Cox, Robert H; Nakajima, Simon T; Bump, Micah N
Cc: Zengotitabengoa, Colleen R; Groom, Molly M; Salem, Claudia S; Choi, Heesun S (Sunny); Zill, Katherine F
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

Adding Katherine.

Sincerely,

(b)(6)

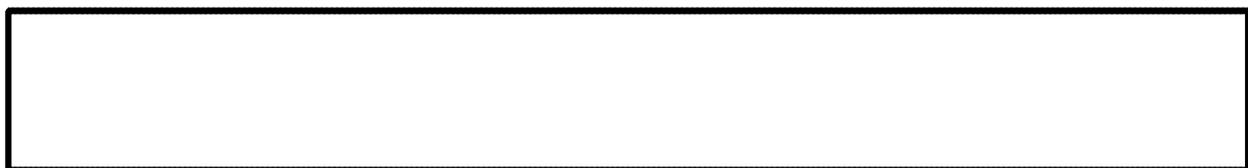
Bonnie C. Kustra|Associate Counsel|Litigation and National Security Coordination Division|Office of the Chief Counsel| USCIS-DHS|Office: (202) 272-8408; Cell:  Fax: (202) 272-9549|E-Mail: bonnie.kustra@uscis.dhs.gov|National Security E-mail box: USCISOCCNSCD@uscis.dhs.gov

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Thank you.

From: Hinds, Ian G
Sent: Monday, April 10, 2017 8:02:38 PM
To: Cox, Robert H; Nakajima, Simon T; Bump, Micah N; Kustra, Bonnie C
Cc: Zengotitabengoa, Colleen R; Groom, Molly M; Salem, Claudia S; Choi, Heesun S (Sunny)
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

(b)(5)





(b)(5)

Ian

From: Cox, Robert H
Sent: Monday, April 10, 2017 2:20 PM
To: Hinds, Ian G; Nakajima, Simon T; Bump, Micah N
Cc: Zengotitabengoa, Colleen R; Groom, Molly M; Salem, Claudia S; Choi, Heesun S (Sunny)
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

Hi Ian,

I believe all three of us have the invite for the internal call tomorrow at 1:00. I can be available for the call Wednesday at 10:00, but it may be good to also have Simon or Micah on that call.

Thanks,
Robert

From: Hinds, Ian G
Sent: Monday, April 10, 2017 2:14 PM
To: Nakajima, Simon T; Cox, Robert H; Bump, Micah N
Cc: Zengotitabengoa, Colleen R; Groom, Molly M; Salem, Claudia S; Choi, Heesun S (Sunny)
Subject: FW: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

OCC Only,

Robert, Simon, Micah,



(b)(5)

Thanks,
Ian

From: Parascandola, Ciro A
Sent: Monday, April 10, 2017 1:52 PM
To: Doumani, Stephanie M; Rodriguez, Miguel E; Violet, Michael D; Nicklaw, Nicole C; Davidson, Andrew J; Case, Mary A (Mary Ann)
Cc: Viger, Steven W; Buten, Elizabeth C; Cummings, Kevin J; Alfonso, Angelica M; Atkinson, Ronald A; Tintary, Ruth E; Nuebel Kovarik, Kathy; Levine, Laurence D; Neufeld, Donald W; Symons, Craig M; Groom, Molly M; Zengotitabengoa, Colleen R; Hinds, Ian G
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

Adding Craig, Molly and Colleen/Ian (per Molly's out of office message) for their visibility.

Ciro Parascandola

Deputy Chief, Business and Foreign Workers Division

USCIS Office of Policy and Strategy, DHS

Office: 202-272-1366; Cell: [redacted] (b)(6)

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From: Doumani, Stephanie M
Sent: Monday, April 10, 2017 1:42 PM
To: Rodriguez, Miguel E; Parascandola, Ciro A; Violett, Michael D; Nicklaw, Nicole C; Davidson, Andrew J; Case, Mary A (Mary Ann)
Cc: Viger, Steven W; Buten, Elizabeth C; Cummings, Kevin J; Alfonso, Angelica M; Atkinson, Ronald A; Tintary, Ruth E; Nuebel Kovarik, Kathy; Levine, Laurence D; Neufeld, Donald W
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

Hi Mike,

(b)(5)

Thanks for your email.

[redacted]

Thanks,
Stephanie

From: Rodriguez, Miguel E
Sent: Monday, April 10, 2017 1:35 PM
To: Doumani, Stephanie M; Parascandola, Ciro A; Violett, Michael D; Nicklaw, Nicole C; Davidson, Andrew J; Case, Mary A (Mary Ann)
Cc: Viger, Steven W; Buten, Elizabeth C; Cummings, Kevin J; Alfonso, Angelica M; Atkinson, Ronald A; Tintary, Ruth E; Nuebel Kovarik, Kathy; Levine, Laurence D; Neufeld, Donald W
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am
Importance: High

Hi Stephanie/all and adding Andrew and Mary Ann from FDNS and OLA, SCOPS and OP&S leadership, for their visibility as well.

(b)(5)

[redacted]

Thanks again and in advance, as always.

Mike

Mike Rodriguez
Office of Legislative Affairs
USCIS-HQ
Tel. - 202-272-1952
BB/Cell [REDACTED] (b)(6)
Fax - 202-272-1955
miguel.e.rodriguez@uscis.dhs.gov

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From: Doumani, Stephanie M
Sent: Monday, April 10, 2017 11:11 AM
To: Rodriguez, Miguel E; Parascandola, Ciro A; Violett, Michael D; Nicklaw, Nicole C
Cc: Viger, Steven W; Buten, Elizabeth C; Cummings, Kevin J
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse

Our meeting is from 1-2, but we won't be available to meet again until 3 pm.

Thanks,
Stephanie

From: Rodriguez, Miguel E
Sent: Monday, April 10, 2017 11:09 AM
To: Parascandola, Ciro A; Doumani, Stephanie M
Cc: Viger, Steven W; Buten, Elizabeth C; Cummings, Kevin J
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse

That works. Why don't one of you send out a meeting notice, as I don't even know when your call is taking place. Please include Andrew and Mary Ann from FDNS on the meeting notice.

Thanks.

Mike

Mike Rodriguez
Office of Legislative Affairs
Phone (202) 272-1952 (b)(6)
Cell [REDACTED]
Miguel.e.rodriguez@uscis.dhs.gov

From: Parascandola, Ciro A
Sent: Monday, April 10, 2017 11:07:20 AM
To: Doumani, Stephanie M; Rodriguez, Miguel E
Cc: Viger, Steven W; Buten, Elizabeth C; Cummings, Kevin J

Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse

Yes, that sounds like a good plan. We have no preference, but perhaps we will need some time immediately after the call to finalize our thoughts. So maybe do the pre brief later on Tuesday?

From: Doumani, Stephanie M
Sent: Monday, April 10, 2017 11:02:24 AM
To: Rodriguez, Miguel E; Parascandola, Ciro A
Cc: Viger, Steven W; Buten, Elizabeth C; Cummings, Kevin J
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse

Hi Everyone,

Would it be possible to do a pre-brief at a later time or immediately following the call? I think it would be best if we didn't tie the two together as we have a lot to discuss.

Thanks,
Stephanie

From: Rodriguez, Miguel E
Sent: Monday, April 10, 2017 10:17 AM
To: Parascandola, Ciro A
Cc: Viger, Steven W; Buten, Elizabeth C; Cummings, Kevin J; Doumani, Stephanie M
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse

Perfect; what time is your meeting tomorrow and that can serves as the prebrief, as well. I can schedule the call for sometime tomorrow afternoon, if that works for all.

Thanks again.

Mike

Mike Rodriguez
Office of Legislative Affairs
Phone (202) 272-1952 (b)(6)
Cell [REDACTED]
Miguel.e.rodriguez@uscis.dhs.gov

From: Parascandola, Ciro A
Sent: Monday, April 10, 2017 10:14:44 AM
To: Rodriguez, Miguel E
Cc: Viger, Steven W; Buten, Elizabeth C; Cummings, Kevin J; Doumani, Stephanie M
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse (b)(5)



[Redacted]

(b)(5)

Ciro Parascandola

Deputy Chief, Business and Foreign Workers Division

USCIS Office of Policy and Strategy, DHS

Office: 202-272-1366; Cell [Redacted] (b)(6)

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From: Parascandola, Ciro A

Sent: Monday, April 10, 2017 10:11 AM

To: Rodriguez, Miguel E

Cc: 'Viger, Steven W'; 'Buten, Elizabeth C'; Cummings, Kevin J

Subject: FW: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse

Hi Mike –

Our H-1B SMEs, Steven Viger and Elizabeth Buten, would join the call with me. Today is not good for us, but we can be available tomorrow or Wednesday. That said, we at OP&S would not be able to speak to these [Redacted]

[Redacted] as FDNS was/is the lead.

(b)(5)

Ciro Parascandola

Deputy Chief, Business and Foreign Workers Division

USCIS Office of Policy and Strategy, DHS

Office: 202-272-1366; Cell [Redacted] (b)(6)

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From: Rodriguez, Miguel E

Sent: Monday, April 10, 2017 10:06 AM

To: Arroyo, Susan K; Hutchings, Pamela G; Cummings, Kevin J; Parascandola, Ciro A; FDNSExecSec; Davidson, Andrew J

Cc: Nuebel Kovarik, Kathy; Levine, Laurence D; Doumani, Stephanie M; Emrich, Matthew D; Neufeld, Donald W; Alfonso, Angelica M; Atkinson, Ronald A; Tintary, Ruth E

Subject: FW: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse

(b)(5)

Good morning all,

[Redacted]

[REDACTED]

Thanks in advance, as always.

(b)(5)

Mike

Mike Rodriguez
Office of Legislative Affairs
Phone (202) 272-1952 (b)(6)

[REDACTED]
Miguel.e.rodriguez@uscis.dhs.gov

From: Shahoulian, David
Sent: Monday, April 03, 2017 4:03:07 PM
To: Tintary, Ruth E; Rodriguez, Miguel E
Subject: FW: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse

Ruth & Mike! I hope you had a great weekend.

Can I get a briefing on this asap? I'm just trying to better understand the memo and how it's going to impact adjudications.

Thanks!

David Shahoulian
202-225-6727 (office)
[REDACTED] cell) (b)(6)

From: U.S. Citizenship and Immigration Services [<mailto:uscis@public.govdelivery.com>]
Sent: Monday, April 03, 2017 12:52 PM
To: Shahoulian, David
Subject: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse

Agency Creates Avenue for American Workers to Report Abuse

WASHINGTON – U.S. Citizenship and Immigration Services (USCIS) today announced multiple measures to further deter and detect H-1B visa fraud and abuse. The H-1B visa program should help U.S. companies recruit highly-skilled foreign nationals when there is a shortage of qualified workers in the country. Yet, too many American workers who are as qualified, willing, and deserving to work in these fields have been ignored or unfairly disadvantaged. Protecting American workers by combating fraud in our employment-based immigration programs is a priority for USCIS.

Beginning today, USCIS will take a more targeted approach when making site visits across the country to H-1B petitioners and the worksites of H-1B employees. USCIS will focus on:

Cases where USCIS cannot validate the employer's basic business information through commercially available data;

- H-1B-dependent employers (those who have a high ratio of H-1B workers as compared to U.S. workers, as defined by statute); and
- Employers petitioning for H-1B workers who work off-site at another company or organization's location.

Targeted site visits will allow USCIS to focus resources where fraud and abuse of the H-1B program may be more likely to occur, and determine whether H-1B dependent employers are evading their obligation to make a good faith effort to recruit U.S. workers. USCIS will continue random and unannounced visits nationwide. These site visits are not meant to target nonimmigrant employees for any kind of criminal or administrative action but rather to identify employers who are abusing the system.

Employers who abuse the H-1B visa program negatively affect U.S. workers, decreasing wages and job opportunities as they import more foreign workers. To further deter and detect abuse, USCIS has established an [email address](#) which will allow individuals (including both American workers and H-1B workers who suspect they or others may be the victim of H-1B fraud or abuse) to submit tips, alleged violations and other relevant information about potential H-1B fraud or abuse. Information submitted to the email address will be used for investigations and referrals to law enforcement agencies for potential prosecution.

Existing H-1B Fraud Measures

Since 2009, USCIS has conducted random administrative site visits to ensure that employers and foreign workers are complying with requirements of the H-1B nonimmigrant classification. USCIS refers many cases of suspected fraud or abuse to U.S. Immigration and Customs Enforcement (ICE) for further investigation.

Additionally, individuals can report allegations of employer fraud or abuse by submitting [Form WH-4](#) to the Department of Labor's (DOL) Wage and Hour Division or by completing ICE's [HSI Tip Form](#).

Further information

For more information about the new H-1B visa fraud and abuse detection initiative, visit the [Combating Fraud and Abuse in the H-1B Visa Program web page](#).

For information about H-1B petition requirements, visit the [USCIS H-1B webpage](#).

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| |

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U.S. Citizenship and Immigration Services sending to david.shahoulian@mail.house.gov 20 Massachusetts Ave NW, Washington DC 20529 · 1-800-375-5283

From: Bump, Micah N
To: [Cox, Robert H](#); [Nakajima, Simon T](#); [Zimonjic, Milica](#)
Cc: [Dalal-Dheini, Sharvari P \(Shev\)](#); [Zill, Katherine F](#)
Subject: FW: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am
Date: Tuesday, April 11, 2017 4:35:00 PM

Did anyone get call-in details for the pre-call for tomorrow? If not, I can reach out to Stephanie.

From: Bump, Micah N
Sent: Tuesday, April 11, 2017 1:45 PM
To: Hinds, Ian G
Cc: Nakajima, Simon T; Cox, Robert H
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

There will be a 9:30 pre-brief. Haven't gotten the call-in details yet.

From: Hinds, Ian G
Sent: Tuesday, April 11, 2017 1:44 PM
To: Bump, Micah N
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

If they schedule the pre-brief during the 1 pm call, please let me know. Thanks.

From: Bump, Micah N
Sent: Tuesday, April 11, 2017 10:38 AM
To: Cox, Robert H; Hinds, Ian G; Nakajima, Simon T
Cc: Zengotibengoa, Colleen R; Groom, Molly M; Salem, Claudia S; Choi, Heesun S (Sunny)
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

I'll be on both calls. Thanks.

From: Cox, Robert H
Sent: Monday, April 10, 2017 2:20 PM
To: Hinds, Ian G; Nakajima, Simon T; Bump, Micah N
Cc: Zengotibengoa, Colleen R; Groom, Molly M; Salem, Claudia S; Choi, Heesun S (Sunny)
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

Hi Ian,

I believe all three of us have the invite for the internal call tomorrow at 1:00. I can be available for the call Wednesday at 10:00, but it may be good to also have Simon or Micah on that call.

Thanks,
Robert

From: Hinds, Ian G
Sent: Monday, April 10, 2017 2:14 PM
To: Nakajima, Simon T; Cox, Robert H; Bump, Micah N
Cc: Zengotibengoa, Colleen R; Groom, Molly M; Salem, Claudia S; Choi, Heesun S (Sunny)
Subject: FW: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

OCC Only,

Robert, Simon, Micah,

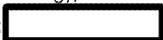


Thanks,
Ian

From: Parascandola, Ciro A
Sent: Monday, April 10, 2017 1:52 PM
To: Doumani, Stephanie M; Rodriguez, Miguel E; Violett, Michael D; Nicklaw, Nicole C; Davidson, Andrew J; Case, Mary A (Mary Ann)
Cc: Viger, Steven W; Buten, Elizabeth C; Cummings, Kevin J; Alfonso, Angelica M; Atkinson, Ronald A; Tintary, Ruth E; Nuebel Kovarik, Kathy; Levine, Laurence D; Neufeld, Donald W; Symons, Craig M; Groom, Molly M; Zengotitabengoa, Colleen R; Hinds, Ian G
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

Adding Craig, Molly and Colleen/Ian (per Molly's out of office message) for their visibility.

Ciro Parascandola

Deputy Chief, Business and Foreign Workers Division
USCIS Office of Policy and Strategy, DHS
Office: 202-272-1366; Cell:  (b)(6)

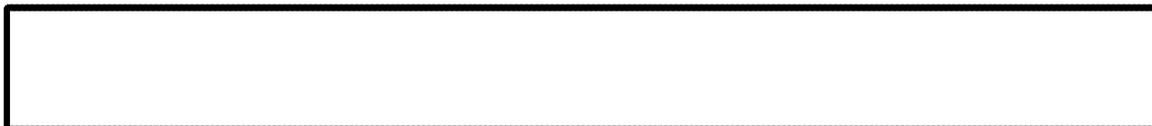
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From: Doumani, Stephanie M
Sent: Monday, April 10, 2017 1:42 PM
To: Rodriguez, Miguel E; Parascandola, Ciro A; Violett, Michael D; Nicklaw, Nicole C; Davidson, Andrew J; Case, Mary A (Mary Ann)
Cc: Viger, Steven W; Buten, Elizabeth C; Cummings, Kevin J; Alfonso, Angelica M; Atkinson, Ronald A; Tintary, Ruth E; Nuebel Kovarik, Kathy; Levine, Laurence D; Neufeld, Donald W
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

Hi Mike,

(b)(5)

Thanks for your email.



Thanks,
Stephanie

From: Rodriguez, Miguel E
Sent: Monday, April 10, 2017 1:35 PM
To: Doumani, Stephanie M; Parascandola, Ciro A; Violett, Michael D; Nicklaw, Nicole C; Davidson, Andrew J; Case, Mary A (Mary Ann)

From: Bump, Micah N
To: [Dalal-Dheini, Sharvari P \(Shev\)](#)
Cc: [Nakajima, Simon T](#); [Cox, Robert H](#)
Subject: FW: Rescission Memo Guidance
Date: Friday, April 28, 2017 10:45:00 AM
Attachments: [Guidance on PM-602-0142 \(Cleaned\).cmsredline.docx](#)

Shev, I'm fine with Craig's edits. Let me know if you have anything else and I can send back to SCOPS. -Micah

From: Symons, Craig M
Sent: Friday, April 28, 2017 10:36 AM
To: Nakajima, Simon T
Cc: Cox, Robert H; Bump, Micah N; Dalal-Dheini, Sharvari P (Shev)
Subject: RE: Rescission Memo Guidance

This is excellent. Very well done. I only had two slight edits (please see attached).

Thanks!

Craig

Craig M. Symons

Chief Counsel | Office of the Chief Counsel

U.S. Citizenship and Immigration Services

U.S. Department of Homeland Security

Tel. (202) 272-1440 | Cell (b)(6)

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From: Nakajima, Simon T
Sent: Thursday, April 27, 2017 3:23 PM
To: Symons, Craig M
Cc: Cox, Robert H; Bump, Micah N; Dalal-Dheini, Sharvari P (Shev)
Subject: FW: Rescission Memo Guidance

Hi Craig,

[Redacted]

(b)(5)

Thanks,

Simon

From: Violet, Michael D
Sent: Thursday, April 27, 2017 11:16 AM
To: Nakajima, Simon T; Nicklaw, Nicole C; Cox, Robert H; Aucoin, Lauren J; Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Fortes, Michael J; Bailey, Morgan; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; McCloskey, Ahran K
Cc: Zimonjic, Milica; Bump, Micah N
Subject: RE: Rescission Memo Guidance

[Redacted]

(b)(5)

Thanks,

Michael

<< File: Guidance on PM-602-0142 (Cleaned).docx >> << File: Guidance on PM-602-0142 (Redlined).docx >>

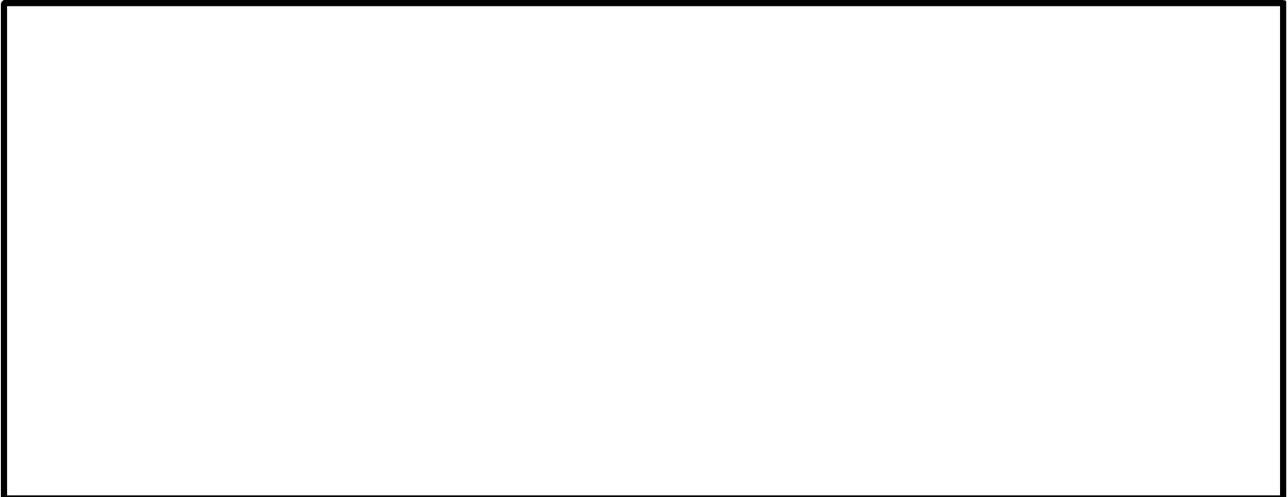
From: Nakajima, Simon T
Sent: Wednesday, April 26, 2017 3:53 PM
To: Violet, Michael D; Nicklaw, Nicole C; Cox, Robert H; Aucoin, Lauren J; Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Fortes, Michael J; Bailey, Morgan; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; McCloskey, Ahran K
Cc: Zimonjic, Milica; Bump, Micah N
Subject: RE: Rescission Memo Guidance

Thanks Michael. I'm think that answer my question.

From: Violet, Michael D
Sent: Wednesday, April 26, 2017 3:36 PM
To: Nakajima, Simon T; Nicklaw, Nicole C; Cox, Robert H; Aucoin, Lauren J; Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Fortes, Michael J; Bailey, Morgan; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; McCloskey, Ahran K
Cc: Zimonjic, Milica; Bump, Micah N
Subject: RE: Rescission Memo Guidance

(b)(5)

Hi Simon,



Hope that clears everything up.

Michael

From: Nakajima, Simon T

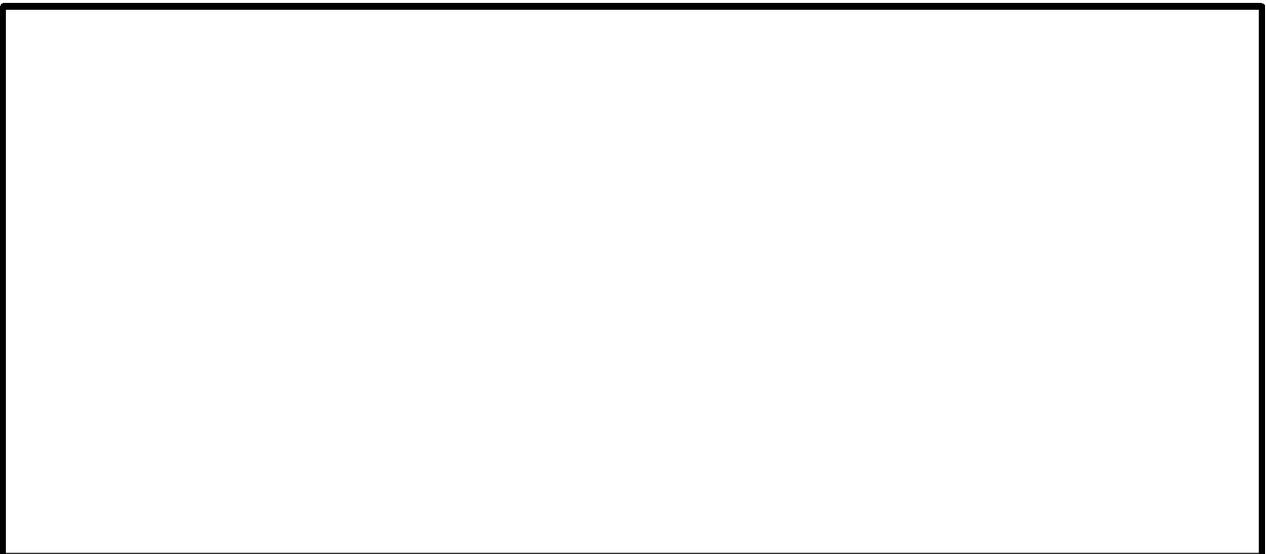
Sent: Wednesday, April 26, 2017 2:15 PM

To: Violett, Michael D; Nicklaw, Nicole C; Cox, Robert H; Aucoin, Lauren J; Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Fortes, Michael J; Bailey, Morgan; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; McCloskey, Ahran K

Cc: Zimonjic, Milica; Bump, Micah N

(b)(5)

Subject: RE: Rescission Memo Guidance



From: Violett, Michael D

Sent: Wednesday, April 26, 2017 2:04 PM

To: Nakajima, Simon T; Nicklaw, Nicole C; Cox, Robert H; Aucoin, Lauren J; Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Fortes, Michael J; Bailey, Morgan; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; McCloskey, Ahran K

Cc: Zimonjic, Milica; Bump, Micah N

Subject: RE: Rescission Memo Guidance

Hi Simon,



(b)(5)

Thanks,

Michael Violett

Adjudications Officer

Business Employment Services Team

Service Center Operations

U.S. Citizenship and Immigration Services

202.272.2968 Desk

202.306.8021 Mobile

From: Nakajima, Simon T
Sent: Tuesday, April 25, 2017 9:28 AM
To: Nicklaw, Nicole C; Cox, Robert H; Aucoin, Lauren J; Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Violett, Michael D; Fortes, Michael J; Bailey, Morgan; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; McCloskey, Ahran K
Cc: Zimonjic, Milica; Bump, Micah N
Subject: RE: Rescission Memo Guidance (b)(5)

Hi Nicole -



From: Nicklaw, Nicole C
Sent: Tuesday, April 25, 2017 9:12 AM
To: Cox, Robert H; Aucoin, Lauren J; Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Nakajima, Simon T; Violett, Michael D; Fortes, Michael J; Bailey, Morgan; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; McCloskey, Ahran K
Cc: Zimonjic, Milica; Bump, Micah N
Subject: RE: Rescission Memo Guidance

Good morning!

Has everyone had a chance to review the comments or is additional time needed?

Thank you,

Nicole

From: Nicklaw, Nicole C
Sent: Friday, April 21, 2017 2:26 PM
To: Cox, Robert H; Aucoin, Lauren J; Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Nakajima, Simon T; Violett, Michael D; Fortes, Michael J; Bailey, Morgan; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; McCloskey, Ahran K
Cc: Zimonjic, Milica; Bump, Micah N
Subject: RE: Rescission Memo Guidance

Hi everyone,

SCOPS reviewed and responded to all of the comments in the guidance. Can you please take a look ([Rescission Memo Guidance](#)) and provide any additional comments by COB Monday, April 24? If you need additional time, please let us know.

Thank you,

Nicole

From: Cox, Robert H
Sent: Tuesday, April 18, 2017 4:53 PM
To: Nicklaw, Nicole C; Aucoin, Lauren J; Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Nakajima, Simon T; Violett, Michael D; Fortes, Michael J; Bailey, Morgan; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; McCloskey, Ahran K
Cc: Zimonjic, Milica; Bump, Micah N
Subject: RE: Rescission Memo Guidance

Hi Nicole,

We have completed our initial review (comments and edits saved to the ECN and attached hereto for ease of future reference). Please note that we will need to review this once more, and give our leadership a chance to review, when it is closer to final and the comments have been resolved.

Thanks,

Robert << File: Guidance on PM-602-0142.Clean 4 18 17 OCC ALD.docx >>

From: Nicklaw, Nicole C
Sent: Tuesday, April 18, 2017 2:33 PM
To: Cox, Robert H; Aucoin, Lauren J; Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Nakajima, Simon T; Violett, Michael D; Fortes, Michael J; Bailey, Morgan; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; McCloskey, Ahran K
Cc: Zimonjic, Milica; Bump, Micah N
Subject: RE: Rescission Memo Guidance

Hi everyone,

I'm just touching base about the rescission memo guidance referenced in the email below. SCOPS needs comments/edits back no later than COB today (I see that there are a few folks in there now editing – thank you!) in order to move forward as leadership has requested. SCOPS will assume silence is concurrence after COB today.

Thank you so much for your time and review on such short notice.

-Nicole

From: Nicklaw, Nicole C
Sent: Thursday, April 13, 2017 2:16 PM
To: Cox, Robert H; Aucoin, Lauren J; Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Nakajima, Simon T; Violett, Michael D; Fortes, Michael J; Bailey, Morgan; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; McCloskey, Ahran K
Cc: Zimonjic, Milica; Bump, Micah N
Subject: Rescission Memo Guidance

Good afternoon everyone,

In response to service center questions and concerns, SCOPS drafted guidance related to the recently issued rescission memo for your review. Please find the draft guidance on the ECN here: [_Rescission Memo Guidance](#)

Leadership is looking to distribute guidance to the centers as soon as possible. Could everyone please review and provide any edits/comments by COB Monday, April 17? Please let us know if you need additional time and we apologize for the quick turnaround.

Thank you,

Nicole Nicklaw

Adjudications Officer

DHS|USCIS|SCOPS|Business Employment Services Team (BEST)

Desk: (202) 272-8174

Mobile: (202) 557-0347

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Statutory Background

Established in 1990, the H-1B program allows US employers to hire foreign nationals to work in *specialty occupations*.¹

- A. The primary statutory basis for this classification is INA § 101(a)(15)(H);
- B. “Specialty occupation” – as this term concerns H-1B workers – is defined at INA § 214(i)(1) and (2). Per this definition, a specialty occupation requires “(A) theoretical and practical application of a body of specialized knowledge and (B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.”²

The Department of Labor (DOL) has provided more detail about specialty and non-specialty occupations in its Occupational Outlook Handbook (OOH), which can be found online (<http://www.bls.gov/ooh/>). The OOH offers a layman’s definition of each occupation and a description of the duties and educational requirements for the various occupations that it addresses. While USCIS recognizes DOL’s OOH as one authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses, it is not always determinative. USCIS also considers other sources provided

(b)(5)

- C. There is no requirement that companies employing H-1B workers first attempt to recruit U.S. citizens or lawful permanent residents *unless the respective company is H-1B dependent or a willful violator*.

An H-1B dependent employer is defined at INA § 212(n)(3). It means:

- The employer has 25 or fewer full-time equivalent employees who are employed in the U.S., of whom eight or more are H-1Bs, or;
- The employer has 26 to 50 full-time equivalent employees who are employed in the U.S., of whom 13 or more are H-1Bs, or;

¹ The H-1B classification also includes certain fashion modes and Department of Defense workers, but those subtypes will not be discussed here.

² See also 8 CFR § 214.2(h)(4)(iii).

³ Note that a petitioner may also rely upon other authoritative sources to establish the prevailing wage, such as private wage surveys based on the “median wage of workers similarly employed in the area of intended employment. 20 CFR 656.731(b)(3)(iii)(B) and (C).

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- The employer has more than 50 full-time equivalent employees who are employed in the U.S. and 15% or more are H-1B nonimmigrants.

H-1B-dependent employers and willful violators have more procedures to go through, and more obligations to comply with, before filing a petition for an H-1B worker unless the worker is considered an exempt worker as defined at INA § 212(n)(3)(B)(i)(I) and (II):

- The employer will compensate the H-1B worker at \$60,000 or more per year, or;
- The H-1B worker has attained a master's degree or higher in a field related to the specialty occupation.



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Further statutory language to keep in mind when considering abuses of the H-1B nonimmigrant visa classification is found at INA § 212(n)(1)(A)(ii). This language reads:

No alien may be admitted or provided status as an H-1B nonimmigrant...unless the employer has filed with the Secretary of Labor an application stating...[it] will provide working conditions for such a nonimmigrant ***that will not adversely affect the working conditions of workers similarly employed.*** [Emphasis added]

Filing Procedures

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Before a petitioner can employ an H-1B worker, three things must happen:



- B. The employer must file a Labor Condition Application, aka LCA (Form ETA-9035), with the Department of Labor (DOL) and the DOL must certify (approve) this form. By filing the LCA, the employer is attesting to various obligations per INA § 212(n);
- C. The employer must file a Petition for Nonimmigrant Worker (Form I-129) with USCIS and USCIS must approve this form, unless the H-1B workers is eligible for H-1B portability under INA § 214(n) (if eligible under H-1B portability, the H-1B worker can commence new employment upon the filing of the H-1B petition with USCIS);

Note: there is no charge for filing an LCA, which a potential employer can do electronically. USCIS charges a \$460 filing fee for the I-129 petition. In some instances,

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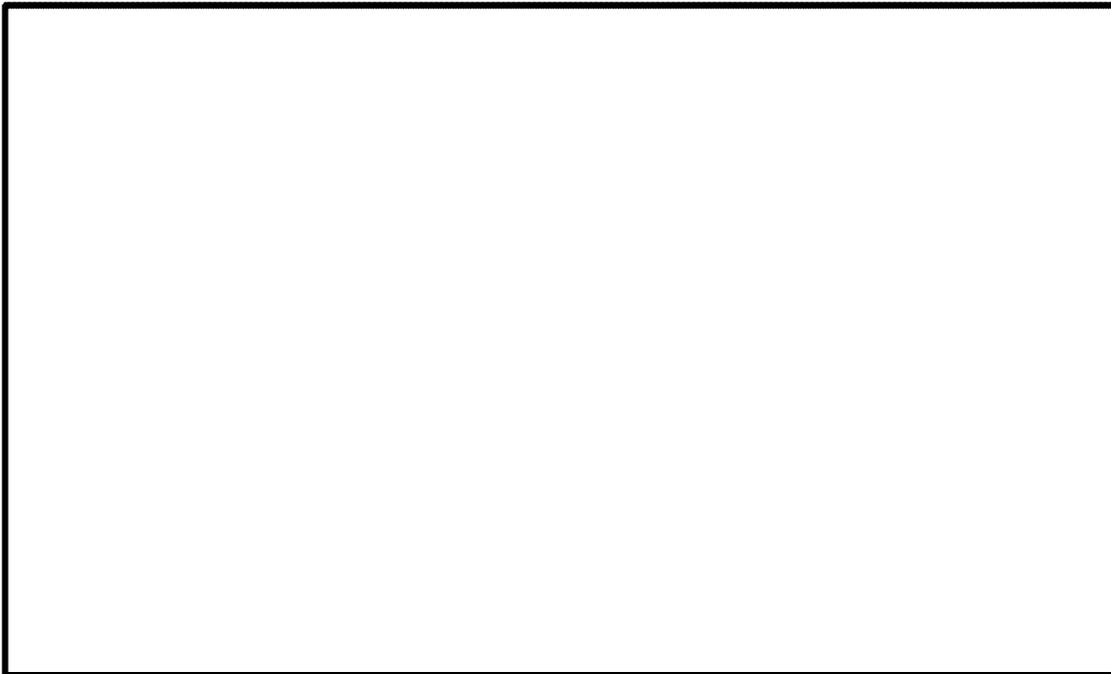
an additional \$500 “Fraud Detection and Prevention” fee applies. There is also a fee of either \$750 or \$1,500 associated with the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA) for initial I-129 filings and first extensions. If the employer has fewer than 26 employees, it pays \$750; if 26 or more, it pays \$1,500.

Finally, Public Law 114-113 imposes a \$4,000 fee on certain employers seeking initial H-1B status for a worker or obtaining authorization for a worker to change employers.

This \$4,000 fee only applies to employers who have 50 or more workers in the United States and half of those workers are in H-1B, L-1B, or L-1A status. The total amount an employer must pay to obtain authorization to employ an H-1B worker will thus vary depending on the type of filing (initial, first extension, second extension) and the employer’s size.

Processing/adjudication times for LCAs and I-129s vary. The DOL strives for a five-to-seven-business-day processing time for LCAs. USCIS takes longer, which has led many employers to use the premium processing option, when available. For an additional \$1,225, an I-129 can be accompanied by a Form I-907 (the premium processing form) and USCIS will take adjudicative action on the I-129 in 15 calendar days. If USCIS cannot meet this deadline, it must refund the premium processing fee. Note: premium processing and the 15-day deadline are regulatory, see 8 CFR Part 103.7(e)(2). Also note that premium process may sometimes be temporarily suspended. Be sure to check the USCIS public website to see if premium process is currently available for H-1B filings.

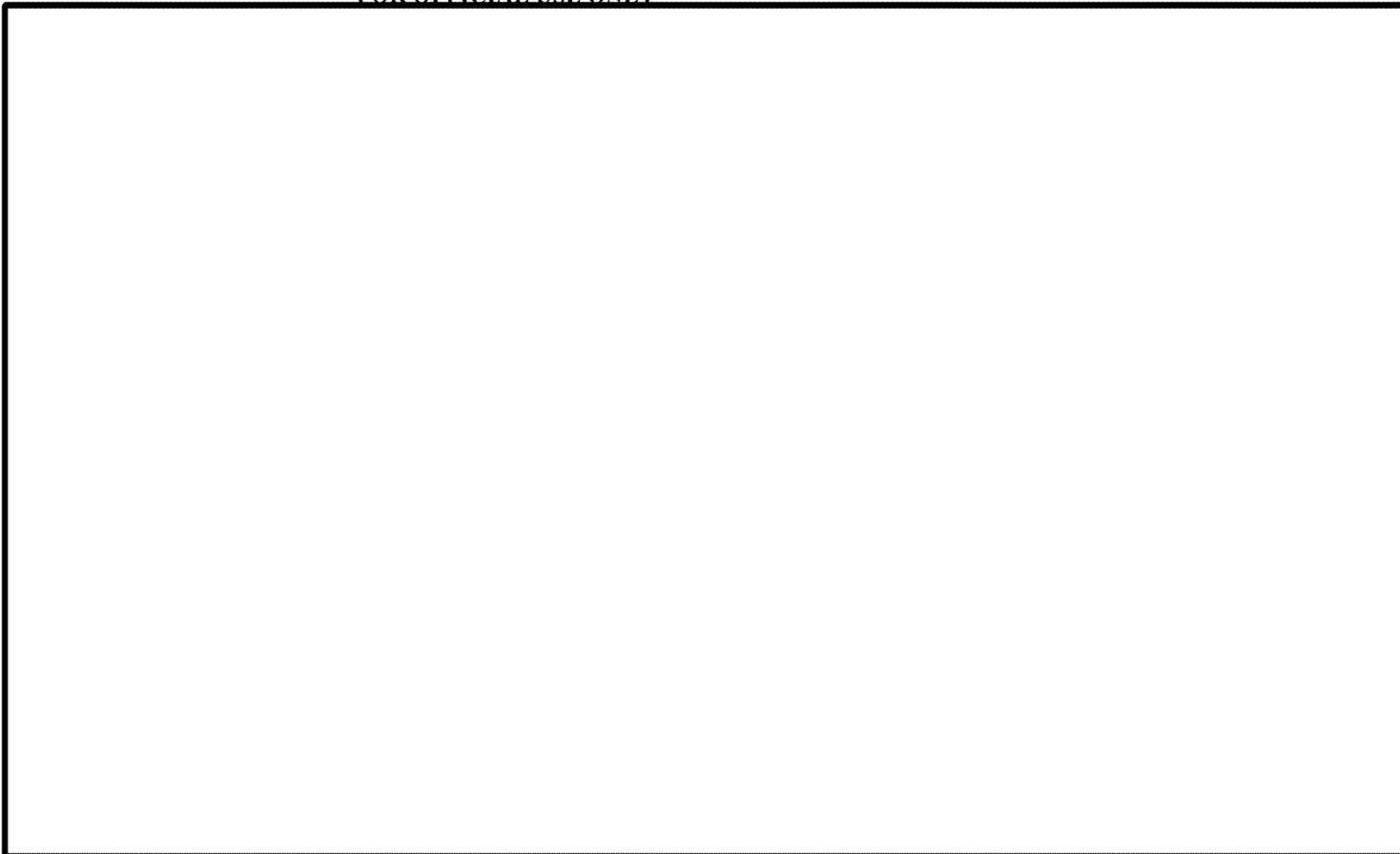
Abuses of the H-1B Program and How to Check for Them



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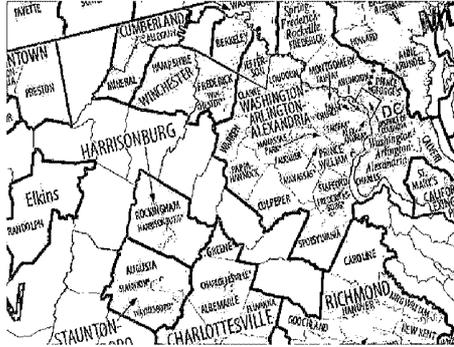
Below are some tools to help you determine the geographic area of employment and corresponding prevailing wage.

An MSA map:

http://www2.census.gov/geo/maps/metroarea/us_wall/Feb2013/cbsa_us_0213.pdf

Here is a close-up view of Northern Virginia taken from the MSA map:

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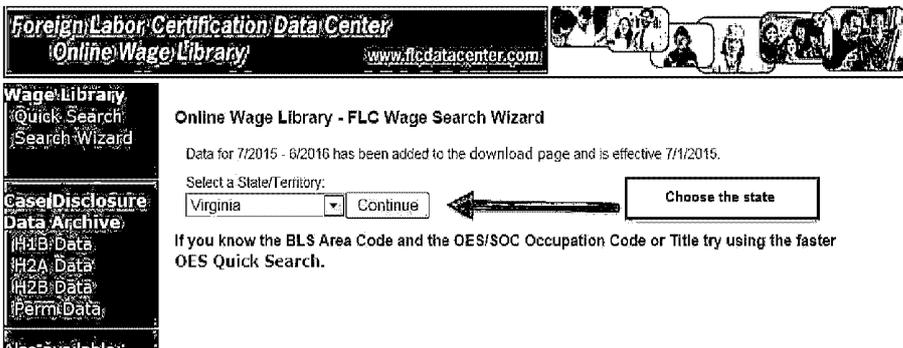


The thick green lines represent an MSA's borders. (Informational: dark green areas represent Metropolitan Statistical Areas and light green areas, like Elkins, WV, represent Micropolitan Statistical Areas. This distinction can be ignored for the purpose of reviewing prevailing wages.)



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Wages sometimes vary within MSAs. For help determining what the correct prevailing wage should be, you can turn to the FLC Data Center Online Wage Library, <http://www.flcdatacenter.com/OesWizardStart.aspx>. The screen captures below should help you learn to navigate this website.



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Wage Library
Quick Search
Search Wizard

Case Disclosure
Data Archive
H1B Data
H2A Data
H2B Data
Perm Data

Online Wage Library - Quick Search New Quick Search New Search Wizard

Data for 7/2016 - 6/2017 has been added to the download page and is effective 7/1/2016.

Select a Data Source: 

- 7/2016 - 6/2017 All Industries Database
- 7/2016 - 6/2017 ACWIA - Higher Education Database
- 7/2015 - 6/2016 All Industries Database
- 7/2015 - 6/2016 ACWIA - Higher Education Database
- 7/2014 - 6/2015 All Industries Database
- 7/2014 - 6/2015 ACWIA - Higher Education Database
- 7/2013 - 6/2014 All Industries Database
- 7/2013 - 6/2014 ACWIA - Higher Education Database



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Foreign Labor Certification Data Center
Online Wage Library
www.flcdlibcenter.com

Wage Library
Quick Search
Search Wizard

Case Disclosure
Data Archive
H1B Data
H2A Data
H2B Data
Perm Data

Also available:
File Archive

Skill Level
Explanation

SVP Explanation

FLC Wage Data
Updated
July 1, 2016

Job Zones updated
August 26, 2016
See change
history.

Technical Support
Help/FAQ page

FLC Data Center - FLC Wage Search Wizard New Quick Search New Search Wizard

Data for 7/2016 - 6/2017 has been added to the download page and is effective 7/1/2016.

You have requested data for Virginia



(b)(5)

Select a Data Source: 

7/2016 - 6/2017 All Industries Database

Select an area based on: County/Township BLS Areas 

- BUENA VISTA CITY - Northwest Virginia nonmetropolitan area
- CAMPBELL - Lynchburg, VA MSA
- CAROLINE - Richmond, VA MSA
- CARROLL - Southwest Virginia nonmetropolitan area
- CHARLES CITY - Richmond, VA MSA
- CHARLOTTE - Southside Virginia nonmetropolitan area
- CHARLOTTESVILLE CITY - Charlottesville, VA MSA
- CHESAPEAKE CITY - Virginia Beach-Norfolk-Newport News, VA-NC MSA
- CHESTERFIELD - Richmond, VA MSA
- CLARKE - Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Division
- CLIFTON FORGE CITY - Northwest Virginia nonmetropolitan area
- COLONIAL HEIGHTS CITY - Richmond, VA MSA
- COVINGTON CITY - Northwest Virginia nonmetropolitan area
- CRAIG - Roanoke, VA MSA
- CULPEPER - Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Division
- CUMBERLAND - Southside Virginia nonmetropolitan area
- DANVILLE CITY - Southside Virginia nonmetropolitan area
- DICKENSON - Southwest Virginia nonmetropolitan area
- DINWIDDIE - Richmond, VA MSA
- EMPORIA CITY - Southside Virginia nonmetropolitan area
- ESSEX - Northeast Virginia nonmetropolitan area
- FAIRFAX - Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Division
- FAIRFAX CITY - Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Division
- FALLS CHURCH CITY - Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Division
- FALLOUTHER - Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Division

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Foreign Labor Certification Data Center
Online Wage Library
www.flcdatcenter.com

Wage Library
Quick Search
Search Wizard

Case Disclosure
Data Archive
H1B Data
H2A Data
H2B Data
Perm Data

Also available:
File Archive
Skill Level
Explanation
SVP Explanation
FLC Wage Data
updated
July 21, 2016
Job Zones updated
August 26, 2016
See change
history
Technical Support
Help FAQ page

FLC Data Center - FLC Wage Search Wizard New Quick Search New Search Wizard

Data for 7/2016 - 6/2017 has been added

You have requested data for Virginia

Select a Data Source: ①
7/2016 - 6/2017 All Industries Database

Select an area based on County/Township BLS Areas ①
FAIRFAX - Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Divisi

Enter a keyword or phrase: ①

OR Select an occupation from the list: ①

- 13-2072 | Loan Officers
- 13-2081 | Tax Examiners and Collectors, and Revenue Agents
- 13-2082 | Tax Preparers
- 13-2099 | Financial Specialists, All Other
- 15-1111 | Computer and Information Research Scientists
- 15-1121 | Computer Systems Analysts
- 15-1122 | Information Security Analysts
- 15-1131 | Computer Programmers
- 15-1132 | Software Developers, Applications
- 15-1133 | Software Developers, Systems Software
- 15-1134 | Web Developers
- 15-1141 | Database Administrators
- 15-1142 | Network and Computer Systems Administrators
- 15-1143 | Computer Network Architects
- 15-1151 | Computer User Support Specialists
- 15-1152 | Computer Network Support Specialists
- 15-1199 | Computer Occupations, All Other
- 15-2011 | Actuaries
- 15-2021 | Mathematicians

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Informational: the SOC can be found on p. 1 of the LCA. It should align with the specialty occupation listed on Part 5 of the I-129.

A. Employment-Based Nonimmigrant Visa Information

1. Indicate the type of visa classification supported by this application (Write classification symbol). *	H-1B
--	------

B. Temporary Need Information

1. Job Title * PROGRAMMER ANALYST	2. SOC (ONET/OES) code * 15-1131	3. SOC (ONET/OES) occupation title * COMPUTER PROGRAMMERS
4. Is this a full-time position? * <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Period of Intended Employment	
	5. Begin Date * 09/12/2013 <small>(mm/dd/yyyy)</small>	6. End Date * 09/10/2016 <small>(mm/dd/yyyy)</small>

Once you have input the database (All Industries, usually), location (Fairfax County, not City, for the purposes of our example), and SOC (Computer Programmer in our example), click on 'Search'. This provides the following result:

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Wage Library
Quick Search
Search Wizard

FLC Wage Results New Quick Search New Search Wizard

You selected the All Industries database for 7/2016 - 6/2017.

Your search returned the following: Print Format

Area Code: 47894
Area Title: Washington-Arlington-Alexandria, DC-VA-MD-WY Metropolitan
Division:
OES/SOC Code: 15-1131 Prevailing wages by wage level
OES/SOC Title: Computer Programmers
GeoLevel: 1
Level 1 Wage: \$31.98 hour - \$66,518 year
Level 2 Wage: \$39.68 hour - \$82,534 year
Level 3 Wage: \$47.38 hour - \$98,550 year
Level 4 Wage: \$55.08 hour - \$114,566 year
Mean Wage (H-2B): \$47.38 hour - \$98,550 year

Prevailing wages by wage level

Summary of a Computer Programmer's duties, taken from official O*Net database

Case Disclosure
Data Archive
H1B Data
H2A Data
H2B Data
Perm Data

Also available
File Archive

Skill Level
Explanation

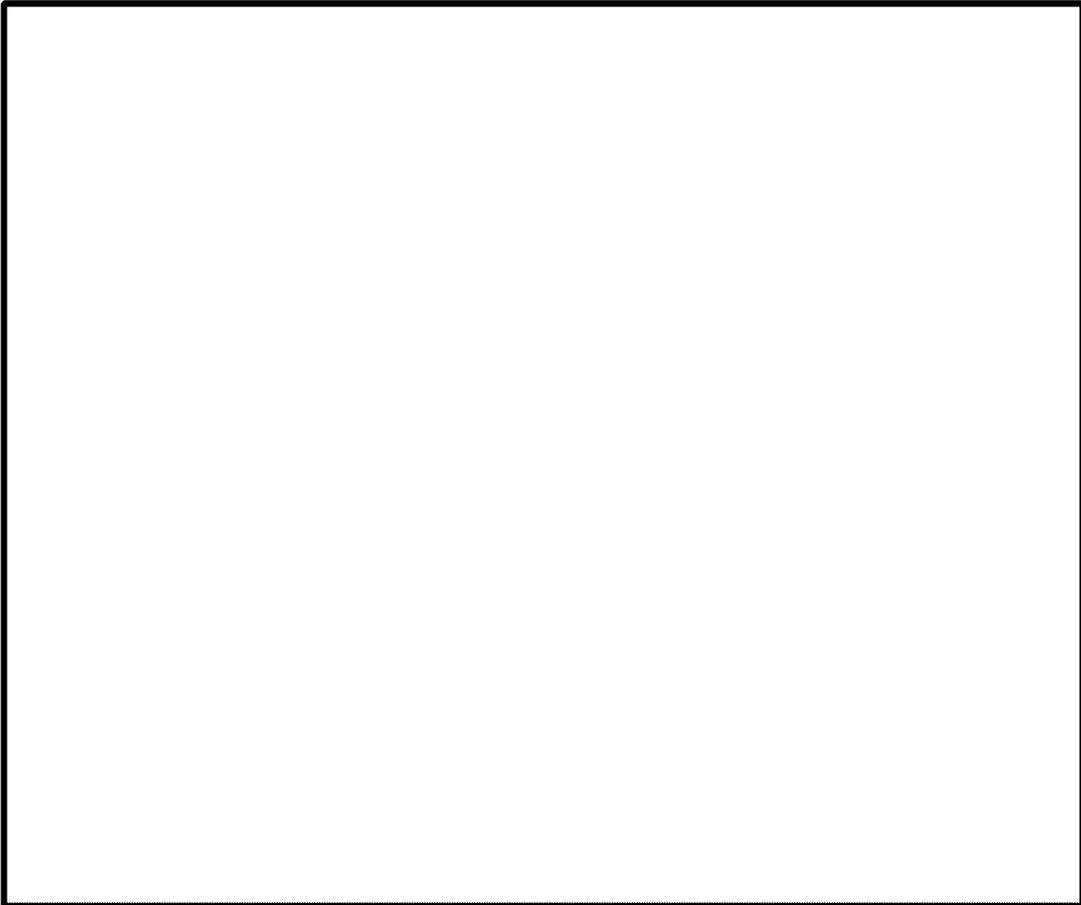
SVP Explanation

FLC Wage Data
updated:
July 1, 2016

This wage applies to the following O*Net occupations:

15-1131.00 Computer Programmers

Create, modify, and test the code, forms, and script that allow computer applications to run. Work from specifications drawn up by software developers or other individuals. May assist software developers by analyzing user needs and designing software solutions. May develop and write computer programs to store, locate, and retrieve specific documents, data, and information.



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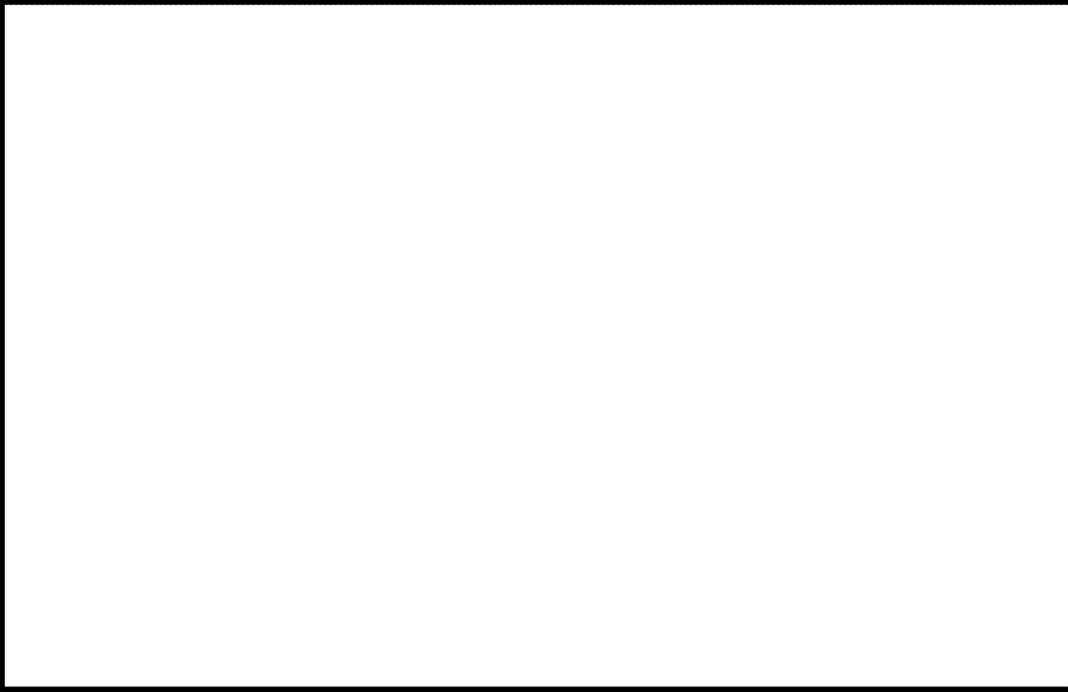
USCIS Policy Memorandum 602-0142 of 03/31/2017 provides the following guidance about wage levels: “USCIS officers must also review the LCA to ensure the wage level designated by the petitioner corresponds to the proffered position. If a petitioner designates a position as a Level I, entry-level position, for example, such an assertion will likely contradict a claim that the proffered position is particularly complex, specialized, or unique compared to other positions *within the same occupation.*” [Italics in original]



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- Conduct research into fundamental computer and information science as theorists, designers, or inventors. Solve or develop solutions to problems in the field of computer hardware and software.
- Convert project specifications and statements of problems and procedures to detailed logical flow charts for coding into computer language. Develop and write computer programs to store, locate, and retrieve specific documents, data, and information. May program web sites.
- Develop, create, and modify general computer applications software or specialized utility programs. Analyze user needs and develop software solutions. Design software or customize software for client use with the aim of optimizing operational efficiency. May analyze and design databases within an application area, working individually or coordinating database development as part of a team.
- Research, design, develop, and test operating systems-level software, compilers, and network distribution software for medical, industrial, military, communications, aerospace, business, scientific, and general computing applications. Set operational specifications and formulate and analyze software requirements. Apply principles and techniques of computer science, engineering, and mathematical analysis.
- Provide technical assistance to computer system users. Answer questions or resolve computer problems for clients in person, via telephone or from remote location. May provide assistance concerning the use of computer hardware and software, including printing, installation, word processing, electronic mail, and operating systems.
- Analyze science, engineering, business, and all other data processing problems for application to electronic data processing systems. Analyze user requirements, procedures, and problems to automate or improve existing systems and review computer system capabilities, workflow, and scheduling limitations. May analyze or recommend commercially available software. May supervise computer programmers.
- Coordinate changes to computer databases, test and implement the database applying knowledge of database management systems. May plan, coordinate, and implement security measures to safeguard computer databases.
- Install, configure, and support an organization's local area network (LAN), wide area network (WAN), and Internet system or a segment of a network system. Maintain network hardware and software. Monitor network to ensure network availability to all system users and perform necessary maintenance to support network availability. May supervise other network support and client server specialists and plan, coordinate, and implement network security measures.
- Analyze, design, test, and evaluate network systems, such as local area networks (LAN), wide area networks (WAN), Internet, intranet, and other data communications systems. Perform network modeling, analysis, and planning. Research and recommend network and data communications hardware and software. Includes telecommunications specialists who deal with the interfacing of computer and communications equipment.
- Plan, coordinate, and implement security measures for information systems to regulate access to computer data files and prevent unauthorized modification, destruction, or disclosure of information.

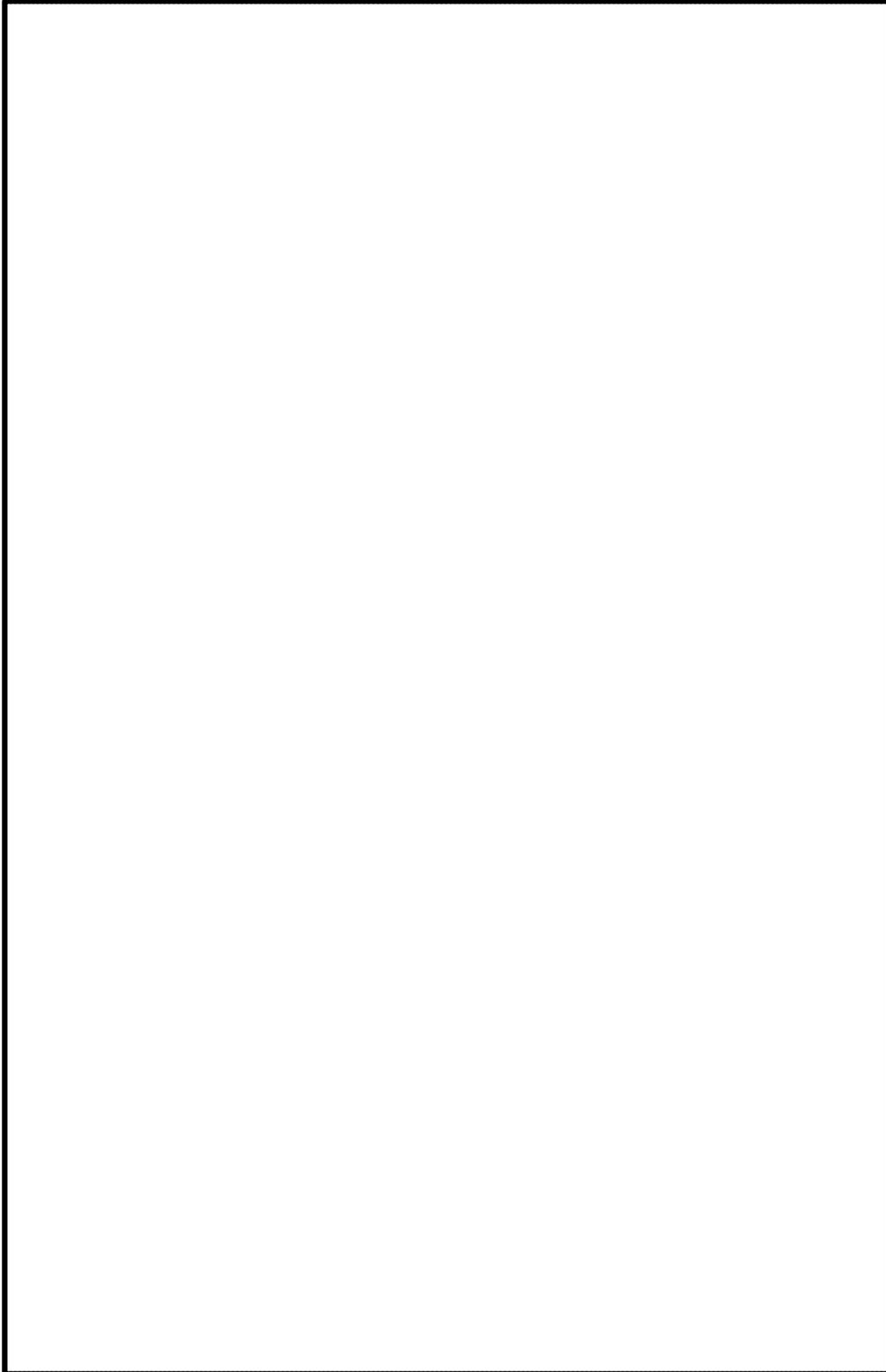
Each of the descriptions above corresponds to a SOC (Systems Analysis, Computer Programmer, Software Engineer, Database Administrator, etc.) – see the attached Computer Skills Key.



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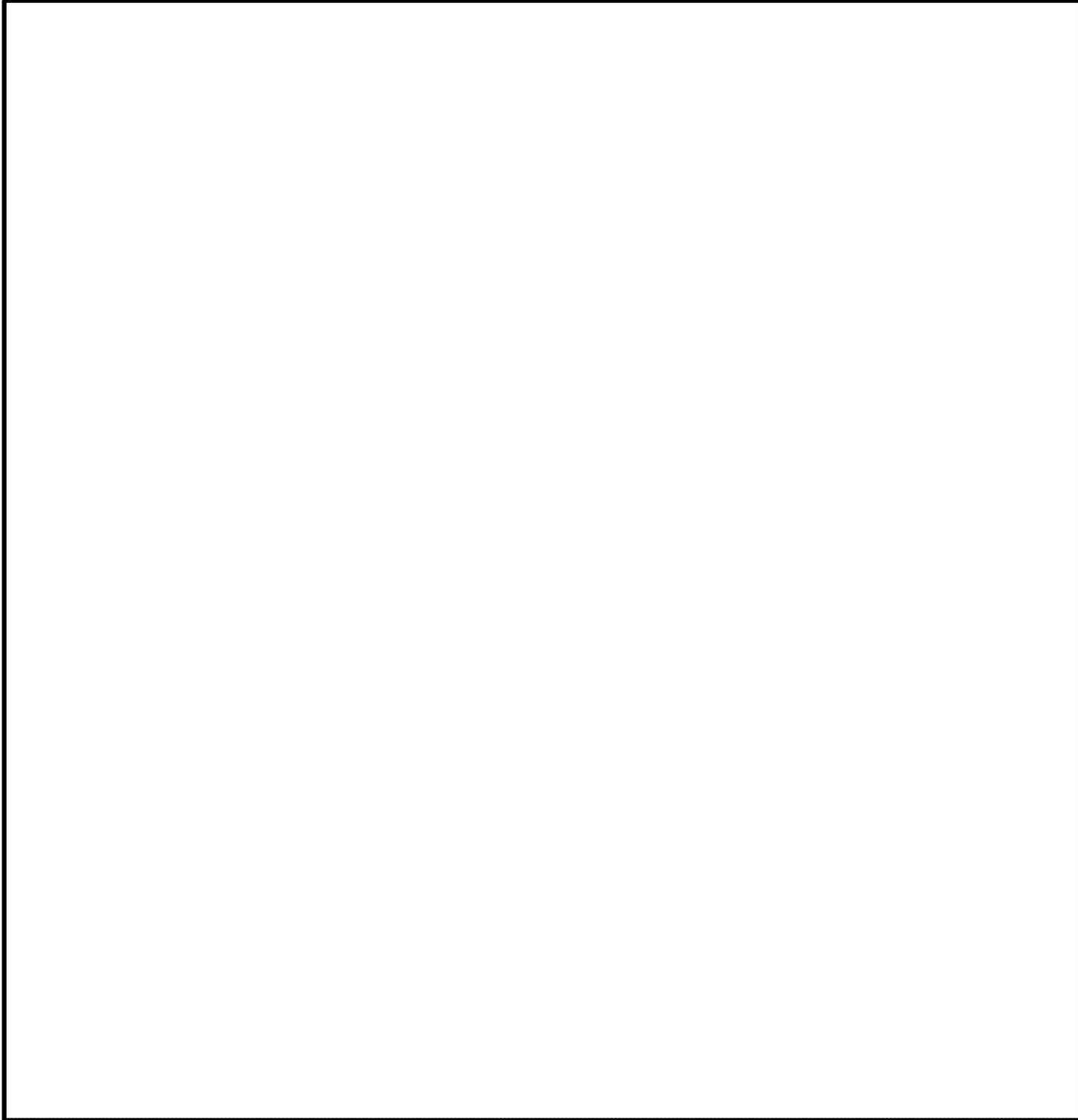
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(b)(5)



From: Dalal-Dheini, Sharvari P (Shev) on behalf of ALD
To: Bump, Micah N; Cox, Robert H; Nakajima, Simon T; Salem, Claudia S
Subject: H-1B Rescission Memo discussion
Start: Wednesday, March 29, 2017 2:30:00 PM
End: Wednesday, March 29, 2017 3:30:00 PM
Location: ALD EB Line

Toll-Free Phone Number: 888-461-9130
Toll Number: 1-203-923-9985
Leader Passcode: 71676354
Participant Passcode: 25319811

1-129 H1B AC21 Denial STANDARDS

129 H1B Denial ACWIA FEE- INTRODUCTION

8 CFR § 103.2(a)(7) states the following regarding the submission of the correct fees:

Comment [CSC - DHN1]: These are new fee regulations effective on December 23, 2016

(7) Benefit requests submitted. (i) USCIS will consider a benefit request received and will record the receipt date as of the actual date of receipt at the location designated for filing such benefit request whether electronically or in paper format.

(ii) A benefit request which is rejected will not retain a filing date. A benefit request will be rejected if it is not:

(A) Signed with valid signature;

(B) Executed;

(C) Filed in compliance with the regulations governing the filing of the specific application, petition, form, or request; and

(D) Submitted with the correct fee(s). If a check or other financial instrument used to pay a fee is returned as unpayable, USCIS will re-submit the payment to the remitter institution one time. If the instrument used to pay a fee is returned as unpayable a second time, the filing will be rejected and a charge will be imposed in accordance with 8 CFR 103.7(a)(2).

(iii) A rejection of a filing with USCIS may not be appealed.

INA § 214(c)(9) provides for the following required fees for an H-1B petition:

(A) The Attorney General shall impose a fee on an employer (excluding any employer that is a primary or secondary education institution, an institution of higher education, as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. § 1001(a), a nonprofit entity related to or affiliated with any such institution, a nonprofit entity which engages in established curriculum-related clinical training of students registered at any such institution, a nonprofit research organization, or a governmental research organization) filing before (sic) and a petition under paragraph (1)-

(i) initially to grant an alien nonimmigrant status described in section 101(a)(15)(H)(i)(b);

(ii) to extend the stay of an alien having such status (unless the employer previously has obtained an extension for such alien); or

(iii) to obtain authorization for an alien having such status to change employers.

(B) The amount of the fee shall be \$1,500 for each such petition except that the fee shall be half the amount for each such petition by any employer with not more than 25 full-time equivalent employees who are employed in the United States (determined by including any affiliate or subsidiary of such employer).

(C) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 286(s).

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8 CFR § 214.2(h)(19)(i) and (h)(19)(ii) provide for the following ACWIA fee:

Additional fee for filing certain H-1B petitions. (i) A United States employer (other than an exempt employer defined in paragraph (h)(19)(iii) of this section, or an employer filing a petition described in paragraph (h)(19)(v) of this section) who files a Petition for Nonimmigrant Worker (Form I-129) must include the additional American Competitiveness and Workforce Improvement Act (ACWIA) fee referenced in § 103.7(b)(1) of this chapter, if the petition is filed for any of the following purposes:

- (A) An initial grant of H-1B status under section 101(a)(15)(H)(i)(b) of the INA;
- (B) An initial extension of stay, as provided in paragraph (h)(15)(i) of this section; or
- (C) Authorization for a change in employers, as provided in paragraph (h)(2)(i)(D) of this section.

(ii) A petitioner must submit with the petition the ACWIA fee, and any other applicable fees, in accordance with § 103.7 of this chapter, and form instructions. Payment of all applicable fees must be made at the same time, but the petitioner may submit separate checks. USCIS will accept payment of the ACWIA fee only from the United States employer or its representative of record, as defined in 8 CFR 103.2(a) and 8 CFR part 292.

The H-1B provisions of the Omnibus Appropriations Act for fiscal year 2005 reinstated the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA) fee that sunsetted on October 1, 2003. Further, the provisions raised the fee to \$1,500. However, petitioners who employ no more than 25 full-time equivalent employees, including any affiliate or subsidiary, may submit a reduced fee of \$750. The \$750 or \$1,500 fee applies to any non-exempt petitions filed with USCIS after December 8, 2004, and must be paid by you or your representative. All petitions requesting H-1B classification are subject to the ACWIA fee unless you establish that your organization or the filing situation is exempt from the ACWIA fee.

The following filing situations do not require payment of the \$1,500 or \$750 ACWIA fee:

- Amended petition not requesting extension of stay;
- Petition filed for the sole purpose of correcting a USCIS error; or
- Petition for a beneficiary's second or subsequent extension of stay with the same employer.

The following organizations are also exempt from paying the ACWIA fee:

- Institution of higher education as defined in 20 U.S.C. § 1001(a);
- Nonprofit entity related to or affiliated with institution of higher education;
- Nonprofit research organization or governmental research organization;
- Primary or secondary education institution; or
- Nonprofit entity that engages in established curriculum-related clinical training of students registered at an institution of higher education.

129 H1B Denial ACWIA Fee- 26 or More Full-time Equivalent U.S. Employees

26 or More Full-time Equivalent U.S. Employees

You indicated on the Form I-129 that you seek to change the beneficiary's employer / seek to begin employing the beneficiary / are seeking the first extension of the beneficiary's stay. You also stated that you employ [INSERT

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NUMBER OF U.S. WORKERS FROM PART 5, QUESTION 13 OF I-129] employees in the United States. Therefore, you remitted the reduced \$750 ACWIA fee with the Form I-129.

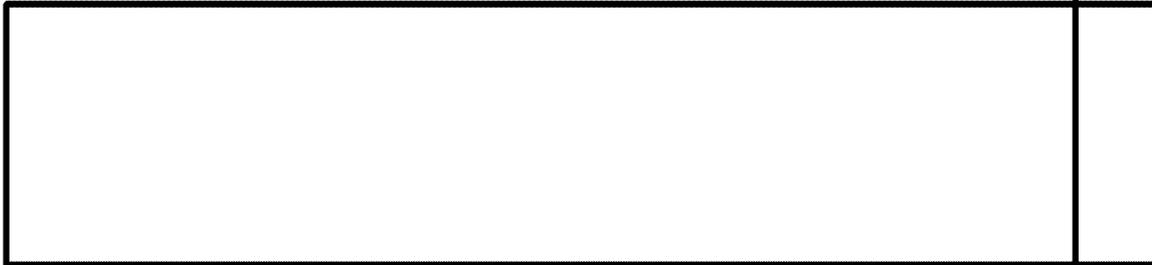
INA § 214(c)(9)(B) provides for a reduced \$750 ACWIA fee if:

(B) The amount of the fee shall be \$1,500 for each such petition except that the fee shall be half the amount for each such petition by any employer with not more than 25 full-time equivalent employees who are employed in the United States (determined by including any affiliate or subsidiary of such employer).

To qualify for this reduced ACWIA fee, you must show that your organization and all of your affiliates and subsidiaries employ, in total, no more than 25 full-time equivalent U.S. employees in the United States.

XXX[DISCUSS WHY ENTITY IS NOT ELIGIBLE FOR REDUCED ACWIA FEE]XXX (b)(5)

[SAMPLE ANALYSIS 1: ENTITY HAS AFFILIATES AND/OR SUBSIDIARIES]



129 H1B Denial ACWIA Fee- Not an Amended Petition

You indicate that the instant Form I-129 is exempt from the ACWIA fee because the petition is an amended petition that is not requesting an extension of stay.

8 CFR § 214.2(h)(19)(v)(A) allows for an exemption from the ACWIA fee when the petition "is an amended H-1B petition that does not contain any requests for an extension of stay."

XXX[DISCUSS WHY PETITION IS NOT AN AMENDED PETITION]XXX

[SAMPLE ANALYSIS 1: NOT THE SAME END DATE]

USCIS records show that the beneficiary's H-1B status [ended or will end] on [INSERT H-1B STATUS END DATE]. The Form I-129 indicates that you requested to extend the beneficiary's status from [INSERT REQUESTED EXTENSION START DATE] to [INSERT REQUESTED EXTENSION END DATE]. Further, the record shows that this petition is the first extension of stay request that you had filed for the beneficiary. Therefore, you are required to remit the ACWIA fee because the petition is requesting an extension of stay and it is the first extension of stay request you are filing for this beneficiary. You did not remit the \$750 or \$1,500 ACWIA fee. Thus, the Form I-129 is denied because you did not remit the required filing fees.

[SAMPLE ANALYSIS 2: CAN'T AMEND A PETITION YOU WERE NEVER APPROVED]

USCIS records show that the instant petition is the second petition that you have filed for the beneficiary. You had previously filed another Form I-129 for the beneficiary. That prior filing was subsequently denied. On this Form I-129, you indicated that the petition is an amended petition that does not seek an extension of stay. Since you have never been approved to employ the beneficiary, the instant petition is not an amended petition because you cannot amend a petition that was not approved. Therefore, you are required to remit the ACWIA fee because the

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petition is not an amended petition. Since this is an initial petition you are filing for this beneficiary, the ACWIA fee is required. You did not remit the \$750 or \$1,500 ACWIA fee. Thus, the Form I-129 is denied because you did not remit the required filing fees.

129 H1B Denial ACWIA Fee- Correcting USCIS Error

You indicate that the instant Form I-129 is exempt from the ACWIA fee because the petition was solely filed to correct an USCIS error.

8 CFR § 214.2(h)(19)(v)(B) allows for an exemption from the ACWIA fee when the petition “is an H-1B petition filed for the sole purpose of correcting a [USCIS] error.”

XXX[DISCUSS WHY USCIS DID NOT MAKE ERROR]XXX

[SAMPLE ANALYSIS 1: USCIS DID NOT MAKE ERROR]

You explained that USCIS [explain what the claimed error was]. However, [explain that USCIS did not make this error]. Therefore, you are required to remit the ACWIA fee because USCIS did not make the error. You did not remit the \$750 or \$1,500 ACWIA fee. Thus, the Form I-129 is denied because you did not remit the required filing fees.

129 H1B Denial ACWIA Fee- Not a Second or Subsequent Extension of Stay Request

You indicate that the instant Form I-129 is exempt from the ACWIA fee because the petition is a second or subsequent request for extension of stay that was filed by you for the beneficiary.

8 CFR § 214.2(h)(19)(v)(C) allows for an exemption from the ACWIA fee when the petition “is the second or subsequent request for an extension of stay filed by the employer regardless of when the first extension of stay was filed or whether the ACWIA fee was paid on the initial petition or the first extension of stay.”

XXX[DISCUSS WHY PETITION IS NOT 2ND OR SUBSEQUENT EXTENSION OF STAY]XXX

[SAMPLE ANALYSIS 1: PRIOR PETITION WAS AMENDED PETITION]

USCIS records show that the beneficiary was initially granted H-1B status to work for your organization until [INSERT PRIOR STATUS END DATE]. On [INSERT AMENDED PETITION FILING DATE], you filed an amended Form I-129 that sought to amend the prior approval. On that filing, you did not remit the ACWIA fee because the petition did not request an extension of stay. Here, you requested to extend the beneficiary’s stay from [INSERT REQUESTED EXTENSION START DATE] to [INSERT REQUESTED EXTENSION END DATE]. Thus, even though the instant petition is the third H-1B filing that you have filed for the beneficiary, the petition is the first extension of stay request you have filed for this beneficiary. As such, you are required to remit the \$750 or \$1,500 ACWIA fee, as applicable. You did not remit the \$750 or \$1,500 ACWIA fee. Thus, the Form I-129 is denied because you did not remit the required filing fees.

[SAMPLE ANALYSIS 2: PRIOR PETITIONS IN ANOTHER NONIMMIGRANT CATEGORY]

USCIS records show that the beneficiary was initially granted XXX[INSERT NONIMMIGRANT WORKER DESCRIPTOR SUCH AS: intracompany transferee (L-1), employee of treaty trader (E-2)]XXX status to work for your organization. Subsequently, you filed several Forms I-129 that extended the beneficiary’s XXX[INSERT PRIOR STATUS SUCH AS: L-1, E-2]XXX status with your organization. USCIS records also show that the beneficiary was initially granted H-1B status to work for your organization until [INSERT PRIOR STATUS END DATE].

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On [PRESENT PETITION FILING DATE], you filed this Form I-129 that requested to extend the beneficiary's stay from [INSERT REQUESTED EXTENSION START DATE] to [INSERT REQUESTED EXTENSION END DATE]. USCIS interprets the requirement at 8 CFR § 214.2(h)(19)(v)(C), to mean that a Form I-129 is exempt from the ACWIA fee ~~only~~ when the petition is the second or subsequent extension of stay filed by the same employer for H-1B status. Prior petitions that you may have filed for the beneficiary for other nonimmigrant visa classifications do not qualify to exempt the instant petition from ~~for~~ the ACWIA fee under 8 CFR § 214.2(h)(19)(v)(C) exemptions. Thus, even though the instant petition is the second or subsequent extension of stay you have filed for the beneficiary for all nonimmigrant classifications, it is the first extension of stay in H-1B status that you have filed for the beneficiary. As such, you are required to remit the \$750 or \$1,500 ACWIA fee, as applicable. You did not remit the \$750 or \$1,500 ACWIA fee. Thus, the Form I-129 is denied because you did not remit the required filing fees.

Comment [RHC7]: ~~New technical edits Deleted reference to "only" since there are other exemptions.~~

129 H1B Denial ACWIA Fee- Institution of Higher Education

You indicated on the Form I-129 that you seek to change the beneficiary's employer / seek to begin employing the beneficiary / are seeking the first extension of the beneficiary's stay. You also indicated that the instant Form I-129 is exempt from the ACWIA fee because you are an institution of higher education as defined at 20 U.S.C. § 1001(a).

INA § 214(c)(9)(A) provides an exemption from the ACWIA fee if you are "an institution of higher education, as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. § 1001(a))."

USCIS regulation at 8 CFR § 214.2(h)(19)(iii)(A) also allows for an exemption from the ACWIA fee for an "institution of higher education, as defined in section 101(a) of the Higher Education Act of 1965."

20 U.S.C. § 1001(a) defines an "institution of higher education" as:

For purposes of this chapter, other than subchapter IV, the term "institution of higher education" means an educational institution in any State that-

- (1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of section 1091(d) of this title;
- (2) is legally authorized within such State to provide a program of education beyond secondary education;
- (3) provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;
- (4) is a public or other nonprofit institution; and
- (5) is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

This exemption from the ACWIA fee requires that you show that your organization meets all five requirements in the definition of an institution of higher education at 20 U.S.C. § 1001(a).

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XXX[DISCUSS WHY SCHOOL IS NOT AN INSTITUTION OF HIGHER EDUCATION. USE, CHANGE, ADD OR REMOVE SAMPLE ANALYSIS AS APPROPRIATE]XXX

[SAMPLE ANALYSIS 1: SCHOOL IS NOT A PUBLIC OR NONPROFIT INSTITUTION]

USCIS had requested that you provide evidence that your organization is a public or nonprofit institution. However, you did not provide such documents. Instead, the record indicates that your organization is a private for-profit college. As such, you are required to remit the \$750 or \$1,500 ACWIA fee, as applicable. You did not remit the \$750 or \$1,500 ACWIA fee. Thus, the Form I-129 is denied because you did not remit the required filing fees.

[SAMPLE ANALYSIS 2: SCHOOL IS NOT ACCREDITED OR DOES NOT HAVE PRE-ACCREDITATION STATUS]

USCIS requested that you provide evidence that your organization is accredited or has pre-accreditation status from an agency authorized by the U.S. Department of Education to grant such status. In response, you did not provide such evidence. USCIS reviewed the U.S. Department of Education's Database of Accredited Postsecondary Institutions and Programs¹ and USCIS could not locate your organization as an entity that is accredited or has pre-accreditation status. As such, you are required to remit the \$750 or \$1,500 ACWIA fee, as applicable. You did not remit the \$750 or \$1,500 ACWIA fee. Thus, the Form I-129 is denied because you did not remit the required filing fees.

129 H1B Denial ACWIA Fee- Nonprofit Entity Related to or Affiliated with an Institution of Higher Education

You indicated on the Form I-129 that you seek to change the beneficiary's employer / seek to begin employing the beneficiary / are seeking the first extension of the beneficiary's stay. You also indicated that the instant Form I-129 is exempt from the ACWIA fee because you are a nonprofit entity that is related to or affiliated with an institution of higher education as defined at 20 U.S.C. § 1001(a).

INA § 214(c)(9)(A) provides for an exemption from the ACWIA fee if you are "a nonprofit entity related to or affiliated with any such institution [of higher education]."

USCIS regulations at 8 CFR § 214.2(h)(19)(iii)(B) also allow for an exemption from the ACWIA fee for a nonprofit entity related to or affiliated with an institution of higher education as follows:

(B) An affiliated or related nonprofit entity. A nonprofit entity shall be considered to be related to or affiliated with an institution of higher education if it satisfies any one of the following conditions:

(1) The nonprofit entity is connected to or associated with an institution of higher education through shared ownership or control by the same board or federation;

(2) The nonprofit entity is operated by an institution of higher education;

(3) The nonprofit entity is attached to an institution of higher education as a member, branch, cooperative, or subsidiary; or

(4) The nonprofit entity has entered into a formal written affiliation agreement with an institution of higher education that establishes an active working relationship between the nonprofit entity and the institution of higher education for the purposes of research or education, and a

¹ <http://ope.ed.gov/accreditation/Search.aspx>

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fundamental activity of the nonprofit entity is to directly contribute to the research or education mission of the institution of higher education;

A nonprofit entity is defined at 8 CFR § 214.2(h)(19)(iv) as:

(iv) Non-profit or tax exempt organizations. For purposes of paragraphs (h)(19)(iii)(B) and (C) of this section, a nonprofit organization or entity is:

(A) Defined as a tax exempt organization under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4) or (c)(6), 26 U.S.C. 501(c)(3), (c)(4) or (c)(6), and

(B) Has been approved as a tax exempt organization for research or educational purposes by the Internal Revenue Service.

This exemption from the ACWIA fee requires that you show that you are a nonprofit entity that meets at least one of four criteria² at 8 CFR § 214.2(h)(19)(iii)(B). Prior to January 17, 2017, USCIS had issued interim guidance that allowed for USCIS to afford deference to prior approval where USCIS determined that a petitioner was a nonprofit entity related to or affiliated with an institution of higher education since June 6, 2006.² In the Federal Register notice³ that revised 8 CFR § 214.2(h)(19)(iii)(B), DHS noted that the revised regulation “better reflects current operational realities for institutions of higher education and how they interact with, and sometimes rely on, nonprofit entities, and account for the nature and scope of common, bona fide affiliations between nonprofit entities and institutions of higher education.” The regulation supersedes past USCIS guidance in this area, and deference will no longer be afforded to prior approvals where USCIS determined that a petitioner was a nonprofit entity related to or affiliated with an institution of higher education. Instead, USCIS will adjudicate requests for this cap exemption based on the evidentiary criteria listed in the regulation to determine whether an entity is a nonprofit entity related to or affiliated with an institution of higher education.

Comment [RHC8]: Technically it is a DHS regulation.

SCOPS: Thanks Robert.

Comment [ECB9]: I corrected the previous term to agree with the verb in the quotation. Assuming you are only referring to one regulation, I suggest making all references to “regulation” singular in order to be consistent.

SCOPS: Thanks.

XXX[DISCUSS WHY ENTITY IS NOT A NONPROFIT RELATED OR AFFILIATED ENTITY. USE, CHANGE, ADD OR REMOVE SAMPLE ANALYSIS AS APPROPRIATE]XXX

[SAMPLE ANALYSIS 1: ENTITY IS NOT A NONPROFIT UNDER IRC 501(c)(3), (c)(4) or (c)(6)]

To meet the requirements under this ACWIA fee exemption, you must show that your entity is defined as a tax exempt entity under the Internal Revenue Code of 1986 (IRC) section 501(c)(3), (c)(4) or (c)(6). USCIS previously requested that you provide evidence of your nonprofit status. In response, XXX[DISCUSS WHY ENTITY IS NOT A NONPROFIT UNDER FEDERAL LAWS]XXX. You did not provide evidence that your entity has been approved as a tax exempt entity under the relevant IRC section. Therefore, the record does not show that you are a nonprofit entity as defined in DHS regulations for the ACWIA fee exemption under INA § 214(c)(9)(A). As such, you are required to remit the \$750 or \$1,500 ACWIA fee, as applicable. You did not remit the \$750 or \$1,500 ACWIA fee. Thus, the Form I-129 is denied because you did not remit the required filing fees.

(b)(5)

[SAMPLE ANALYSIS 2: HAS NOT MEET REQUIREMENTS AT 8 CFR § 214.2(h)(19)(iii)(B)(1), (2), (3) or (4)]

You indicate that you are a nonprofit entity related to or affiliated with XXX[INSERT UNIVERSITY]XXX.

USCIS will first consider whether you have shown that you are a related or affiliated nonprofit entity pursuant to 8 CFR § 214.2(h)(19)(iii)(B)(1): The nonprofit entity is connected to or associated with an institution of higher education through shared ownership or control by the same board or federation.

² See USCIS Interim Policy Memorandum, *Additional Guidance to the Field on Giving Deference to Prior Determinations of H-1B Cap Exemption Based on Affiliation* (Apr. 28, 2011) (2011 Interim Policy Memo)

³ See 81 Federal Register 82447 (November 18, 2016)

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Upon review, the record does not establish that your entity and XXX[INSERT UNIVERSITY]XXX are owned or controlled by the same boards or federations. USCIS interprets the terms “board” and “federation” as referring to educational bodies such as a board of education or a board of regents. You did not claim that you share the same board or federation with institutions of higher education.

Second, USCIS considers whether you have established that you are a related or affiliated nonprofit entity pursuant to 8 CFR § 214.2(h)(19)(iii)(B)(2): The nonprofit entity is operated by an institution of higher education.

The record does not demonstrate that an institution of higher education operates your entity, XXX[DISCUSS WHY PETITIONER IS NOT OPERATED BY AN INSTITUTION OF HIGHER EDUCATION]XXX. Accordingly, you have not shown that you are operated by an institution of higher education.

Third, USCIS considers whether your entity is a related or affiliated nonprofit entity pursuant to 8 CFR § 214.2(h)(19)(iii)(B)(3): The nonprofit entity is attached to an institution of higher education as a member, branch, cooperative, or subsidiary. All four of these terms indicate, at a bare minimum, some type of shared ownership and/or control, which has not been presented in this matter. See generally, *Black's Law Dictionary* at 224, 409, 1656 (10th Edition 2014) (defining the terms branch, cooperative, and subsidiary); see also, *Webster's New College Dictionary* at 699 (3rd Edition 2008) (defining the term member). XXX[DISCUSS HOW EMPLOYER DOES NOT MEET REQUIREMENTS AS MEMBER, BRANCH, COOPERATIVE OR SUBSIDIARY]XXX. Accordingly, you have not shown that you are attached to an institution of higher education as a member, branch, cooperative, or subsidiary.

(b)(5)

[SAMPLE ANALYSIS 2A: ENTITY HAS NOT ENTERED INTO FORMAL WRITTEN AFFILIATION AGREEMENT WITH SCHOOL. AGREEMENT IS WITH PARENT, AFFILIATE OR SUBSIDIARY]

Fourth, USCIS considers whether you are eligible for the exemption from the ACWIA fee under 8 CFR § 214.2(h)(19)(iii)(B)(4). The issue is whether you have entered into a formal written agreement with an institution of higher education that establishes an active working relationship between your entity and the institution of higher education for the purposes of research or education, and a fundamental activity of your entity is to directly contribute to the research or education mission of the institution of higher education.

XXX[Officer must insert analysis to the parties involved in the affiliation agreement and describe the purpose of the affiliation agreement]XXX. Since the regulations require that your entity has entered into a formal written affiliation agreement with an institution of higher education that establishes an active working relationship between your entity and the institution of higher education for the purposes of research or education, the agreement between your XXX[parent/affiliate/subsidiary]XXX does not meet this requirement. You did not provide evidence that your entity has entered into a formal written agreement with an institution of higher education that establishes an active working relationship between your entity and the institution of higher education for the purposes of research or education. Therefore, the record does not show that you are a nonprofit entity related to or affiliated with an institution of higher education for the ACWIA fee exemption under INA § 214(c)(9)(A). As such, you are required to remit the \$750 or \$1,500 ACWIA fee, as applicable. You did not remit the \$750 or \$1,500 ACWIA fee. Thus, the Form I-129 is denied because you did not remit the required filing fees.

[SAMPLE ANALYSIS 2B: FORMAL AGREEMENT IS OLD, EXPIRED AND/OR NO LONGER ACTIVE; OR NOT A FUNDAMENTAL ACTIVITY OF THE ORGANIZATION]

You indicate that your entity is eligible for the exemption from the ACWIA fee under 8 CFR § 214.2(h)(19)(iii)(B)(4). The record shows that you are a nonprofit entity under one of the relevant Internal Revenue Code of 1986 (IRC) sections. The issue, however, is whether you have entered into a formal written agreement with an institution of higher education that establishes an active working relationship between your entity and the institution of higher education for the purposes of research or education; and whether a

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fundamental activity of your entity is to directly contribute to the research or education mission of the institution of higher education.

(b)(5)

[SAMPLE ANALYSIS 2B(1): AGREEMENT EXPIRED]

education. Thus, the record does not show that you are a nonprofit entity related to or affiliated with an institution of higher education for the ACWIA fee exemption under INA § 214(c)(9)(A). As such, you are required to remit the \$750 or \$1,500 ACWIA fee, as applicable. You did not remit the \$750 or \$1,500 ACWIA fee. Thus, the Form I-129 is denied because you did not remit the required filing fees.

[SAMPLE ANALYSIS 2B(2): NO EVIDENCE OF ACTIVE RELATIONSHIP]

Further, the regulations require that you show that you have an active working relationship with the institution of higher education. XXX[Officer must insert analysis why there is no active working relationship between the petitioner and institution of higher education]XXX. Therefore, the record does not show that you are a nonprofit entity related to or affiliated with an institution of higher education for the ACWIA fee exemption under INA § 214(c)(9)(A). As such, you are required to remit the \$750 or \$1,500 ACWIA fee, as applicable. You did not remit the \$750 or \$1,500 ACWIA fee. Thus, the Form I-129 is denied because you did not remit the required filing fees.

[SAMPLE ANALYSIS 2B(3): ENTITY'S FUNDAMENTAL ACTIVITY IS NOT TO DIRECTLY CONTRIBUTE TO RESEARCH OR EDUCATION OF THE SCHOOL]

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In addition, you must show that a fundamental activity of your entity is to directly contribute to the research or education mission of the institution of higher education. XXX[Officer must insert analysis on the petitioner's fundamental activity and how it is not to directly contribute to the research or education of the institution of higher education]XXX. Thus, the record does not show that you are a nonprofit entity related to or affiliated with an institution of higher education for the ACWIA fee exemption under INA § 214(c)(9)(A). As such, you are required to remit the \$750 or \$1,500 ACWIA fee, as applicable. You did not remit the \$750 or \$1,500 ACWIA fee. Thus, the Form I-129 is denied as improperly filed because you did not remit the required filing fees.

129 H1B Denial ACWIA Fee- Nonprofit Research Organization or Governmental Research Organization

You indicated on the Form I-129 that you seek to change the beneficiary's employer / seek to begin employing the beneficiary / are seeking the first extension of the beneficiary's stay. You also indicate that the Form I-129 is exempt from the ACWIA fee because you are a nonprofit research organization or governmental research organization.

INA § 214(c)(9)(A) provides an exemption from the ACWIA fee if you are "a nonprofit research organization, or a governmental research organization."

A nonprofit organization is defined at 8 CFR § 214.2(h)(19)(iv) as:

(iv) Non-profit or tax exempt organizations. For purposes of paragraphs (h)(19)(iii)(B) and (C) of this section, a nonprofit organization or entity is:

(A) Defined as a tax exempt organization under the Internal Revenue Code of 1986,

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section 501(c)(3), (c)(4) or (c)(6), 26 U.S.C. 501(c)(3), (c)(4) or (c)(6), and

(B) Has been approved as a tax exempt organization for research or educational purposes by the Internal Revenue Service.

8 CFR § 214.2(h)(19)(iii)(C) defines a nonprofit research organization and a governmental research organization as follows:

(C) A nonprofit research organization or governmental research organization. A nonprofit research organization is an organization that is primarily engaged in basic research and/or applied research. A governmental research organization is a federal, state, or local entity whose primary mission is the performance or promotion of basic research and/or applied research. Basic research is general research to gain more comprehensive knowledge or understanding of the subject under study, without specific applications in mind. Basic research is also research that advances scientific knowledge, but does not have specific immediate commercial objectives although it may be in fields of present or potential commercial interest. It may include research and investigation in the sciences, social sciences, or humanities. Applied research is research to gain knowledge or understanding to determine the means by which a specific, recognized need may be met. Applied research includes investigations oriented to discovering new scientific knowledge that has specific commercial objectives with respect to products, processes, or services. It may include research and investigation in the sciences, social sciences, or humanities.

To qualify for ACWIA fee exemption under these criteria, you must show that your organization is a nonprofit research organization that is primarily engaged in basic and/or applied research; or that your organization is a federal, state or local governmental entity whose primary mission is the performance or promotion of basic and/or applied research.

XXX[DISCUSS WHY ENTITY IS NOT A NONPROFIT RESEARCH ORGANIZATION OR GOVERNMENTAL RESEARCH ORGANIZATION. USE, CHANGE, ADD OR REMOVE SAMPLE ANALYSIS AS APPROPRIATE]XXX

[SAMPLE ANALYSIS 1: ENTITY IS NOT A NONPROFIT UNDER IRC 501(c)(3), (c)(4) or (c)(6)]

To qualify as a nonprofit research organization, you must show that your organization is defined as a tax exemption organization under the Internal Revenue Code of 1986 (IRC) section 501(c)(3), (c)(4) or (c)(6). USCIS previously requested that you provide evidence of your nonprofit status. In response, XXX[DISCUSS WHY ENTITY IS NOT A NONPROFIT UNDER FEDERAL LAWS]XXX. You did not provide evidence that your organization has been approved as a tax exempt organization under one of the relevant IRC sections. Therefore, the record does not show that your organization is a nonprofit entity as defined in DHS regulations for the ACWIA fee exemption under INA § 214(c)(9)(A). As such, you are required to remit the \$750 or \$1,500 ACWIA fee, as applicable. You did not remit the \$750 or \$1,500 ACWIA fee. Thus, the Form I-129 is denied because you did not remit the required filing fees.

[SAMPLE ANALYSIS 2: ENTITY IS NOT PRIMARILY ENGAGED IN RESEARCH FOR NONPROFIT RESEARCH ORGANIZATIONS]

You indicate that you qualify for ACWIA fee exemption because you are a nonprofit research organization. You did not claim that you are a governmental research organization. The record shows that your organization is a nonprofit entity under one of the relevant Internal Revenue Code of 1986 (IRC) sections, but fails to establish that you are primarily engaged in basic and/or applied research. XXX[DISCUSS HOW ENTITY IS NOT PRIMARILY ENGAGED IN RESEARCH]XXX Thus, the record does not show that your organization is a nonprofit research organization for the ACWIA fee exemption under INA § 214(c)(9)(A). As such, you are required to remit the \$750 or \$1,500 ACWIA fee, as applicable. You did not remit the \$750 or \$1,500 ACWIA fee. Therefore, the Form I-129 is denied because you did not remit the required filing fees.

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[Sample Analysis 3: Government Research organization not engaged in basic or applied research.]

(b)(5)

You indicate that you qualify for ACWIA fee exemption because you are a governmental research organization. To qualify for this exemption, you must establish that you are a federal, state or local governmental entity whose primary mission is the performance or the promotion of basic and/or applied research. XXX[Officer must insert why the petitioner doesn't qualify as a federal, state or local governmental entity or that the petitioner's primary mission is not the performance or promotion of basic/applied research]XXX. Thus, the record does not show that your organization is a governmental research organization that qualifies for the ACWIA fee exemption. As such, you are required to remit the \$750 or \$1,500 ACWIA fee, as applicable. You did not remit the \$750 or \$1,500 ACWIA fee. Therefore, the Form I-129 is denied because you did not remit the required filing fees.

129 H1B Denial ACWIA Fee- Primary or Secondary Education Institution

You indicated on the Form I-129 that you seek to change the beneficiary's employer / seek to begin employing the beneficiary / are seeking the first extension of the beneficiary's stay. You also indicate that the instant Form I-129 is exempt from the ACWIA fee because you are a primary or secondary school.

INA § 214(c)(9)(A) and 8 CFR § 214.2(h)(19)(iii)(D) provide an exemption from the ACWIA fee if you are "a primary or secondary education institution."

XXX[DISCUSS WHY ENTITY IS NOT A PRIMARY OR SECONDARY SCHOOL]XXX

[SAMPLE ANALYSIS 1: DAY CARE ENTITY – NOT A PRIMARY SCHOOL]

129 H1B Denial ACWIA Fee- Nonprofit Entity that Engages in Establishing Curriculum-related Clinical Training of Students Registered at an Institution of Higher Education

You indicate that the instant Form I-129 is exempt from the ACWIA fee because you are a nonprofit organization that engages in established curriculum-related clinical training of students who are registered at institutions of higher education.

INA § 214(c)(9)(A) provides an exemption from the ACWIA fee if you are "a nonprofit entity which engages in established curriculum-related clinical training of students registered at any such institution [of higher education]."

8 CFR § 214.2(h)(19)(iii)(E) provides for the same exemption from the ACWIA fee for a "nonprofit entity which engages in an established curriculum-related clinical training of students registered at an institution of higher education."

A nonprofit entity is defined at 8 CFR § 214.2(h)(19)(iv) as:

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(iv) Non-profit or tax exempt organizations. For purposes of paragraphs (h)(19)(iii)(B) and (C) of this section, a nonprofit organization or entity is:

(A) Defined as a tax exempt organization under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4) or (c)(6), 26 U.S.C. 501(c)(3), (c)(4) or (c)(6), and

(B) Has been approved as a tax exempt organization for research or educational purposes by the Internal Revenue Service.

XXX[DISCUSS WHY ENTITY IS NOT A NONPROFIT ENTITY THAT ENAGES IN CLINICAL TRAINING]XXX

[SAMPLE ANALYSIS 1: ENTITY IS NOT A NONPROFIT UNDER IRC 501(c)(3), (c)(4) or (c)(6)]

To qualify for ACWIA fee exemption under this criterion, you must show that your entity is defined as a tax exemption organization under the Internal Revenue Code of 1986 (IRC) section 501(c)(3), (c)(4) or (c)(6). USCIS previously requested that you provide evidence of your nonprofit status. In response, XXX[DISCUSS WHY ENTITY IS NOT A NONPROFIT UNDER FEDERAL LAWS]XXX. You did not provide evidence that your entity has been approved as a tax exempt entity under one of the relevant IRC sections. Therefore, the record does not show that you are a nonprofit entity under DHS regulations for the ACWIA fee exemption under INA § 214(c)(9)(A). As such, you are required to remit the \$750 or \$1,500 ACWIA fee, as applicable. You did not remit the \$750 or \$1,500 ACWIA fee. Thus, the Form I-129 is denied because you did not remit the required filing fees.

[SAMPLE ANALYSIS 2: ENTITY DOES NOT ENGAGE IN CLINICAL TRAINING]

You indicated that you qualify for this exemption from the ACWIA fee because your entity engages in curriculum-related clinical training of students who are registered at institutions of higher education. USCIS had requested evidence of such clinical training. XXX[Officer must insert reason why the evidence does not establish that the petitioner is engaged in clinical training]XXX. Thus, the record does not show that you are eligible for the ACWIA fee exemption under INA § 214(c)(9)(A). As such, you are required to remit the \$750 or \$1,500 ACWIA fee, as applicable. You did not remit the \$750 or \$1,500 ACWIA fee. Therefore, the Form I-129 is denied because you did not remit the required filing fees.

129 H1B DENIAL CAP EXEMPTION- INTRODUCTION

The [first, second, third, next, only] issue to be discussed is whether your organization or the beneficiary is exempt from the H-1B numerical limitation ("H-1B Cap").

INA § 214(g)(1)(A) provides for an H-1B Cap as follows:

The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year (beginning with fiscal year 1992)-

(A) under section 101(a)(15)(H)(i)(b), may not exceed—

- (i) 65,000 in each fiscal year before fiscal year 1999;
- (ii) 115,000 in fiscal year 1999;
- (iii) 115,000 in fiscal year 2000;
- (iv) 195,000 in fiscal year 2001;

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- (v) 195,000 in fiscal year 2002;
- (vi) 195,000 in fiscal year 2003 and
- (vii) 65,000 in each succeeding fiscal year; or

All employers and beneficiaries are subject to the H-1B Cap unless an employer or beneficiary qualifies for an H-1B Cap exemption.

Upon filing, you indicated on the Form I-129 that your organization or the beneficiary is exempt from the H-1B Cap. Subsequently, USCIS requested that you provide additional information or evidence regarding your organization or the beneficiary's exemption from the H-1B Cap. Following your response, the record contains the following documents regarding the H-1B Cap exemption:

XXX[INSERT, REMOVE, CHANGE EVIDENCE SUBMITTED]XXX

- Information about your organization's products or services;
- Evidence that your organization is accredited or has pre-accreditation status from an agency authorized by the U.S. Department of Education to grant such status;
- Evidence of your nonprofit status;
- Copies of your Form 990, Return of Organization Exempt From Income Tax;
- Your organization's Articles of Incorporation, by-laws or similar organizational documents;
- An agreement between your organization and XXX[INSERT UNIVERSITY]XXX;
- Information regarding XXX[INSERT UNIVERSITY]XXX;
- A letter from XXX[INSERT UNIVERSITY]XXX;
- Evidence that you will employ the beneficiary to perform job duties at a qualifying institution;
- Copies of Form I-797, Approval Notices, that previously granted the beneficiary H-1B classification;
- Copies of the beneficiary's Form I-612, Application for Waiver of the Foreign Residence Requirement (under Section 212(e) of the Immigration and Nationality Act, as Amended); and
- Documents regarding your workers.

USCIS will now discuss each H-1B Cap exemption that you claim.

129 Denial Cap Exemption- Institution of Higher Education

You indicate on the H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement that the Form I-129 is exempt from the H-1B Cap because you are an institution of higher education as defined at 20 U.S.C. § 1001(a).

INA § 214(g)(5)(A) provides an exemption from the H-1B Cap at INA § 214(g)(1)(A) as follows:

The numerical limitations contained in paragraph (1)(A) shall not apply to any nonimmigrant alien issued a visa or otherwise provided status under section 101(a)(15)(H)(i)(b) who --

(A) is employed (or has received an offer of employment) at an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))), or a related or affiliated nonprofit entity;

(b)(5)

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exemption under section 214(g)(5) of the Act. For purposes of section 214(g)(5)(A) and (B) of the Act:

(1) "Institution of higher education" has the same definition as described at section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

20 U.S.C. § 1001(a) defines an "institution of higher education" as:

For purposes of this chapter, other than subchapter IV, the term "institution of higher education" means an educational institution in any State that-

(1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of section 1091(d) of this title;

(2) is legally authorized within such State to provide a program of education beyond secondary education;

(3) provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;

(4) is a public or other nonprofit institution; and

(5) is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

This exemption from the H-1B Cap requires that you show that your organization meets all five requirements in the definition of an institution of higher education at 20 U.S.C. § 1001(a).

XXX[DISCUSS WHY SCHOOL IS NOT AN INSTITUTION OF HIGHER EDUCATION. USE, CHANGE, ADD OR REMOVE SAMPLE ANALYSIS AS APPROPRIATE]XXX

[SAMPLE ANALYSIS 1: SCHOOL IS NOT A PUBLIC OR NONPROFIT INSTITUTION]

USCIS had requested that you provide evidence that your organization is a public or nonprofit institution. However, you did not provide such documents. Instead, the record indicates that your organization is a private for-profit college. Therefore, your organization is not eligible for the exemption from the H-1B Cap as an institution of higher education under INA § 214(g)(5)(A).

[SAMPLE ANALYSIS 2: SCHOOL IS NOT ACCREDITED OR DOES NOT HAVE PRE-ACCREDITATION STATUS]

USCIS requested that you provide evidence that your organization is accredited or has pre-accreditation status from an agency authorized by the U.S. Department of Education to grant such status. In response, you did not provide such evidence. USCIS reviewed the U.S. Department of Education's Database of Accredited Postsecondary Institutions and Programs⁴ and USCIS could not locate your organization as an entity that is

⁴ <http://ope.ed.gov/accreditation/Search.aspx>.

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accredited or has pre-accreditation status. Therefore, you have not established that your organization is exempt from the H-1B Cap as an institution of higher education under INA § 214(g)(5)(A).

129 H1B Denial Cap Exemption- Nonprofit Entity Related to or Affiliated with an Institution of Higher Education

You indicate on the H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement that the Form I-129 is exempt from the H-1B Cap because you are a nonprofit entity that is related to or affiliated with an institution of higher education as defined at 20 U.S.C. § 1001(a).

INA § 214(g)(5)(A) provides an exemption from the H-1B Cap at INA § 214(g)(1)(A) as follows:

The numerical limitations contained in paragraph (1)(A) shall not apply to any nonimmigrant alien issued a visa or otherwise provided status under section 101(a)(15)(H)(i)(b) who --

(A) is employed (or has received an offer of employment) at an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))), or a related or affiliated nonprofit entity;

8 CFR § 214.2(h)(8)(ii)(F)(2) provides for an exemption from the H-1B Cap for nonprofit entities related to or affiliated with institutions of higher education as follows:

(F) Cap exemptions under sections 214(g)(5)(A) and (B) of the Act. An alien is not subject to the numerical limitations identified in section 214(g)(1)(A) of the Act if the alien qualifies for an exemption under section 214(g)(5) of the Act. For purposes of section 214(g)(5)(A) and (B) of the Act:

(2) A nonprofit entity shall be considered to be related to or affiliated with an institution of higher education if it satisfies any one of the following conditions:

(i) The nonprofit entity is connected to or associated with an institution of higher education through shared ownership or control by the same board or federation;

(ii) The nonprofit entity is operated by an institution of higher education;

(iii) The nonprofit entity is attached to an institution of higher education as a member, branch, cooperative, or subsidiary; or

(iv) The nonprofit entity has entered into a formal written affiliation agreement with an institution of higher education that establishes an active working relationship between the nonprofit entity and the institution of higher education for the purposes of research or education, and a fundamental activity of the nonprofit entity is to directly contribute to the research or education mission of the institution of higher education.

A nonprofit entity is defined at 8 CFR § 214.2(h)(19)(iv) as:

(iv) Non-profit or tax exempt organizations. For purposes of paragraphs (h)(19)(iii)(B) and (C) of this section, a nonprofit organization or entity is:

(A) Defined as a tax exempt organization under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4) or (c)(6), 26 U.S.C. 501(c)(3), (c)(4) or (c)(6), and

(B) Has been approved as a tax exempt organization for research or educational purposes

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by the Internal Revenue Service.

XXX[ONLY KEEP THIS IN IF PETITIONER IS TRYING TO CLAIM DEFERENCE UNDER THE APRIL 2013 GUIDANCE]XXXThis exemption from the H-1B Cap requires that you show that you are a nonprofit entity that meets at least one of four criteria⁵ at 8 CFR § 214.2(h)(8)(ii)(F)(2). Prior to January 17, 2017, USCIS had issued interim guidance that allowed for USCIS to afford deference to prior approvals where USCIS determined that a petitioner was a nonprofit entity related to or affiliated with an institution of higher education since June 6, 2006.⁵ In the Federal Register notice⁶ that implemented 8 CFR § 214.2(h)(8)(ii)(F)(2), USCIS-DHS noted that the regulation “better reflects current operational realities for institutions of higher education and how they interact with, and sometimes rely on, nonprofit entities, and account for the nature and scope of common, bona fide affiliations between nonprofit entities and institutions of higher education.” The regulation supersedes past USCIS guidance in this area, and deference will no longer be afforded to prior approvals where USCIS determined that a petitioner was a nonprofit entity related to or affiliated with an institution of higher education. Instead, USCIS will adjudicate requests for this cap exemption based on the evidentiary criteria listed in the regulation to determine whether an entity is a nonprofit entity related to or affiliated with an institution of higher education.

XXX[DISCUSS WHY ENTITY IS NOT A NONPROFIT RELATED OR AFFILIATED ENTITY. USE, CHANGE, ADD OR REMOVE SAMPLE ANALYSIS AS APPROPRIATE]XXX

[SAMPLE ANALYSIS 1: ENTITY IS NOT A NONPROFIT UNDER IRC 501(c)(3), (c)(4) or (c)(6)]

To meet the requirements under this H-1B Cap exemption, you must show that your entity is defined as a tax exempt entity under the Internal Revenue Code of 1986 (IRC) section 501(c)(3), (c)(4) or (c)(6). USCIS previously requested that you provide evidence of your nonprofit status. In response, XXX[DISCUSS WHY ENTITY IS NOT A NONPROFIT UNDER FEDERAL LAWS]XXX. You did not provide evidence that your entity has been approved as a tax exempt entity under one of the relevant IRC sections. Therefore, the record does not show that you are a nonprofit entity as defined in DHS regulations for the H-1B Cap exemption under INA § 214(g)(5)(A).

[SAMPLE ANALYSIS 2: HAS NOT MEET REQUIREMENTS AT 8 CFR § 214.2(h)(8)(ii)(F)(2)(i), (ii), (iii) or (iv)]

You indicate that you are a nonprofit entity related to or affiliated with XXX[INSERT UNIVERSITY]XXX.

USCIS will first consider whether you have shown that you are a related or affiliated nonprofit entity pursuant to 8 CFR § 214.2(h)(8)(ii)(F)(2)(i): The nonprofit entity is connected to or associated with an institution of higher education through shared ownership or control by the same board or federation.

(b)(5)

Second, USCIS considers whether you have established that you are a related or affiliated nonprofit entity pursuant to 8 CFR § 214.2(h)(8)(ii)(F)(2)(ii): The nonprofit entity is operated by an institution of higher education.

⁵ See USCIS Interim Policy Memorandum, *Additional Guidance to the Field on Giving Deference to Prior Determinations of H-1B Cap Exemption Based on Affiliation* (Apr. 28, 2011) (2011 Interim Policy Memo).

⁶ See 81 Federal Register 82447 (November 18, 2016).

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The record does not demonstrate that your entity is operated by an institution of higher education, XXX[DISCUSS WHY PETITIONER IS NOT OPERATED BY AN INSTITUTION OF HIGHER EDUCATION]XXX. Accordingly, you have not shown that you are operated by an institution of higher education.

Third, USCIS considers whether your entity is a related or affiliated nonprofit entity pursuant to 8 CFR § 214.2(h)(8)(ii)(F)(2)(iii): The nonprofit entity is attached to an institution of higher education as a member, branch, cooperative, or subsidiary.

All four of these terms indicate, at a bare minimum, some type of shared ownership and/or control, which has not been presented in this matter. *See generally, Black's Law Dictionary* at 224, 409, 1656 (10th Edition 2014) (defining the terms branch, cooperative, and subsidiary); *see also, Webster's New College Dictionary* at 699 (3rd Edition 2008) (defining the term member). XXX[DISCUSS HOW EMPLOYER DOES NOT MEET REQUIREMENTS AS MEMBER, BRANCH, COOPERATIVE OR SUBSIDIARY]XXX Accordingly, you have not shown that you are attached to an institution of higher education as a member, branch, cooperative, or subsidiary.

[SAMPLE ANALYSIS 2A: ENTITY HAS NOT ENTERED INTO FORMAL WRITTEN AFFILIATION AGREEMENT WITH SCHOOL. AGREEMENT IS WITH PARENT, AFFILIATE OR SUBSIDIARY]

Fourth, USCIS considers whether your organization is eligible for the exemption from the H-1B Cap under 8 CFR § 214.2(h)(8)(ii)(F)(2)(iv): The nonprofit entity has entered into a formal written affiliation agreement with an institution of higher education that establishes an active working relationship between the nonprofit entity and the institution of higher education for the purposes of research or education, and a fundamental activity of the nonprofit entity is to directly contribute to the research or education mission of the institution of higher education.

The record shows that your organization is a nonprofit entity under one of the relevant Internal Revenue Code of 1986 (IRC) sections. The issue, however, is whether you have entered into a formal written agreement with an institution of higher education that establishes an active working relationship between your entity and the institution of higher education for the purposes of research or education.

XXX[Officer must insert analysis to the parties involved in the affiliation agreement and describe the purpose of the affiliation agreement]XXX. Since the regulations require that your entity has entered into a formal written affiliation agreement with an institution of higher education that establishes an active working relationship between the nonprofit entity and the institution of higher education for the purposes of research or education, the agreement between your XXX[parent/affiliate/subsidiary]XXX does not meet this requirement. You did not provide evidence that your entity has entered into a formal written agreement with an institution of higher education that establishes an active working relationship between your entity and the institution of higher education for the purposes of research or education. Therefore, the record does not show that you are a nonprofit entity related to or affiliated with an institution of higher education for the H-1B cap exemption under INA § 214(g)(5)(A).

[SAMPLE ANALYSIS 2B: FORMAL AGREEMENT IS OLD, EXPIRED AND/OR NO LONGER ACTIVE; OR NOT A FUNDAMENTAL ACTIVITY OF THE ORGANIZATION]

You indicate that your organization is eligible for the exemption from the H-1B Cap under 8 CFR § 214.2(h)(8)(ii)(F)(2)(iv). The record shows that your organization is a nonprofit entity under one of the relevant Internal Revenue Code of 1986 (IRC) sections. The issue, however, is whether you have entered into a formal written agreement with an institution of higher education that establishes an active working relationship between your entity and the institution of higher education for the purposes of research or education; and whether a fundamental activity of your entity is to directly contribute to the research or education mission of the institution of higher education.

[SAMPLE ANALYSIS 2B(1)A: AGREEMENT EXPIRED]

(b)(5)

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(b)(5)

Further, the regulations require that you show that you have an active working relationship with the institution of higher education. XXX[Officer must insert analysis why there is no active working relationship between the petitioner and the institution of higher education]XXX. Therefore, the record does not show that you are a nonprofit entity related to or affiliated with an institution of higher education for the H-1B Cap exemption under INA § 214(g)(5)(A).

[SAMPLE ANALYSIS 2B(3): ENTITY'S FUNDAMENTAL ACTIVITY IS NOT TO DIRECTLY CONTRIBUTE TO RESEARCH OR EDUCATION OF THE SCHOOL]

In addition, you must show that a fundamental activity of your entity is to directly contribute to the research or education mission of the institution of higher education. XXX[Officer must insert analysis on the petitioner's fundamental activity and how it is not to directly contribute to the research or education of the institution of higher education]XXX. Thus, the record does not show that you are a nonprofit entity related to or affiliated with an institution of higher education for the H-1B Cap exemption under INA § 214(g)(5)(A).

129 H1B Denial Cap Exemption- Nonprofit Research Organization or Governmental Research Organization

You indicate on the H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement that the Form I-129 is exempt from the H-1B Cap because you are a nonprofit research organization or governmental research organization.

INA § 214(g)(5)(B) provides an exemption from the H-1B Cap at INA § 214(g)(1)(A) as follows:

The numerical limitations contained in paragraph (1)(A) shall not apply to any nonimmigrant alien issued a visa or otherwise provided status under section 101(a)(15)(H)(i)(b) who --

(B) is employed (or has received an offer of employment) at a nonprofit research organization or a governmental research organization; or

8 CFR § 214.2(h)(8)(ii)(F)(3) provides for an exemption from the H-1B Cap for nonprofit research organizations or governmental research organizations as follows:

(F) Cap exemptions under sections 214(g)(5)(A) and (B) of the Act. An alien is not subject to the numerical limitations identified in section 214(g)(1)(A) of the Act if the alien qualifies for an exemption under section 214(g)(5) of the Act. For purposes of section 214(g)(5)(A) and (B) of the Act:

(3) An entity is considered a "nonprofit entity" if it meets the definition described at paragraph (h)(19)(iv) of this section. "Nonprofit research organization" and "governmental research organization" have the same definitions as described at paragraph (h)(19)(iii)(C) of this section.

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A nonprofit entity is defined at 8 CFR § 214.2(h)(19)(iv) as:

(iv) Non-profit or tax exempt organizations. For purposes of paragraphs (h)(19)(iii)(B) and (C) of this section, a nonprofit organization or entity is:

(A) Defined as a tax exempt organization under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4) or (c)(6), 26 U.S.C. 501(c)(3), (c)(4) or (c)(6), and

(B) Has been approved as a tax exempt organization for research or educational purposes by the Internal Revenue Service.

8 CFR § 214.2(h)(19)(iii)(C) defines a nonprofit research organization and a governmental research organization as follows:

(C) A nonprofit research organization or governmental research organization. A nonprofit research organization is an organization that is primarily engaged in basic research and/or applied research. A governmental research organization is a federal, state, or local entity whose primary mission is the performance or promotion of basic research and/or applied research. Basic research is general research to gain more comprehensive knowledge or understanding of the subject under study, without specific applications in mind. Basic research is also research that advances scientific knowledge, but does not have specific immediate commercial objectives although it may be in fields of present or potential commercial interest. It may include research and investigation in the sciences, social sciences, or humanities. Applied research is research to gain knowledge or understanding to determine the means by which a specific, recognized need may be met. Applied research includes investigations oriented to discovering new scientific knowledge that has specific commercial objectives with respect to products, processes, or services. It may include research and investigation in the sciences, social sciences, or humanities.

To qualify for H-1B Cap exemption under these criteria, you must show that your organization is a nonprofit research organization that is primarily engaged in basic and/or applied research; or that your organization is a federal, state or local entity whose primary mission is the performance or promotion of basic and/or applied research.

XXX[DISCUSS WHY ENTITY IS NOT A NONPROFIT RESEARCH ORGANIZATION OR GOVERNMENTAL RESEARCH ORGANIZATION. USE, CHANGE, ADD OR REMOVE SAMPLE ANALYSIS AS APPROPRIATE]XXX

[SAMPLE ANALYSIS 1: ENTITY IS NOT A NONPROFIT UNDER IRC 501(c)(3), (c)(4) or (c)(6)]

To qualify as a nonprofit research organization, you must show that your organization is defined as a tax exemption organization under the Internal Revenue Code of 1986 (IRC) section 501(c)(3), (c)(4) or (c)(6). USCIS previously requested that you provide evidence of your nonprofit status. In response, XXX[DISCUSS WHY ENTITY IS NOT A NONPROFIT UNDER FEDERAL LAWS OR [You did not provide evidence that your organization has been approved as a tax exempt organization under one of the relevant IRC sections.] Therefore, the record does not show that your organization is a nonprofit organization under DHS regulations for the H-1B Cap exemption under INA § 214(g)(5)(B).

[SAMPLE ANALYSIS 2: ENTITY IS NOT PRIMARILY ENGAGED IN RESEARCH]

You indicate that you qualify for H-1B Cap exemption because you are a nonprofit research organization. You did not claim that you are a governmental research organization. The record shows that your organization is a nonprofit entity under one of the relevant Internal Revenue Code of 1986 (IRC) sections. However, XXX[DISCUSS HOW ENTITY IS NOT PRIMARILY ENGAGED IN RESEARCH]XXX Thus, the record does not

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show that your organization is a nonprofit research organization for the H-1B Cap exemption under INA § 214(g)(5)(B).

[Sample Analysis 3: Government Research organization not engaged in basic or applied research.]

You indicate that you qualify for H-1B Cap exemption because you are a governmental research organization. To qualify for this exemption, you must establish that you are a federal, state or local governmental entity whose primary mission is the performance or the promotion of basic and/or applied research. XXX[Officer must insert why the petitioner doesn't qualify as a federal, state or local governmental entity or that the petitioner's primary mission is not the performance or promotion of basic/applied research]XXX. Thus, the record does not show that your organization is a governmental research organization for the H-1B Cap exemption under INA § 214(g)(5)(B).

129 H1B Denial Cap Exemption- Beneficiary Will Perform Job Duties at a Qualifying Institution, Organization, or Entity

You indicate that the beneficiary is exempt from the H-1B Cap because you will employ the beneficiary to perform job duties at a qualifying institution, organization or entity that directly and predominantly furthers the essential purpose, mission, objectives or functions of the qualifying institution, organization or entity.:

INA § 214(g)(5)(A) and (g)(5)(B) provide for exemptions from the H-1B Cap at INA § 214(g)(1)(A) as follows:

The numerical limitations contained in paragraph (1)(A) shall not apply to any nonimmigrant alien issued a visa or otherwise provided status under section 101(a)(15)(H)(i)(b) who --

(A) is employed (or has received an offer of employment) at an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))), or a related or affiliated nonprofit entity;

(B) is employed (or has received an offer of employment) at a nonprofit research organization or a governmental research organization; or

8 CFR § 214.2(h)(8)(ii)(F)(4) provides for an exemption from the H-1B Cap if the beneficiary will spend the majority of the beneficiary's work time performing job duties at a qualifying institution, organization or entity as defined at INA § 214(g)(5)(A) or (g)(5)(B).

(4) An H-1B beneficiary who is not directly employed by a qualifying institution, organization or entity identified in section 214(g)(5)(A) or (B) of the Act shall qualify for an exemption under such section if the H-1B beneficiary will spend the majority of his or her work time performing job duties at a qualifying institution, organization or entity and those job duties directly and predominately further the essential purpose, mission, objectives or functions of the qualifying institution, organization or entity, namely, either higher education, nonprofit research or government research. The burden is on the H-1B petitioner to establish that there is a nexus between the duties to be performed by the H-1B beneficiary and the essential purpose, mission, objectives or functions of the qualifying institution, organization or entity.

To meet the requirements under this H-1B Cap exemption, you must show that the majority of the beneficiary's work time will be spent performing duties at a qualifying institution, organization or entity under INA § 214(g)(5)(A) or (g)(5)(B). A qualifying institution is an institution of higher education, a nonprofit related or affiliated entity, a nonprofit research organization or a governmental research organization.

XXX[DISCUSS WHY EMPLOYMENT IS NOT MAJORITY AT A QUALIFYING INSTITUTION]XXX

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[SAMPLE ANALYSIS 1: JOB DUTIES DO NOT DIRECTLY AND PREDOMINATELY FURTHER THE ESSENTIAL PURPOSE, MISSION, OBJECTIVES OR FUNCTIONS OF QUALIFYING INSTITUTION]

You stated that the beneficiary will work at XXX[INSERT QUALIFYING INSTITUTION]XXX. You also indicate that XXX[INSERT QUALIFYING INSTITUTION]XXX is a qualifying institution, organization or entity under INA § 214(g)(5)(A) or (g)(5)(B). However, to qualify for this exemption from the H-1B Cap, you must show that the majority of the beneficiary's work time will be spent performing duties at the qualifying institution and that those job duties directly and predominately further the essential purpose, mission, objectives or functions of the qualifying institution. XXX[DISCUSS HOW THE BENEFICIARY WILL NOT SPEND A MAJORITY OF TIME PERFORMING DUTIES THAT PREDOMINANTLY FURTHER THE ESSENTIAL PURPOSE, MISSION, OBJECTIVES OR FUNCTIONS OF QUALIFYING INSTITUTION]XXX Thus, you have not shown that the majority of the beneficiary's working time will be spent performing job duties at a qualifying institution, organization or entity and that those job duties directly and predominantly furthers the essential purpose, mission, objectives or functions of the qualifying institution, organization or entity, namely, either higher education, nonprofit research or government research. Accordingly, the beneficiary is not eligible for the H-1B Cap exemption under this criterion.

[SAMPLE ANALYSIS 2: QUALIFYING INSTITUTION IS NOT A NONPROFIT UNDER IRC 501(c)(3), (c)(4) or (c)(6) Related to or Affiliated]

You stated that the beneficiary will work at XXX[INSERT QUALIFYING INSTITUTION]XXX. You also indicate that XXX[INSERT QUALIFYING INSTITUTION]XXX is a nonprofit entity related to or affiliated with an institution of higher education. USCIS had requested evidence to show that the qualifying institution is defined as a tax exempt organization under the Internal Revenue Code of 1986 (IRC) section 501(c)(3), (c)(4) or (c)(6). In response, you did not provide evidence that the qualifying institution has been approved as a tax exempt organization under one of the relevant IRC sections. Therefore, the record does not show that the qualifying institution is a nonprofit entity related to or affiliated with an institution of higher education under DHS regulations for the H-1B Cap exemption under INA § 214(g)(5)(A). Thus, the beneficiary is not exempt from the H-1B Cap because the beneficiary will not work at a qualifying institution.

[SAMPLE ANALYSIS 3: QUALIFYING INSTITUTION HAS NOT MEET REQUIREMENTS AT 8 CFR § 214.2(h)(8)(ii)(F)(2)(i), (ii), (iii) or (iv)]

You stated that the beneficiary will work at XXX[INSERT QUALIFYING INSTITUTION]XXX. You also indicate that XXX[INSERT QUALIFYING INSTITUTION]XXX is a nonprofit entity related to or affiliated with XXX[INSERT UNIVERSITY]XXX. The record contains sufficient evidence that XXX[INSERT QUALIFYING INSTITUTION]XXX is a nonprofit entity under one of the relevant Internal Revenue Code (IRC) sections. However, you must show that XXX[INSERT QUALIFYING INSTITUTION]XXX is related to or affiliated with an institution of higher education in order to qualify for exemption from the cap on this basis.

USCIS will first consider whether you have shown that XXX[INSERT QUALIFYING INSTITUTION]XXX is a related or affiliated nonprofit entity pursuant to 8 CFR § 214.2(h)(8)(ii)(F)(2)(i): The nonprofit entity is connected to or associated with an institution of higher education through shared ownership or control by the same board or federation.

Upon review, the record does not establish that XXX[INSERT QUALIFYING INSTITUTION]XXX and XXX[INSERT UNIVERSITY]XXX are owned or controlled by the same boards or federations. USCIS interprets the terms "board" and "federation" as referring to educational bodies such as a board of education or a board of regents. You did not claim that XXX[INSERT QUALIFYING INSTITUTION]XXX share the same board or federation with institutions of higher education.

Second, USCIS considers whether you have established that XXX[INSERT QUALIFYING INSTITUTION]XXX is a related or affiliated nonprofit entity pursuant to 8 CFR § 214.2(h)(8)(ii)(F)(2)(ii): The nonprofit entity is operated by an institution of higher education.

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The record does not demonstrate that an institution of higher education operates XXX[INSERT QUALIFYING INSTITUTION]XXX, XXX[DISCUSS WHY QUALIFYING INSTITUTION IS NOT OPERATED BY AN INSTITUTION OF HIGHER EDUCATION]XXX. Accordingly, you have not shown that XXX[INSERT QUALIFYING INSTITUTION]XXX is operated by an institution of higher education.

Third, USCIS considers whether XXX[INSERT QUALIFYING INSTITUTION]XXX is a related or affiliated nonprofit entity pursuant to 8 CFR § 214.2(h)(8)(ii)(F)(2)(iii). The nonprofit entity is attached to an institution of higher education as a member, branch, cooperative, or subsidiary.

(b)(5)

All four of these terms indicate, at a bare minimum, some type of shared ownership and/or control, which has not been presented in this matter. *See generally*, *Black's Law Dictionary* at 224, 409, 1656 (10th Edition 2014) (defining the terms branch, cooperative, and subsidiary); *see also*, *Webster's New College Dictionary* at 699 (3rd Edition 2008) (defining the term member). XXX[DISCUSS HOW QUALIFYING ORGANIZATION IS NOT A MEMBER, BRANCH, COOPERATIVE OR SUBSIDIARY]XXX. You have not sufficiently explained how these aspects demonstrate shared ownership and/or control. Therefore, the record does not show that XXX[INSERT QUALIFYING INSTITUTION]XXX is a nonprofit entity related to or affiliated with an institution of higher education for the H-1B Cap exemption under INA § 214(g)(5)(A). Thus, the beneficiary is not exempt from the H-1B Cap because the beneficiary will not work at a qualifying institution.

[SAMPLE ANALYSIS 3A: QUALIFYING INSTITUTION HAS NOT ENTERED INTO FORMAL WRITTEN AFFILIATION AGREEMENT WITH SCHOOL. AGREEMENT IS WITH PARENT, AFFILIATE OR SUBSIDIARY]

Fourth, USCIS will consider whether XXX[INSERT QUALIFYING INSTITUTION]XXX is a related or affiliated nonprofit entity pursuant to 8 CFR § 214.2(h)(8)(ii)(F)(2)(iv). You stated that the beneficiary will work at XXX[INSERT QUALIFYING INSTITUTION]XXX.

XXX[Officer must insert analysis to the parties involved in the affiliation agreement and describe the purpose of the affiliation agreement]XXX. Since the regulations require that XXX[INSERT QUALIFYING INSTITUTION]XXX has entered into a formal written affiliation agreement with an institution of higher education that establishes an active working relationship between the nonprofit entity and the institution of higher education for the purposes of research or education, the agreement between XXX[INSERT NAME OF AFFILIATE, PARENT OR SUBSIDIARY]XXX and XXX[INSERT QUALIFYING INSTITUTION]XXX does not meet this requirement. You did not provide evidence that XXX[INSERT QUALIFYING INSTITUTION]XXX has entered into a formal written agreement with an institution of higher education that establishes an active working relationship between the nonprofit entity and the institution of higher education for the purposes of research or education. Therefore, the record does not show that XXX[INSERT QUALIFYING INSTITUTION]XXX is a nonprofit entity related to or affiliated with an institution of higher education for the H-1B Cap exemption under INA § 214(g)(5)(A). Thus, the beneficiary is not exempt from the H-1B Cap because the beneficiary will not work at a qualifying institution.

[SAMPLE ANALYSIS 3B: FORMAL AGREEMENT IS OLD, EXPIRED AND/OR NO LONGER ACTIVE; OR NOT A FUNDAMENTAL ACTIVITY OF THE ORGANIZATION]

You stated that the beneficiary will work at XXX[INSERT QUALIFYING INSTITUTION]XXX. You also indicate that XXX[INSERT QUALIFYING INSTITUTION]XXX is a nonprofit entity related to or affiliated with XXX[INSERT UNIVERSITY]XXX. The record contains sufficient evidence that XXX[INSERT QUALIFYING INSTITUTION]XXX is a nonprofit entity under one of the relevant Internal Revenue Code (IRC) section. However, you must show that XXX[INSERT QUALIFYING INSTITUTION]XXX is related to or affiliated with an institution of higher education.

[SAMPLE ANALYSIS 3B(1): AGREEMENT EXPIRED]

You submitted an agreement between XXX[INSERT QUALIFYING INSTITUTION]XXX and XXX[INSERT UNIVERSITY]XXX. XXX[Officer must insert analysis describing the evidence that shows the agreement has expired]

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prior to filing.]XXX However, the document indicates a review of this agreement indicates that the agreement had expired prior to the filing of this Form I-129. You did not provide evidence that XXX[INSERT QUALIFYING INSTITUTION]XXX has a formal written agreement at the time of filing with XXX[INSERT UNIVERSITY]XXX that establishes an active working relationship with such institution of higher education. Thus, the record does not show that XXX[INSERT QUALIFYING INSTITUTION]XXX is a nonprofit entity related to or affiliated with an institution of higher education for the H-1B Cap exemption under INA § 214(g)(5)(A).

[SAMPLE ANALYSIS 3B(2): NO EVIDENCE OF ACTIVE RELATIONSHIP]

Further, the regulations require that you show that XXX[INSERT QUALIFYING INSTITUTION]XXX has an active working relationship with the institution of higher education. XXX[Officer must insert analysis why there is no active working relationship between the qualifying institution and institution of higher education]XXX. Therefore, the record does not show that XXX[INSERT QUALIFYING INSTITUTION]XXX is a nonprofit entity related to or affiliated with an institution of higher education for the H-1B Cap exemption under INA § 214(g)(5)(A).

[SAMPLE ANALYSIS 3B(3): ENTITY'S FUNDAMENTAL ACTIVITY IS NOT TO DIRECTLY CONTRIBUTE TO RESEARCH OR EDUCATION OF THE SCHOOL]

In addition, you must show that a fundamental activity of XXX[INSERT QUALIFYING INSTITUTION]XXX is to directly contribute to the research or education mission of the institution of higher education. XXX[Officer must insert analysis describing the qualifying institutions fundamental activity and how it is not to directly contribute to the research or education of the institution of higher education]XXX. Thus, the record does not show that XXX[INSERT QUALIFYING INSTITUTION]XXX is a nonprofit entity related to or affiliated with an institution of higher education for the H-1B Cap exemption under INA § 214(g)(5)(A). Therefore, the beneficiary is not exempt from the H-1B Cap because the beneficiary will not work at a qualifying institution.

129 H1B Denial Cap Exemption- Previously Counted in the H-1B Cap

You indicate on the H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement that the Form I-129 is exempt from the H-1B Cap because the beneficiary was previously counted in the H-1B Cap.

XXX[Officers please delete any citations that does not pertain to the issue at hand.]XXX INA § 214(g)(7) provides an exemption from the H-1B Cap at INA § 214(g)(1)(A) when an H-1B worker was already counted in the H-1B Cap as follows:

(7) Any alien who has already been counted within the 6 years prior to the approval of a petition described in subsection (c), toward the numerical limitations of paragraph (1)(A) shall not again be counted toward those limitations unless the alien would be eligible for a full 6 years of authorized admission at the time the petition is filed. Where multiple petitions are approved for 1 alien, that alien shall be counted only once.

8 CFR § 214.2(h)(8)(ii)(A) further clarifies how H-1B beneficiaries are counted in the H-1B Cap:

(A) Each alien issued a visa or otherwise provided nonimmigrant status under sections 101(a)(15)(H)(i)(b), 101(a)(15)(H)(i)(c), or 101(a)(15)(H)(ii) of the Act shall be counted for purposes of any applicable numerical limit, unless otherwise exempt from such numerical limit. Requests for petition extension or extension of an alien's stay shall not be counted for the purpose of the numerical limit. The spouse and children of principal H aliens are classified as H-4 nonimmigrants and shall not be counted against numerical limits applicable to principals.

8 CFR § 214.2(h)(8)(ii)(C) states that when a beneficiary does not apply for admission to the United States and the H-1B Cap case was automatically revoked, then the H-1B Cap number will be taken back.

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(C) When an approved petition is not used because the beneficiary(ies) does not apply for admission to the United States, the petitioner shall notify the Service Center Director who approved the petition that the number(s) has not been used. The petition shall be revoked pursuant to paragraph (h)(11)(ii) of this section and USCIS will take into account the unused number during the appropriate fiscal year.

For beneficiaries who had concurrent cap-exempt employment, 8 CFR § 214.2(h)(8)(ii)(F)(5) states that when the cap-exempt employment ceases and the beneficiary was not previously counted in the H-1B Cap within the six year period of authorized admission to which the cap-exempt employment applied, then the beneficiary will be subject to the H-1B Cap:

If cap-exempt employment ceases, and if the alien is not the beneficiary of a new cap-exempt petition, then the alien will be subject to the cap if not previously counted within the 6-year period of authorized admission to which the cap-exempt employment applied. If cap-exempt employment converts to cap-subject employment subject to the numerical limitations in section 214(g)(1)(A) of the Act, USCIS may revoke the petition authorizing such employment consistent with paragraph (h)(11)(iii) of this section.

(b)(5)

To qualify for this exemption from the H-1B Cap, you must submit evidence that the beneficiary was previously counted in the H-1B Cap and has not exhausted his or her 6 years of H-1B admission.

XXX[DISCUSS WHY BENEFICIARY WAS NOT COUNTED WITHIN H-1B CAP. USE, CHANGE, ADD OR REMOVE SAMPLE ANALYSIS AS APPROPRIATE]XXX

[SAMPLE ANALYSIS 1: BENEFICIARY WORKED AT A CAP-EXEMPT ENTITY]

The record contains copies of the beneficiary's Forms I-797. These documents and USCIS records indicate that the beneficiary was previously approved for H-1B employment with an H-1B Cap exempt entity. USCIS approved that employment because the prior employer was exempt from the H-1B Cap under INA § 214(g)(5)(A) or (g)(5)(B). The record does not show that the beneficiary has ever been counted in the H-1B Cap by virtue of having obtained H-1B status or visa based on a Form I-129 that was subject to the numerical limitations in INA § 214(g)(1)(A). Additionally, the evidence provided does not establish that you are exempt from the H-1B cap under INA § 214(g)(5)(A) and (g)(5)(B). Thus, you have not established that the beneficiary is exempt from the H-1B Cap under this criterion.

[SAMPLE ANALYSIS 2: CAP CASE WAS REVOKED WITHOUT USE]

The record contains copies of the beneficiary's Forms I-797. These documents and USCIS records indicate that the beneficiary was previously counted against the H-1B cap and approved for H-1B classification beginning in fiscal year XXX[INSERT H-1B INITIAL FISCAL YEAR APPROVAL]XXX. Subsequently, on XXX[INSERT REVOCATION DATE]XXX, USCIS revoked the cap-subject H-1B petition approval pursuant to a request from the petitioner. The record does not contain evidence that the beneficiary had ever obtained an H-1B visa or H-1B status based on the revoked H-1B Cap case. Therefore, pursuant to 8 CFR § 214.2(h)(8)(ii)(C), the H-1B Cap number that the beneficiary previously obtained was taken back when USCIS revoked that H-1B Cap case. Thus, the beneficiary is not eligible for H-1B Cap exemption under this criterion.

129 H1B Denial Cap Exemption- Waiver under INA 214(i)

A beneficiary may be exempt from the H-1B Cap if the beneficiary is an exchange visitor (J-1) who engaged in graduate medical education or training in the United States and the beneficiary has obtained a waiver of the two-year foreign residence requirement under INA § 214(i).

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INA § 214(l)(2)(A) provides for an exemption from the H-1B Cap for certain J-1 nonimmigrants:

(2) (A) Notwithstanding section 248(a)(2), the Attorney General may change the status of an alien that qualifies under this subsection and section 212(e) to that of an alien described in section 101(a)(15)(H)(i)(b). The numerical limitations contained in subsection (g)(1)(A) shall not apply to any alien whose status is changed under the preceding sentence, if the alien obtained a waiver of the 2-year foreign residence requirement upon a request by an interested Federal agency or an interested State agency.

This H-1B Cap exemption requires that you provide evidence that the beneficiary has obtained a waiver of the two-year foreign residence requirement under INA § 214(l). INA § 214(l) has two waivers. One waiver is for the beneficiary to work as an H-1B physician for at least three years in a medically underserved area pursuant to a request from a state department of public health. This waiver is commonly called the state “Conrad 30” waiver. The second waiver is for the beneficiary to work as an H-1B physician, in medical research or training for at least three years pursuant to a request from a Federal government agency. This second waiver is commonly called the Interested Government Agency (“IGA”) waiver.

XXX[DISCUSS WHY BENEFICIARY DOES NOT HAVE A WAIVER UNDER INA 214(l). USE, CHANGE, ADD OR REMOVE SAMPLE ANALYSIS AS APPROPRIATE]XXX

[SAMPLE ANALYSIS 1: BENEFICIARY HAS THE WRONG WAIVER]

USCIS previously requested that you provide evidence that the beneficiary has a waiver under INA § 214(l). In response, you provided evidence that the beneficiary has an approved Form I-612, Application for Waiver of the Foreign Residence Requirement (under Section 212(e) of the Immigration and Nationality Act, as Amended). However, the beneficiary’s Form I-612 was approved based on XXX[exceptional hardship to the beneficiary’s U.S. citizen or lawful permanent resident spouse or child / potential persecution of the beneficiary on account of race, religion or political opinion / no objection from the foreign government]XXX. Such an approval is not a waiver under INA § 214(l). Thus, the beneficiary is not eligible for this H-1B Cap exemption because the beneficiary does not have a waiver under INA § 214(l).

129 H1B Denial Cap Exemption- Beneficiary will work in Guam or CNMI

You indicated that the beneficiary is exempt from the H-1B Cap because the beneficiary will work in Guam or CNMI.

Section 702 of Public Law 110-229, as amended by section 10 of Public Law 113-235, created a new section 6 to Public Law 94-241 (90 Stat. 263). The newly created section 6 of Public Law 94-241 allowed for an exemption from the H-1B Cap until December 31, 2019 if the beneficiary will work in Guam or CNMI.

Sections 6(a)(2) and 6(b) of Public Law 94-241 state:

(a)(2) TRANSITION PERIOD.—There shall be a transition period beginning on the transition program effective date and ending on December 31, 2019, during which the Secretary of Homeland Security, in consultation with the Secretary of State, the Attorney General, the Secretary of Labor, and the Secretary of the Interior, shall establish, administer, and enforce a transition program to regulate immigration to the Commonwealth, as provided in this section (hereafter referred to as the ‘transition program’).

(b) NUMERICAL LIMITATIONS FOR NONIMMIGRANT WORKERS.— An alien, if otherwise qualified, may seek admission to Guam or to the Commonwealth during the transition program as a nonimmigrant worker under section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) without counting against the numerical limitations set forth in section 214(g) of such Act (8 U.S.C. 1184(g)). This subsection does not apply to

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any employment to be performed outside of Guam or the Commonwealth. Not later than 3 years following the transition program effective date, the Secretary of Homeland Security shall issue a report to the Committee on Energy and Natural Resources and the Committee on the Judiciary of the Senate and the Committee on Natural Resources and the Committee on the Judiciary of the House of Representatives projecting the number of asylum claims the Secretary anticipates following the termination of the transition period, the efforts the Secretary has made to ensure appropriate interdiction efforts, provide for appropriate treatment of asylum seekers, and prepare to accept and adjudicate asylum claims in the Commonwealth.

(b)(5)

To qualify for this H-1B Cap exemption, you must show that the beneficiary will work in Guam or CNMI for the entire H-1B validity period.

XXX[DISCUSS WHY BENEFICIARY WILL NOT WORK IN GUAM OR CNMI. USE, CHANGE, ADD OR REMOVE SAMPLE ANALYSIS AS APPROPRIATE]XXX

[SAMPLE ANALYSIS 1: BENEFICIARY IS NOT WORKING IN GUAM OR CNMI]

Upon filing, you stated that the beneficiary will provide services to your organization in XXX[INSERT LOCATION OTHER THAN GUAM OR CNMI]XXX. Consequently, USCIS requested that you provide additional evidence regarding how the beneficiary is eligible for this H-1B Cap exemption. In response, you stated that the beneficiary will not provide services in XXX[INSERT LOCATION OTHER THAN GUAM OR CNMI]XXX and that the beneficiary will work solely in XXX[Guam OR CNMI]XXX. You submitted a Labor Condition Application (LCA) for work in Guam or CNMI that was certified after you had filed in this Form I-129.

You must establish eligibility at the time of filing. 8 CFR § 103.2(b)(1). USCIS cannot consider facts that have come into being only subsequent to the filing of a petition. *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981); *Matter of Drigo*, 18 I&N Dec. 223 (BIA 1982). If the petitioner was not already eligible when the petition was filed, subsequent developments cannot retroactively establish eligibility as of the filing date. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm'r 1971). A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service [USCIS] requirements. *Matter of Izummi*, 22 I&N Dec. 169 (Assoc. Comm'r 1998). There comes a point where it is more appropriate for such new evidence to accompany a new petition. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). Thus, USCIS cannot accept the new work location and LCA that were created after you had filed this Form I-129.

129 H1B Denial Cap Exemption- Concurrent Employment with H-1B Cap-Subject Employer

You indicate that the beneficiary is exempt from the H-1B Cap because the beneficiary will be concurrently employed by your organization while the beneficiary works for the beneficiary's current employer (which is an H-1B Cap-exempt entity).

8 CFR § 214.2(h)(8)(ii)(F)(6) allows for the beneficiary to be concurrently employed at an H-1B Cap-subject employer while the beneficiary remains employed with an H-1B Cap-exempt entity:

Concurrent H-1B employment in a cap-subject position of an alien that qualifies for an exemption under section 214(g)(5)(A) or (B) of the Act shall not subject the alien to the numerical limitations in section 214(g)(1)(A) of the Act. When petitioning for concurrent cap-subject H-1B employment, the petitioner must demonstrate that the H-1B beneficiary is employed in valid H-1B status under a cap exemption under section 214(g)(5)(A) or (B) of the Act, the beneficiary's employment with the cap-exempt employer is expected to continue after the new cap-subject petition is approved, and the beneficiary can reasonably and concurrently perform the work described in each employer's respective positions.

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(i) Validity of a petition for concurrent cap-subject H-1B employment approved under paragraph (h)(8)(ii)(F)(6) of this section cannot extend beyond the period of validity specified for the cap-exempt H-1B employment.

(ii) If H-1B employment subject to a cap exemption under section 214(g)(5)(A) or (B) of the Act is terminated by a petitioner, or otherwise ends before the end of the validity period listed on the approved petition filed on the alien's behalf, the alien who is concurrently employed in a cap-subject position becomes subject to the numerical limitations in section 214(g)(1)(A) of the Act, unless the alien was previously counted with respect to the 6-year period of authorized H-1B admission to which the petition applies or another exemption applies. If such an alien becomes subject to the numerical limitations in section 214(g)(1)(A) of the Act, USCIS may revoke the cap-subject petition described in paragraph (h)(8)(ii)(F)(6) of this section consistent with paragraph (h)(11)(iii) of this section.

To qualify for this exemption, you must show that the beneficiary is employed in valid H-1B status under an H-1B Cap-exemption at INA § 214(g)(5)(A) or (B); the beneficiary's employment with the cap-exempt employer is expected to continue after the new cap-subject petition is approved; and the beneficiary can reasonably and concurrently perform the work described in each employer's respective positions.

XXX[DISCUSS WHY BENEFICIARY DOES NOT QUALIFY FOR CONCURRENT EMPLOYMENT]XXX

XXX[SAMPLE ANALYSIS 1: BENEFICIARY CEASED EMPLOYMENT AT CAP-EXEMPT ENTITY]XXX

USCIS records indicate that the beneficiary was previously approved to work as an H-1B worker at XXX[INSERT CAP EXEMPT ENTITY]XXX. USCIS requested that you provide evidence that the beneficiary is currently employed by XXX[INSERT CAP EXEMPT ENTITY]XXX. In response, you provided the beneficiary's payroll records from XXX[INSERT CAP EXEMPT ENTITY]XXX. These documents indicate that the beneficiary had ceased employment at XXX[INSERT CAP EXEMPT ENTITY]XXX prior to the filing of this Form I-129. Thus, the beneficiary is no longer employed in valid H-1B status under an H-1B Cap-exemption at INA § 214(g)(5)(A) or (B). Therefore, the beneficiary is not eligible for H-1B Cap-exemption under this criterion.

XXX[SAMPLE ANALYSIS 2: THE BENEFICIARY CANNOT REASONABLY PERFORM CONCURRENT EMPLOYMENT]XXX

USCIS records indicate that the beneficiary was previously approved to work as an H-1B worker at XXX[INSERT CAP EXEMPT ENTITY]XXX in XXX[INSERT CAP-EXEMPT WORK LOCATION]XXX. You requested to concurrently employ the beneficiary in XXX[INSERT NEW WORK LOCATION]XXX. This new work location is approximately XXX[INSERT APPROXIMATE DISTANCE]XXX miles from the beneficiary's current work location. USCIS had requested that you provide evidence and an explanation regarding how the beneficiary can reasonably and concurrently perform the work described in each employer's respective positions when the work locations are XXX[INSERT APPROXIMATE DISTANCE]XXX miles from each other. In response, you did not offer any explanation or evidence regarding the beneficiary's work locations. Without such explanation or documentation, you have not shown that the beneficiary can reasonably and concurrently perform the work described in each employer's respective positions. Therefore, the beneficiary is not eligible for H-1B Cap-exemption under this criterion.

XXX[THIS CONCLUSION MUST BE KEPT FOR ANY ISSUE]XXX

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As stated above, all employers and beneficiaries are subject to the H-1B Cap unless you establish how your organization or the beneficiary is exempt from the H-1B Cap. Here, you have not shown that your organization or the beneficiary is exempt from the H-1B Cap. You filed the Form I-129 on XXX[INSERT I-129 FILING DATE]XXX and you seek to begin employing the beneficiary within the Federal government's XXX[INSERT FISCAL YEAR]XXX fiscal year. USCIS previously announced that it stopped accepting filings for the XXX[INSERT FISCAL YEAR]XXX fiscal year H-1B Cap on XXX[INSERT CAP CLOSED DATE]XXX. Since the H-1B Cap is closed and you have not shown that your organization or the beneficiary is exempt from the H-1B Cap, this instant Form I-129 cannot be approved.

129 H1B DENIAL LICENSURE

129 H1B Denial Licensure- No License

Section 101(a)(15)(H)(i)(b) of the Act relates to a nonimmigrant:

...who is coming temporarily to the United States to perform services...in a specialty occupation described in section 214(i)(1)..., who meets the requirements for the occupation specified in section 214(i)(2)..., and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under 212(n)(1).

Further, section 214(i)(2) of the Act states that in order for a nonimmigrant to qualify to perform services in a "specialty occupation" the following evidence is required:

(A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,

Title 8, Code of Federal Regulations (8 CFR) 214.2(h)(4)(v)(A) provides that if an occupation requires a state or local license for an individual to fully perform the duties of the occupation, the beneficiary must have that license prior to approval of the petition.

Further, 8 CFR 214.2(h)(4)(v)(C) states, in relevant part:

(1) In certain occupations which generally require licensure, a state may allow an individual without licensure to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, USCIS shall examine the nature of the duties and the level at which they are performed, as well as evidence provided by the petitioner as to the identity, physical location, and credentials of the individual(s) who will supervise the alien, and evidence that the petitioner is complying with state requirements. If the facts demonstrate that the alien under supervision will fully perform the duties of the occupation, H classification may be granted.

(2) An H-1B petition filed on behalf of an alien who does not have a valid state or local license, where a license is otherwise required to fully perform the duties in that occupation, may be approved for a period of up to 1 year if:

- (i) The license would otherwise be issued provided the alien was in possession of a valid Social Security number, was authorized for employment in the United States, or met a similar technical requirement, and
- (ii) The petitioner demonstrates, through evidence from the state or local licensing authority, that the only obstacle to the issuance of a license to the beneficiary is the lack of a Social Security number, a lack of employment authorization in the United States, or a failure to meet a similar technical requirement that precludes the issuance of the license to an individual who is not yet in H-1B status. The petitioner must demonstrate that the alien is fully qualified to receive the state or local license in all other respects, meaning that all educational, training, experience, and other substantive requirements have been met. The alien must have filed an application for the license in accordance with applicable state and local rules and procedures,

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(b)(5)

provided that state or local rules or procedures do not prohibit the alien from filing the license application without provision of a Social Security number or proof of employment authorization or without meeting a similar technical requirement.

According to the XXX[Officer Must Enter Source]XXX, state licensure is required to fully practice in the occupation requested in the petition.

In a Request for Evidence (RFE) dated XXX[Date]XXX, you were notified that the evidence submitted was insufficient to establish that the beneficiary 1) is licensed to perform the duties of the proffered position, 2) would be issued a license but for the beneficiary's inability to meet a technical requirement for such a license, or 3) is otherwise exempt from licensure. As explained in the RFE, XXX[Summarize the Discussion from the RFE]XXX.

Your response, received on XXX[Date]XXX, includes the following evidence: XXX[List Evidence Submitted]XXX

The record does not include evidence that the beneficiary is licensed as a XXX[Profession]XXX in XXX[State]XXX.

XXX[Use/Modify If Applicable:]XXX The record does not include a letter or similar documentation from the appropriate state licensing agency attesting to the beneficiary's exemption from the usual licensing requirements.

XXX[Use/Modify If Applicable:]XXX You indicate that the beneficiary will work under the supervision of licensed senior or supervisory personnel and is therefore exempt from the state licensing requirements. However, you have not provided the identity, physical location, or credentials of the individual who will supervise the beneficiary. XXX[Alternatively, Officer Insert Reason This Documentation Does Not Establish Eligibility, e.g. The Beneficiary's Supervisor is Only Licensed For a Different Profession, The Licensed Individual Named Differs from the Beneficiary's Supervisor, Etc.]XXX

XXX[Use/Modify If Applicable:]XXX You indicate that the beneficiary is eligible as the beneficiary is unable to obtain licensure only because of a lack of a Social Security number, authorization for employment in the United States, or a similar technical requirement. However, the documentation provided does not establish that the beneficiary would be granted a license but for the lack of a Social Security number, authorization for employment in the United States, or a similar technical requirement. The documentation indicates XXX[Officer Insert Reason, e.g. The Beneficiary Has Not Met All Educational or Other Substantive Requirements for Licensure]XXX

Based on this information, the record does not establish that the beneficiary qualifies for classification under section 101(a)(15)(H)(i)(b) of the Act.

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129 H1B Denial Licensure- No License after 1 year

Further, section 214(i)(2) of the Act states that in order for a nonimmigrant to qualify to perform services in a "specialty occupation" the following evidence is required:

(A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,

Title 8, Code of Federal Regulations (8 CFR) 214.2(h)(4)(v)(A) provides that if an occupation requires a state or local license for an individual to fully perform the duties of the occupation, the beneficiary must have that license prior to approval of the petition.

Further, 8 CFR 214.2(h)(4)(v)(C) states in pertinent part:

(2) An H-1B petition filed on behalf of an alien who does not have a valid state or local license, where a license is otherwise required to fully perform the duties in that occupation, may be approved for a period of up to 1 year if:

(i) The license would otherwise be issued provided the alien was in possession of a valid Social Security number, was authorized for employment in the United States, or met a similar technical requirement...

(3) An H-1B petition filed on behalf of an alien who has been previously accorded H-1B classification under paragraph (h)(4)(v)(C)(2) of this section may not be approved unless the petitioner demonstrates that the alien has obtained the required license, is seeking to employ the alien in a position requiring a different license, or the alien will be employed in that occupation in a different location which does not require a state or local license to fully perform the duties of the occupation.

(b)(5)



In a Request for Evidence (RFE) dated XXX[Date]XXX, you were notified that the evidence submitted was insufficient to establish that the beneficiary obtained the required license, will be employed in a position requiring a different license, or will be employed in a different location which does not require a state or local license to fully perform the duties of the occupation. As explained in the RFE, XXX[Summarize the Discussion from the RFE]XXX.

Your response, received on XXX[Date]XXX, includes the following evidence: XXX[List Evidence Submitted]XXX.

1-129 H1B AC21 Denial STANDARDS

The record does not include evidence that the beneficiary is licensed as a XXX[Profession]XXX in XXX[State]XXX.

XXX[Use/Modify If Applicable:]XXX You do not indicate that the beneficiary's position is different from the beneficiary's initial H-1B petition or that the beneficiary's work location has changed. XXX[Alternatively, Officer Insert Reason This Documentation Does Not Establish Eligibility, e.g. The Beneficiary's Location is in the Same State with the Same Licensure Requirements]XXX Based on this information, the record does not establish that the beneficiary qualifies for classification under section 101(a)(15)(H)(i)(b) of the Act.

129 H1B DENIAL 6th Year Limit

129 H1B Denial 6th Year Limit- No Recapture Time

USCIS regulations allow the beneficiary to "recapture" periods that the beneficiary was physically present outside the United States. This recaptured time is added back to the six-year limit, thereby enabling the beneficiary to fully use the maximum 6-year period of admission, even if such admission has to be extended more than 6 calendar years past the initial day the beneficiary held H-1B status.

8 CFR § 214.2(h)(13)(iii)(C) states:

(C) Calculating the maximum H-1B admission period. Time spent physically outside the United States exceeding 24 hours by an alien during the validity of an H-1B petition that was approved on the alien's behalf shall not be considered for purposes of calculating the alien's total period of authorized admission under section 214(g)(4) of the Act, regardless of whether such time meaningfully interrupts the alien's stay in H-1B status and the reason for the alien's absence. Accordingly, such remaining time may be recaptured in a subsequent H-1B petition on behalf of the alien, at any time before the alien uses the full period of H-1B admission described in section 214(g)(4) of the Act.

(1) It is the H-1B petitioner's burden to request and demonstrate the specific amount of time for recapture on behalf of the beneficiary. The beneficiary may provide appropriate evidence, such as copies of passport stamps, Arrival-Departure Records (Form I-94), or airline tickets, together with a chart, indicating the dates spent outside of the United States, and referencing the relevant independent documentary evidence, when seeking to recapture the alien's time spent outside the United States. Based on the evidence provided, USCIS may grant all, part, or none of the recapture period requested.

(2) If the beneficiary was previously counted toward the H-1B numerical cap under section 214(g)(1) of the Act with respect to the 6-year maximum period of H-1B admission from which recapture is sought, the H-1B petition seeking to recapture a period of stay as an H-1B nonimmigrant will not subject the beneficiary to the H-1B numerical cap, whether or not the alien has been physically outside the United States for 1 year or more and would be otherwise eligible for a new period of admission under such section of the Act. An H-1B petitioner may either seek such recapture on behalf of the alien or, consistent with paragraph (h)(13)(iii) of this section, seek a new period of admission on behalf of the alien under section 214(g)(1) of the Act.

XXX[ANALYZE WHY RECAPTURE TIME WAS NOT GRANTED AND/OR ACTUAL END-DATE]XXX

1-129 H1B AC21 Denial STANDARDS

XXX[SAMPLE ANALYSIS 1: RECAPTURE TIME ALREADY GRANTED IN PRIOR PETITIONS, NEW RECAPTURE TIME NOT PROVEN]XXX

You provided a table that lists the trips the beneficiary made abroad and evidence of those trips. However, the time accounted for on these trips abroad was already recaptured in a prior petition. Taking that into consideration, USCIS has determined that the beneficiary reached the six-year limit on XXX[INSERT NEW SIX-YEAR LIMIT WITH RECAPTURE TIME]XXX. Thus, the beneficiary is not eligible for additional H-1B time on this basis.-

(b)(5)

You indicated that the beneficiary made several trips abroad since the prior H-1B approval. The record shows that the beneficiary made these trips abroad while the beneficiary was in a period of authorized admission beyond the six-year limit that was granted pursuant to the 8 CFR 214.2(h)(13)(iii)(C) or (D). The regulations allow the beneficiary to recapture periods at any time before the beneficiary uses the full period of H-1B admission described in section 214(g)(4) of the Act. Since the periods that you now seek to recapture fall under the extensions beyond the six-year limit under 8 CFR 214.2(h)(13)(iii)(C) or (D), those periods cannot be recaptured. Thus, the beneficiary is not eligible to extend the beneficiary's employment based on recaptured time.

129 H1B Denial 6th Year Limit- Remaining Outside the U.S. for One Continuous Year

When the beneficiary has spent six years in the United States as an H-1B nonimmigrant (or other H or L nonimmigrant status that counts toward the 6-year H-1B limit), the beneficiary may not seek extension, change of status, or be readmitted to the United States as an H or L nonimmigrant unless the beneficiary resided or was physically present outside the United States continuously for the immediate prior year.

Per 8 CFR § 214.2(h)(13)(i)(B), qualifying physical presence outside the United States is described as follows:

When an alien in an H classification has spent the maximum allowable period of stay in the United States, a new petition under sections 101(a)(15)(H) or (L) of the Act may not be approved unless that alien has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the time limit imposed on the particular H classification. Brief trips to the United States for business or pleasure during the required time abroad are not interruptive, but do not count towards fulfillment of the required time abroad. A certain period of absence from the United States of H-2A and H-2B aliens can interrupt the accrual of time spent in such status against the 3-year limit set forth in 8 CFR 214.2(h)(13)(iv). The petitioner shall provide information about the alien's employment, place of residence, and the dates and purposes of any trips to the United States during the period that the alien was required to reside abroad.

8 CFR § 214.2(h)(13)(iii)(C)(2) states:

If the beneficiary was previously counted toward the H-1B numerical cap under section 214(g)(1) of the Act with respect to the 6-year maximum period of H-1B admission from which recapture is sought, the H-1B petition seeking to recapture a period of stay as an H-1B nonimmigrant will not subject the beneficiary to the H-1B numerical cap, whether or not the alien has been physically outside the United States for 1 year or more and would be otherwise eligible for a new period of admission under such section of the Act. An H-1B petitioner may either seek such recapture on behalf of the alien or, consistent with paragraph (h)(13)(iii) of this section, seek a new period of admission on behalf of the alien under section 214(g)(1) of the Act.

1-129 H1B AC21 Denial STANDARDS

XXX[DISCUSS WHY BENEFICIARY HAS NOT LEFT FOR ONE CONTINUOUS YEAR]XXX

XXX[SAMPLE ANALYSIS 1: IF BENEFICIARY LEFT MORE THAN A YEAR BUT CHOSE REMAINDER TIME]XXX

If the beneficiary resided and was physically present outside the United States continuously for the immediate prior year but has time remaining on the beneficiary's initial maximum period of admission, USCIS allows the beneficiary to choose between being readmitted for the remainder of any unused time towards that initial six-year period or admitted as a "new" H-1B worker. To be granted a new six-year admission period, the beneficiary would be subject to the H-1B numerical limitation at INA § 214(g), unless otherwise exempted.

Here, USCIS records show that the beneficiary departed the United States on XXX[INSERT DEPARTURE DATE]XXX. At the time the beneficiary returned to the United States on XXX[INSERT RETURN Date]XXX, the beneficiary chose to be readmitted as an H-1B nonimmigrant using the remainder of the beneficiary's unused six-year period instead of obtaining a new H-1B six-year period. Since the beneficiary has spent the maximum allowable period of stay, the beneficiary is not eligible for the requested H-1B employment period because the beneficiary did not reside and was not physically present outside the United States continuously for the immediate prior year.

XXX[SAMPLE ANALYSIS 2: BENEFICIARY RETURNED AS A NONIMMGRANT THAT IS NOT VISITOR FOR PLEASURE OR BUSINESS]XXX

USCIS records show that the beneficiary departed the United States on XXX[INSERT DEPARTURE DATE]XXX. On XXX[INSERT RETURN Date]XXX, the beneficiary returned to the United States as a nonimmigrant XXX[INSERT NONIMMIGRANT DESCRIPTORS SUCH AS: student, exchange visitor, performer]XXX. The regulations require that the beneficiary has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the immediate prior year. Here, the beneficiary returned to the United States during the one year period as a XXX[INSERT NONIMMIGRANT DESCRIPTORS SUCH AS: student, exchange visitor, performer]XXX. This trip interrupted the one year requirement. Therefore, the beneficiary is not eligible for the requested H-1B employment period because the beneficiary did not reside and was not physically present outside the United States continuously for the immediate prior year.

129 H1B Denial 6th Year Limit- Intermittent, Seasonal, Less than Six Months Employment or Part-Time Employment from Abroad

You indicate that the beneficiary qualifies for an exception from the six-year limit because the beneficiary's employment is seasonal; intermittent; was for an aggregate of six months or less per year; or the beneficiary resides abroad and regularly commutes to the United States to engage in part-time employment;

8 CFR § 214.2(h)(13)(iii)(v) allows for exceptions from 8 CFR § 214.2(h)(13)(iii) through (h)(13)(iv) when:

(v) Exceptions. The limitations in paragraphs (h)(13)(iii) through (h)(13)(iv) of this section shall not apply to H-1B, H-2B, and H-3 aliens who did not reside continually in the United States and whose employment in the United States was seasonal or intermittent or was for an aggregate of 6 months or less per year. In addition, the limitations shall not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. An absence from the United States can interrupt the accrual of time spent as an H-2B nonimmigrant against the 3-year limit. If the accumulated stay is 18 months or less, an absence is interruptive if it lasts for at least 45 days. If the accumulated stay is greater than 18 months, an absence is interruptive if it lasts for at least two months. To qualify for this exception, the petitioner and the alien must provide clear and convincing proof that the alien qualifies for such an exception. Such proof shall consist of evidence such as arrival and departure records, copies of tax returns, and records of employment abroad.

1-129 H1B AC21 Denial STANDARDS

XXX[DISCUSS WHY BENEFICIARY DOES NOT MEET THESE EXEMPTIONS]XXX

XXX[SAMPLE ANALYSIS 1: DOES NOT RESIDE ABROAD]XXX

You stated that the beneficiary resides abroad and that the beneficiary regularly commutes to the United States to engage in part-time employment. USCIS requested that you provide evidence of the beneficiary's residence abroad and part-time employment. In response, you did not provide evidence of the beneficiary's foreign residence such as residential leases, mortgage statements, property tax statements or similar evidence. Without this documentation, you have not shown that the beneficiary resides abroad and that the beneficiary regularly commutes to the United States to engage in part-time employment. Thus, the beneficiary is not eligible for the requested H-1B employment period based on this exception.

129 H1B Denial 6th Year Limit- Per-Country Limitation Exemption

An H-1B nonimmigrant with an approved Form I-140 and who is eligible to be granted that immigrant status but for application of the per country limitation may be eligible to extend his or her H-1B nonimmigrant status beyond the six-year period of admission.

USCIS regulations at 8 CFR § 214.2(h)(13)(iii)(E) state:

(E) Per-country limitation exemption from section 214(g)(4) of the Act. An alien who currently maintains or previously held H-1B status, who is the beneficiary of an approved immigrant visa petition for classification under section 203(b)(1), (2), or (3) of the Act, and who is eligible to be granted that immigrant status but for application of the per country limitation, is eligible for H-1B status beyond the 6-year limitation under section 214(g)(4) of the Act. The petitioner must demonstrate such visa unavailability as of the date the H-1B petition is filed with USCIS.

(1) Validity periods. USCIS may grant validity periods for petitions approved under this paragraph in increments of up to 3 years for as long as the alien remains eligible for this exemption.

(2) H-1B approvals under paragraph (h)(13)(iii)(E) of this section may be granted until a final decision has been made to:

(i) Revoke the approval of the immigrant visa petition; or

(ii) Approve or deny the alien's application for an immigrant visa or application to adjust status to lawful permanent residence.

(3) Current H-1B status not required. An alien who is not in H-1B status at the time the H-1B petition on his or her behalf is filed, including an alien who is not in the United States, may seek an exemption of the 6-year limitation under 214(g)(4) of the Act under this clause, if otherwise eligible.

(4) Subsequent petitioners may seek exemptions. The H-1B petitioner need not be the employer that filed the immigrant visa petition that is used to qualify for this exemption. An H-1B petition may be approved under paragraph (h)(13)(iii)(E) of this section with respect to any approved immigrant visa petition, and a subsequent H-1B petition may be approved with respect to a different approved immigrant visa petition on behalf of the same alien.

(5) Advance filing. A petitioner may file an H-1B petition seeking a per country

1-129 H1B AC21 Denial STANDARDS

limitation exemption under paragraph (h)(13)(iii)(E) of this section within 6 months of the requested H-1B start date. The petitioner may request any time remaining to the beneficiary under the maximum period of admission described in section 214(g)(4) of the Act along with the exemption request, but in no case may the H-1B approval period exceed the limits specified by paragraph (h)(9)(iii) of this section.

(6) Exemption eligibility. Only the principal beneficiary of an approved immigrant visa petition for classification under section 203(b)(1), (2), or (3) of the Act may be eligible under paragraph (h)(13)(iii)(E) of this section for an exemption to the maximum period of admission under section 214(g)(4) of the Act.

(b)(5)

XXX[DISCUSS WHY THE BENEFICIARY DOES NOT QUALIFY FOR AC21 104(c)]XXX

XXX[SAMPLE ANALYSIS 1: IF I-140 IS NOT APPROVED]XXX

XXX[SAMPLE ANALYSIS 2: IF VISA IS AVAILABLE]XXX

XXX[SAMPLE ANALYSIS 3: IF I-140 WAS DENIED/REVOKED AND NO APPEAL OR MOTION. USE THIS ONLY IF THE I-140 DECISION WAS AT LEAST 45 DAYS OLD TO GIVE TIME FOR MOTION OR APPEALS UPDATE IN CLAIMS NATIONAL]XXX

In the present case, USCIS records indicate that the Form I-140, USCIS receipt number XXX[INSERT I-140 RECEIPT NUMBER]XXX, was XXX[Selection final decision: denied or revoked]XXX on XXX[INSERT I-140 DENIAL/Revocation DATE]XXX. Further, USCIS is unable to locate any additional evidence to establish that an appeal or motion of that decision was filed. As such, the beneficiary does not qualify for the exemption under 8 CFR 214.2(h)(13)(iii)(E) because the beneficiary is not a beneficiary of an approved Form I-140. Therefore, you have not shown that the beneficiary qualifies for an H-1B extension beyond the sixth-year based on 8 CFR 214.2(h)(13)(iii)(E).

129 H1B Denial 6th Year Limit- Lengthy Adjudicative Delays

The beneficiary of an application for permanent labor certification or pending Form I-140 may be eligible for H-1B status beyond the six-year period of authorized admission in INA 214(g)(4) if at least 365 days have elapsed since the filing of the labor certification application or Form I-140.

USCIS regulations at 8 CFR § 214.2(h)(13)(iii)(D) state:

(D) Lengthy adjudication delay exemption from 214(g)(4) of the Act.

(1) An alien who is in H-1B status or has previously held H-1B status is eligible for H-1B status beyond the 6-year limitation under section 214(g)(4) of the Act, if at least 365 days have elapsed since:

(i) The filing of a labor certification with the Department of Labor on the alien's behalf, if such certification is required for the alien to obtain status under section 203(b) of the Act; or

(ii) The filing of an immigrant visa petition with USCIS on the alien's behalf to accord classification under section 203(b) of the Act.

(2) H-1B approvals under paragraph (h)(13)(iii)(D) of this section may be granted in up to 1-year increments until either the approved permanent labor certification expires or a final decision has been made to:

(i) Deny the application for permanent labor certification, or, if approved, to revoke or invalidate such approval;

(ii) Deny the immigrant visa petition, or, if approved, revoke such approval;

(iii) Deny or approve the alien's application for an immigrant visa or application to adjust status to lawful permanent residence; or

(iv) Administratively or otherwise close the application for permanent labor certification, immigrant visa petition, or application to adjust status.

(3) *No final decision while appeal available or pending.* A decision to deny or revoke an application for labor certification, or to deny or revoke the approval of an immigrant visa petition, will not be considered final under paragraph (h)(13)(iii)(D)(2)(i) or (ii) of this section during the period authorized for filing an appeal of the decision, or while an appeal is pending.

1-129 H1B AC21 Denial STANDARDS

(4) *Substitution of beneficiaries.* An alien who has been replaced by another alien, on or before July 16, 2007, as the beneficiary of an approved permanent labor certification may not rely on that permanent labor certification to establish eligibility for H-1B status based on this lengthy adjudication delay exemption. Except for a substitution of a beneficiary that occurred on or before July 16, 2007, an alien establishing eligibility for this lengthy adjudication delay exemption based on a pending or approved labor certification must be the named beneficiary listed on the permanent labor certification.

(5) *Advance filing.* A petitioner may file an H-1B petition seeking a lengthy adjudication delay exemption under paragraph (h)(13)(iii)(D) of this section within 6 months of the requested H-1B start date. The petition may be filed before 365 days have elapsed since the labor certification application or immigrant visa petition was filed with the Department of Labor or USCIS, respectively, provided that the application for labor certification or immigrant visa petition must have been filed at least 365 days prior to the date the period of admission authorized under this exemption will take effect. The petitioner may request any time remaining to the beneficiary under the maximum period of admission described at section 214(g)(4) of the Act along with the exemption request, but in no case may the approved H-1B period of validity exceed the limits specified by paragraph (h)(9)(iii) of this section. Time remaining to the beneficiary under the maximum period of admission described at section 214(g)(4) of the Act may include any request to recapture unused H-1B, L-1A, or L-1B time spent outside of the United States.

(6) *Petitioners seeking exemption.* The H-1B petitioner need not be the employer that filed the application for labor certification or immigrant visa petition that is used to qualify for this exemption.

(7) *Subsequent exemption approvals after the 7th year.* The qualifying labor certification or immigrant visa petition need not be the same as that used to qualify for the initial exemption under paragraph (h)(13)(iii)(D) of this section.

(8) *Aggregation of time not permitted.* A petitioner may not aggregate the number of days that have elapsed since the filing of one labor certification or immigrant visa petition with the number of days that have elapsed since the filing of another such application or petition to meet the 365-day requirement.

(9) *Exemption eligibility.* Only a principal beneficiary of a nonfrivolous labor certification application or immigrant visa petition filed on his or her behalf may be eligible under paragraph (h)(13)(iii)(D) of this section for an exemption to the maximum period of admission under section 214(g)(4) of the Act.

(10) *Limits on future exemptions from the lengthy adjudication delay.* An alien is ineligible for the lengthy adjudication delay exemption under paragraph (h)(13)(iii)(D) of this section if the alien is the beneficiary of an approved petition under section 203(b) of the Act and fails to file an adjustment of status application or apply for an immigrant visa within 1 year of an immigrant visa being authorized for issuance based on his or her preference category and country of chargeability. If the accrual of such 1-year period is interrupted by the unavailability of an immigrant visa, a new 1-year period shall be afforded when an immigrant visa again becomes immediately available. USCIS may excuse a failure to file in its discretion if the alien establishes that the failure to apply was due to circumstances beyond his or her control. The limitations described in this paragraph apply to any approved immigrant visa petition under section 203(b) of the Act, including petitions withdrawn by the petitioner or those filed by a petitioner whose business terminates 180 days or more after approval.

(b)(5)

1-129 H1B AC21 Denial STANDARDS

(b)(5)

XXX[DISCUSS WHY THE BENEFICIARY DOES NOT QUALIFY FOR AC21 106]XXX

XXX[SAMPLE ANALYSIS 1: IF LABOR CERT IS NOT OLD ENOUGH]XXX

XXX[SAMPLE ANALYSIS 2: IF EB IMMIGRANT PETITION IS NOT OLD ENOUGH]XXX

XXX[SAMPLE ANALYSIS 3: IF EB IMMIGRANT PETITION WAS DENIED AND NO APPEAL OR MOTION. USE THIS ONLY IF THE EB IMMIGRANT PETITION DECISION WAS AT LEAST 45 DAYS OLD TO GIVE TIME FOR MOTION OR APPEALS UPDATE IN CLAIMS NATIONAL]XXX

XXX[SAMPLE ANALYSIS 4: IF I-485 WAS DENIED/~~APPROVED~~ AND NO MOTION. USE THIS ONLY IF THE I-485 DECISION WAS AT LEAST 45 DAYS OLD TO GIVE TIME FOR MOTION UPDATE IN CLAIMS NATIONAL]XXX

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(b)(5)

XXX[SAMPLE ANALYSIS 5: VISA AVAILABLE FOR MORE THAN 1 YEAR. CIRCUMSTANCES NOT BEYOND BENEFICIARY'S CONTROL]XXX

USCIS records indicate that the employment-based immigrant petition filed on the beneficiary's behalf was approved under section 203(b)XXX[(1) (2) (3)]XXX of the Act, with a priority date of XXX[INSERT PRIORITY DATE]XXX. The beneficiary was born in XXX[INSERT COUNTRY OF BIRTH]XXX. Based on the U.S. Department of State's Visa Bulletin, it appears that the beneficiary failed to file an adjustment of status application or apply for an immigrant visa within 1 year of an immigrant visa being authorized for issuance based on his or her preference category and country of chargeability. On XXX[date]XXX USCIS requested that you provide evidence regarding whether the beneficiary's failure to apply for permanent residence or an employment-based immigrant visa was due to circumstances beyond the beneficiary's control. In response, you explained that XXX[DISCUSS THE EMPLOYER'S EXPLANATION]XXX. XXX[DISCUSS WHY THESE EXPLANATIONS DO NOT SHOW CIRCUMSTANCES BEYOND THE BENEFICIARY'S CONTROL]XXX. Consequently, pursuant to 214.2(h)(13)(iii)(D)(10), an exemption from the six-year limit under 8 CFR 214.2(h)(13)(iii)(D) may not be granted because the beneficiary has an approved employment-based immigrant visa petition and the beneficiary did not file an adjustment of status application or apply for an immigrant visa within one year of an immigrant visa being authorized for issuance based on his or her preference category and country of chargeability. Furthermore, you have not shown that the beneficiary's failure to apply for adjustment of status or immigrant visa was due to circumstances beyond the beneficiary's control.

129 H1B SPLIT DECISIONS

129 H1B Split Decision- Portability **Bridge**

XXX[Use For EOS]XXX Title 8, Code of Federal Regulations (8 CFR), section 214.1(c)(4) states in pertinent part:

(4) Timely filing and maintenance of status. An extension of stay may not be approved for an applicant who failed to maintain the previously accorded status or where such status expired before the application or petition was filed...

XXX[Use For COS]XXX Title 8, Code of Federal Regulations (8 CFR), section 248.1(b) states in pertinent part:

(b) Timely filing and maintenance of status. Except in the case of an alien applying to obtain V nonimmigrant status in the United States under § 214.15(f) of this chapter, a change of status may not be approved for an alien who failed to maintain the previously accorded status or whose status expired before the application or petition was filed...

A beneficiary whose previously authorized status expires while a timely filed, non-frivolous request for an extension of stay or a change of status is pending is considered to be in a period of stay authorized by the Secretary of Homeland Security. Even though the beneficiary is not in a valid nonimmigrant status, this period of authorized stay allows the beneficiary to remain in the United States to await a decision on the pending case without accruing unlawful presence. However, the terms "authorized status" and "period of stay authorized by the Secretary of Homeland Security" are not interchangeable and do not carry the same legal implications. A person must be in status at the time XXX[an extension of stay **OR** a change of status]XXX is filed for that request to be considered timely.

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Further, 8 CFR 214.2(h)(2)(i)(H) states in pertinent part:

(H) H-1B portability. An eligible H-1B nonimmigrant is authorized to start concurrent or new employment under section 214(n) of the Act upon the filing, in accordance with 8 CFR 103.2(a), of a nonfrivolous H-1B petition on behalf of such alien, or as of the requested start date, whichever is later.

(1) Eligible H-1B nonimmigrant. For H-1B portability purposes, an eligible H-1B nonimmigrant is defined as an alien:

(i) Who has been lawfully admitted into the United States in, or otherwise provided, H-1B nonimmigrant status;

(ii) On whose behalf a nonfrivolous H-1B petition for new employment has been filed, including a petition for new employment with the same employer, with a request to amend or extend the H-1B nonimmigrant's stay, before the H-1B nonimmigrant's period of stay authorized by the Secretary of Homeland Security expires; and

(iii) Who has not been employed without authorization in the United States from the time of last admission through the filing of the petition for new employment.

(2) Length of employment. Employment authorized under paragraph (h)(2)(i)(H) of this section automatically ceases upon the adjudication of the H-1B petition described in paragraph (h)(2)(i)(H)(1)(ii) of this section.

(3) Successive H-1B portability petitions.

(i) An alien maintaining authorization for employment under paragraph (h)(2)(i)(H) of this section, whose status, as indicated on the Arrival-Departure Record (Form I-94, or successor form), has expired, shall be considered to be in a period of stay authorized by the Secretary of Homeland Security for purposes of paragraph (h)(2)(i)(H)(1)(ii) of this section. If otherwise eligible under paragraph (h)(2)(i)(H) of this section, such alien may begin working in a subsequent position upon the filing of another H-1B petition or from the requested start date, whichever is later, notwithstanding that the previous H-1B petition upon which employment is authorized under paragraph (h)(2)(i)(H) of this section remains pending and regardless of whether the validity period of an approved H-1B petition filed on the alien's behalf expired during such pendency.

(ii) A request to amend the petition or for an extension of stay in any successive H-1B portability petition cannot be approved if a request to amend the petition or for an extension of stay in any preceding H-1B portability petition in the succession is denied, unless the beneficiary's previously approved period of H-1B status remains valid.

(iii) Denial of a successive portability petition does not affect the ability of the H-1B beneficiary to continue or resume working in accordance with the terms of an H-1B petition previously approved on behalf of the beneficiary if that petition approval remains valid and the beneficiary has maintained H-1B status or been in a period of authorized stay and has not been employed in the United States without authorization.

8 CFR 214.2(h)(2)(i)(H) authorizes an H-1B nonimmigrant to accept new employment upon the filing of a new petition by the prospective employer, but it does not extend the H-1B nonimmigrant's authorized status.

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Your response, received on XXX[Date]XXX, includes the following evidence: XXX[List Evidence Submitted]XXX

The record shows the beneficiary's nonimmigrant status expired on XXX[Date]XXX. You filed the instant I-129 on XXX[Date]XXX. On the date you filed this I-129, the beneficiary was in a period of authorized stay because of a timely filed, pending XXX[H-1B petition, Insert Receipt Number]XXX. However, this petition was subsequently denied on XXX[Date]XXX. Therefore, the beneficiary's status was not extended beyond XXX[Date]XXX. As such, the beneficiary's status had expired before this I-129 was filed, and the requested XXX[extension of stay OR change of status]XXX is denied.

129 H1B Split Decision- 60 Day Grace Period

XXX[Use For EOS]XXX Title 8, Code of Federal Regulations (8 CFR), section 214.1(c)(4) states in pertinent part:

(4) Timely filing and maintenance of status. An extension of stay may not be approved for an applicant who failed to maintain the previously accorded status or where such status expired before the application or petition was filed.

XXX[Use For COS]XXX Title 8, Code of Federal Regulations (8 CFR), section 248.1(b) states in pertinent part:

(b) Timely filing and maintenance of status. Except in the case of an alien applying to obtain V nonimmigrant status in the United States under § 214.15(f) of this chapter, a change of status may not be approved for an alien who failed to maintain the previously accorded status or whose status expired before the application or petition was filed...

Further, 8 CFR 214.1(l) states in pertinent part:

(2) An alien admitted or otherwise provided status in E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 or TN classification and his or her dependents shall not be considered to have failed to maintain nonimmigrant status solely on the basis of a cessation of the employment on which the alien's classification was based, for up to 60 consecutive days or until the end of the authorized validity period, whichever is shorter, once during each authorized validity period. DHS may eliminate or shorten this 60-day period as a matter of discretion. Unless otherwise authorized under 8 CFR 274a.12, the alien may not work during such a period.

(3) An alien in any authorized period described in paragraph (l) of this section may apply for and be granted an extension of stay under paragraph (c)(4) of this section or change of status under 8 CFR 248.1, if otherwise eligible.

You indicated that the beneficiary is eligible for a(n) XXX[extension of stay OR change of status]XXX under 214.1(l)(3) because he or she is eligible for the grace period provided in 214.1(l)(2). . You stated that XXX[Insert Petitioner's Statements Here]XXX.

In a request for evidence (RFE) dated XXX[Date]XXX, you were notified that the evidence submitted was insufficient to establish that the beneficiary is eligible for, and otherwise warrants a favorable exercise of our discretion to grant, the grace period authorized in 214.1(l)(2). As explained in the RFE, XXX[Summarize the Discussion from the RFE]XXX.

1-129 H1B AC21 Denial STANDARDS

Your response, received on XXX[Date]XXX, includes the following evidence: XXX[List Evidence Submitted]XXX

XXX[Use/Modify If Applicable:]XXX You stated that the beneficiary ceased employment with his or her previous employer on XXX[Date]XXX. However, you provided no supporting evidence to establish the date the beneficiary ceased employment with the previous employer. Unsupported statements are insufficient to establish the date the beneficiary ceased employment with the previous employer or the beneficiary's eligibility for the grace period.

XXX[Use/Modify If Applicable:]XXX You stated that the beneficiary ceased employment with his or her previous employer on XXX[Date]XXX. However, the evidence provided does not support this date because XXX[Enter Analysis]XXX.

XXX[Use/Modify If Applicable:]XXX A review of the record indicates that the beneficiary was employed without authorization during the grace period. XXX[Insert Analysis of the Evidence]XXX

XXX[Use/Modify If Applicable:]XXX The beneficiary's previously authorized validity period expired on XXX[Date]XXX. Accordingly, the beneficiary would only be eligible for a grace period up to this date. You filed the current petition on XXX[Date]XXX, which is after the expiration of the beneficiary's grace period.

XXX[Use/Modify If Applicable:]XXX The grace period may only be claimed for "consecutive days." You indicate that the beneficiary ceased employment from XXX[Date]XXX to XXX[Date]XXX and also from XXX[Date]XXX to XXX[Date]XXX. While it is noted that the combination of this time is less than 60 days, these two periods are not continuous and the grace period can only apply to one of these time periods. Therefore, the beneficiary did not maintain his or her status for the other time period.

(b)(5)

129 H1B Split Decision- Employer Retaliation

XXX[Use For EOS]XXX Title 8, Code of Federal Regulations (8 CFR), section 214.1(c)(4) states:

(4) Timely filing and maintenance of status. An extension of stay may not be approved for an applicant who failed to maintain the previously accorded status or where such status expired before the application or petition was filed, except that failure to file before the period of previously authorized status expired may be excused in the discretion of the Service and without separate application, with any extension granted from the date the previously authorized stay expired, where it is demonstrated at the time of filing that:

- (i) The delay was due to extraordinary circumstances beyond the control of the applicant or petitioner, and the Service finds the delay commensurate with the circumstances;
- (ii) The alien has not otherwise violated his or her nonimmigrant status;
- (iii) The alien remains a bona fide nonimmigrant; and

1-129 H1B AC21 Denial STANDARDS

(iv) The alien is not the subject of deportation proceedings under section 242 of the Act (prior to April 1, 1997) or removal proceedings under section 240 of the Act.

XXX[Use For COS]XXX Title 8, Code of Federal Regulations (8 CFR), section 248.1(b) states:

(b) Timely filing and maintenance of status. Except in the case of an alien applying to obtain V nonimmigrant status in the United States under § 214.15(f) of this chapter, a change of status may not be approved for an alien who failed to maintain the previously accorded status or whose status expired before the application or petition was filed, except that failure to file before the period of previously authorized status expired may be excused in the discretion of USCIS, and without separate application, where it is demonstrated at the time of filing that:

- (1) The failure to file a timely application was due to extraordinary circumstances beyond the control of the applicant or petitioner, and USCIS finds the delay commensurate with the circumstances;
- (2) The alien has not otherwise violated his or her nonimmigrant status;
- (3) The alien remains a bona fide nonimmigrant; and
- (4) The alien is not the subject of removal proceedings under 8 CFR part 240.

Further, 8 CFR 214.2(h)(20) states:

(20) Retaliatory action claims. If credible documentary evidence is provided in support of a petition seeking an extension of H-1B stay in or change of status to another classification indicating that the beneficiary faced retaliatory action from his or her employer based on a report regarding a violation of that employer's labor condition application obligations under section 212(n)(2)(C)(iv) of the Act, USCIS may consider a loss or failure to maintain H-1B status by the beneficiary related to such violation as due to, and commensurate with, "extraordinary circumstances" as defined by 8 CFR 214.1(c)(4) and 8 CFR 248.1(b).

You indicated that the beneficiary has not maintained the beneficiary's H-1B nonimmigrant status because the beneficiary faced retaliatory action from the beneficiary's employer based on reporting a violation of that employer's Labor Condition Application (LCA) obligation.

In a Request for Evidence (RFE) dated XXX[Date]XXX, you were notified that the evidence submitted was insufficient to establish that the beneficiary faced relevant retaliatory action from the beneficiary's employer. As explained in the RFE, XXX[Summarize the Discussion from the RFE]XXX.

Your response, received on XXX[Date]XXX, includes the following evidence: XXX[List Evidence Submitted]XXX

XXX[Officer Choose as Appropriate **Either** the Following Sentence: You did not submit any evidence to establish that the beneficiary faced retaliatory actions from the beneficiary's employer. **OR** Officers Must Insert the Reason(s) Why the Evidence Listed Above is Insufficient to Meet This Requirement]XXX

(b)(5)



1-129 H1B RFE STANDARDS

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1-129 H1B RFE STANDARDS

129 H1B RFE INTRODUCTION

Request for Evidence Form I-129, Petition for a Nonimmigrant Worker H-1B, Temporary Worker in a Specialty Occupation

On XXX[Insert filing date]XXX, you, XXX[Insert petitioner's name]XXX, filed a Petition for a Nonimmigrant Worker (Form I-129), with U.S. Citizenship and Immigration Services (USCIS), seeking to classify XXX[Insert beneficiary's name]XXX (beneficiary) as a temporary worker in a specialty occupation (H-1B).

A specialty occupation is one that requires the theoretical and practical application of a body of highly specialized knowledge and which requires the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent, as a minimum, for entry into the occupation in the United States.

You seek XXX[INSERT AS APPROPRIATE: new employment for the beneficiary / a continuation of previously approved employment without change with the same employer / a change in previously approved employment / new concurrent employment / a change of employer / to amend the prior petition]XXX and request that USCIS XXX[notify the consulate / extend the beneficiary's stay / change the beneficiary's status / amend the beneficiary's stay]XXX.

Documentation submitted with your petition indicates that you provide XXX[Indicate the type of service provided such as: information technology consulting services, information technology staffing solutions, information technology solutions, healthcare staffing solutions]XXX with XXX[INSERT NUMBER OF WORKERS LISTED ON THE I-129]XXX employees. You seek to employ the beneficiary as a XXX[INSERT JOB TITLE]XXX from XXX[INSERT I-129 REQUESTED START DATE]XXX to XXX[INSERT I-129 REQUESTED END DATE]XXX.

To process your petition and determine if you and the beneficiary are eligible, additional information is required. This request provides suggested evidence that you may submit to satisfy each requested item. You may:

- Submit one, some, or all of these items;
- Submit none of the suggested items and instead submit other evidence to satisfy the request;
- Explain how the evidence in the record already establishes eligibility; or
- Request a decision based on the record.

Please note that you are responsible for providing evidence showing that you and the beneficiary meet all requirements and are eligible for the requested benefit at the time you filed the Form I-129. Also, note that statements made in cover letters should be supported with additional documentary evidence.

USCIS checks all petitions filed for this classification in its Validation Instrument for Business Enterprises (VIBE) system. VIBE uses commercially available data to validate basic information about organizations petitioning to employ foreign workers. For more information about this program, please visit USCIS's website at www.uscis.gov/VIBE.

129 H1B RFE FILING REQUIREMENTS (FR)

Filing Requirements

The Form I-129 requires the following item(s). These item(s) are either missing or incomplete. Please properly complete or provide the following:

1-129 H1B RFE STANDARDS

129 H1B RFE (FR) Early Filing

Early Filing: USCIS's ~~DHS~~ regulations state that an H-1B petition may not be filed ~~earlier~~ more than six months before the date of actual need for the beneficiary's services or training.

XXX[DISCUSS THE EVIDENCE OF EARLY FILING]XXX

Provide an explanation with supporting documentary evidence and correction on the Form I-129 (if ~~needed~~ applicable) to establish that you filed the H-1B petition in accordance with the regulations.

129 H1B RFE (FR) Fraud Prevention and Detection Fee

Fraud Prevention and Detection Fee: An H-1B petition requires a Fraud Prevention and Detection fee of \$500, which must be paid by petitioners seeking a beneficiary's initial grant of the H-1B classification or when seeking to change a beneficiary's employer within the H-1B classification. Other than petitions to amend or extend stay filed by ~~an existing~~ the beneficiary's current H-1B employer, there are no exemptions from the \$500 fee.

In the present case, you filed the I-129 petition, seeking XXX[CHOOSE: an initial grant of H-1B classification OR a change of the beneficiary's employer within the H-1B classification]XXX without the Fraud Prevention and Detection fee of \$500.

Please remit the \$500 Fraud Prevention and Detection fee or provide evidence that the instant Form I-129 is exempt from the Fraud Prevention and Detection fee.

(b)(5)

129 H1B RFE (FR) Public Law 111-230 Fee

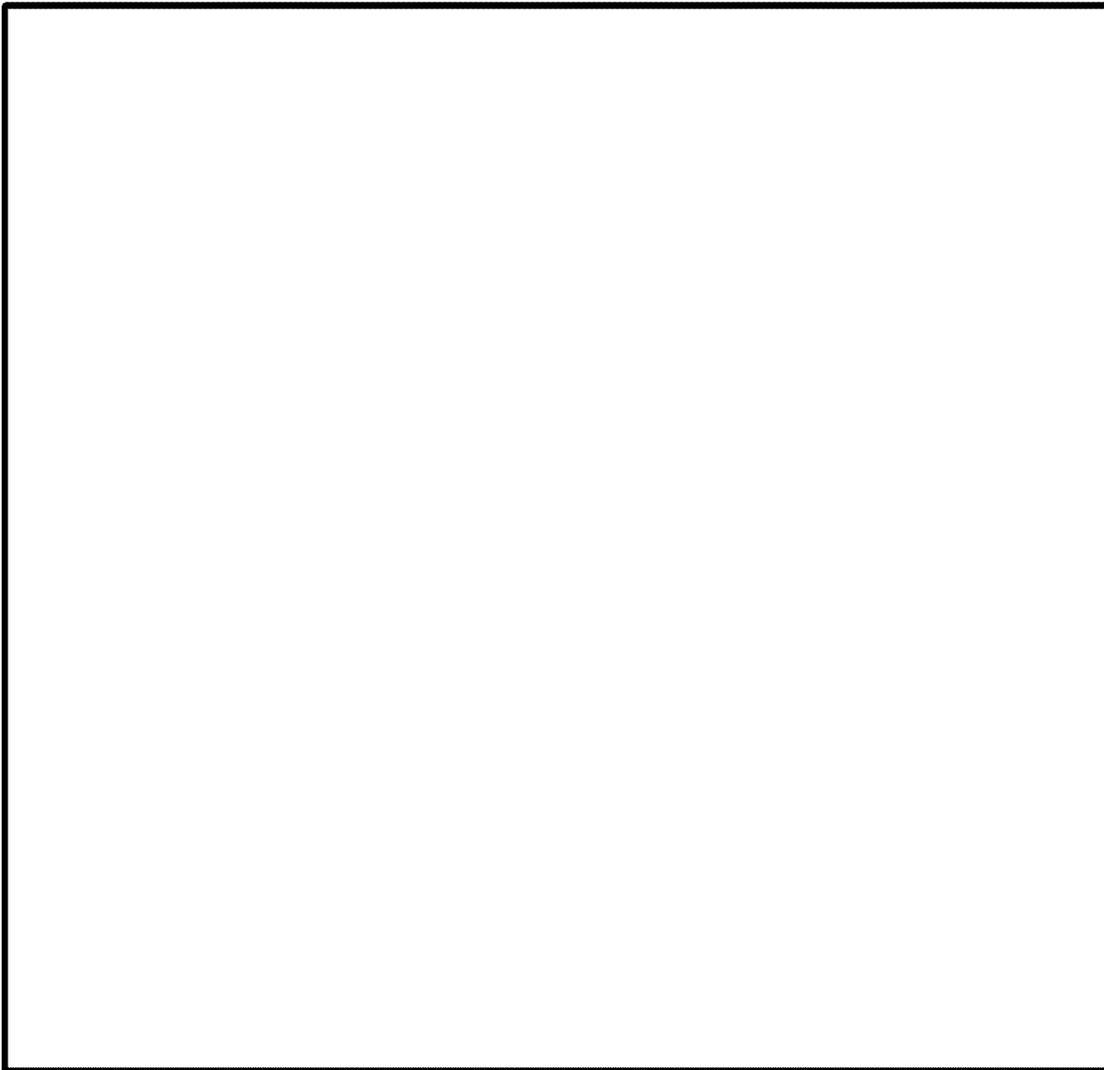
1-129 H1B RFE STANDARDS

(b)(5)



Last Name	First Name	Current Status (i.e., United States Citizen, Lawful Permanent Resident, H-1B, L-1)	USCIS Receipt Number (if applicable)

129 H1B RFE (FR) Public Law 114-113 Fee



(b)(5)

1-129 H1B RFE STANDARDS

- A table as shown below for all employees employed by you at the time you filed this Form I-129. Please arrange the last name in alphabetical order.

Last Name	First Name	Current Status (i.e., United States Citizen, Lawful Permanent Resident, H-1B, L-1)	USCIS Receipt Number (if applicable)

129 H1B RFE (FR) ACWIA Fee

(b)(5)

1-129 H1B RFE STANDARDS

XXX[To show you are a primary or secondary school, you submitted:]XXX

- XXX[list submitted evidence]XXX

XXX[The evidence you submitted is insufficient. [Officer must insert the reason(s) why the evidence listed is not sufficient.]]XXX

Accordingly, it appears that you do not qualify for exemption from payment of the additional fee. Please submit the proper ACWIA fee.

If you believe that you are not required to pay the ACWIA fee, please provide documentary evidence to establish you meet the exemption requirement. Evidence to show you are exempt from the ACWIA fee may include, but is not limited to:

- Evidence from the appropriate state or local licensing agency to establish that you are authorized to operate as a primary or secondary education institution or evidence that such authorization is not required.
- A more detailed description about your business. Include evidence such as copies of your catalog, brochures, internet website, or any other printed materials published by you to establish that you are operating as a primary or secondary education institution.

129 H1B RFE (FR) ACWIA Institution of Higher Education



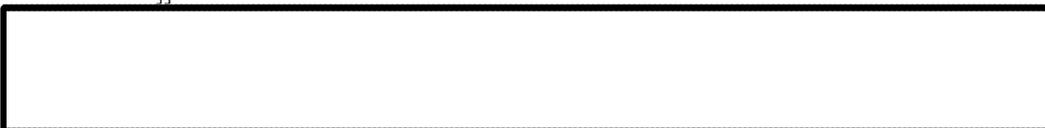
(b)(5)

XXX[You did not submit any evidence to show that you are an institution of higher education.]XXX

XXX[To show you are institution of higher education, you submitted:]XXX

- XXX[list submitted evidence]XXX

XXX[The evidence you submitted is insufficient. [Officer must insert the reason(s) why the evidence listed is not sufficient.]]XXX



(b)(5)

- You admit as regular students only persons having a certificate of graduation from a secondary school, or the recognized equivalent of such a certificate, or persons who meet the requirements of secondary school graduation from a home school setting that is treated as a home school or private school under state law;
- You are legally authorized within a state to provide a program of education beyond secondary education;
- You provide an educational program for which you award a bachelor's degree or provide not less than a two-year program that is acceptable for full credit toward such a degree, or award a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary of the U.S. Department of Education;
- You are a public or other nonprofit institution; and
- You are accredited by a nationally recognized accrediting agency or association, or if not so accredited, you are an institution that has been granted pre-accreditation status by such an agency

(b)(5)

1-129 H1B RFE STANDARDS



The following standards are used to determine if a foreign national is a specialty occupation and if the foreign national is qualified to perform the specialty occupation in the United States.

- 1. The position must require a high level of knowledge and expertise in a specific field of work.
- 2. The position must require a minimum of a bachelor's degree or its equivalent.
- 3. The position must require a high level of knowledge and expertise in a specific field of work that is not commonly available in the United States.
- 4. The position must require a high level of knowledge and expertise in a specific field of work that is not commonly available in the United States.

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- 2. The position must require a minimum of a bachelor's degree or its equivalent.
- 3. The position must require a high level of knowledge and expertise in a specific field of work that is not commonly available in the United States.
- 4. The position must require a high level of knowledge and expertise in a specific field of work that is not commonly available in the United States.

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- 1. The position must require a high level of knowledge and expertise in a specific field of work.
- 2. The position must require a minimum of a bachelor's degree or its equivalent.
- 3. The position must require a high level of knowledge and expertise in a specific field of work that is not commonly available in the United States.
- 4. The position must require a high level of knowledge and expertise in a specific field of work that is not commonly available in the United States.

1-129 H1B RFE STANDARDS

1. The employer must demonstrate that the beneficiary is a specialty occupation.
2. The employer must demonstrate that the beneficiary is a member of the profession, and that the beneficiary is a member of the profession.
3. The employer must demonstrate that the beneficiary is a member of the profession, and that the beneficiary is a member of the profession.

The employer must demonstrate that the beneficiary is a member of the profession, and that the beneficiary is a member of the profession.

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5. The employer must demonstrate that the beneficiary is a member of the profession, and that the beneficiary is a member of the profession.

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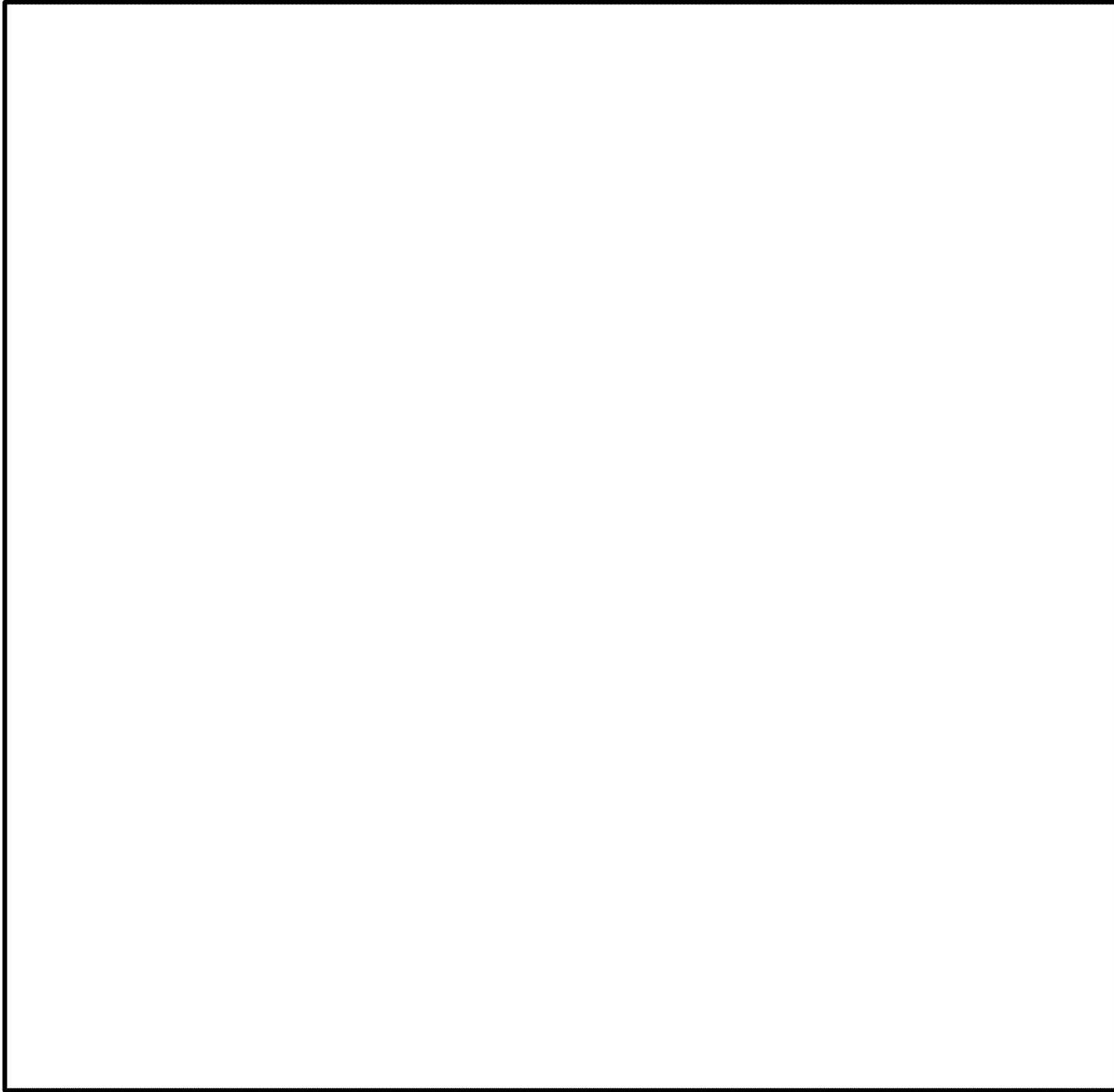
6. The employer must demonstrate that the beneficiary is a member of the profession, and that the beneficiary is a member of the profession.

7. The employer must demonstrate that the beneficiary is a member of the profession, and that the beneficiary is a member of the profession.

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(b)(5)

1-129 H1B RFE STANDARDS



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1-129 H1B RFE STANDARDS

Applied research is research to gain knowledge or understanding to determine the means by which a specific, recognized need may be met. Applied research includes investigations oriented to discovering new scientific knowledge that has specific commercial objectives with respect to products, processes, or services.

As evidence, you provided:

- XXX[Lists evidence provided to show research]XXX

However, the evidence provided does not establish that you qualify as an organization that primarily engages in basic and/or applied research. XXX[Explain why.]XXX You have two options: (1) remit the required \$1,500 or \$750 ACWIA fee, as applicable; or (2) submit evidence to show that you are exempt from the required ACWIA fee. Evidence to show you are exempt from the ACWIA fee may include, but is not limited to, the following:

- Documentation that establishes your research activities, such as copies of organizational documents, including articles of incorporation or articles of organization; and organizational literature, such as books, articles, brochures, research papers, and other literature describing the purpose and nature of your research activities.
- A complete copy of your most recent Form 990, Return of Organization Exempt from Income Tax. The copy of the tax return should include all required schedules and statements that identify your primary exempt purpose.
- Work products from research projects, such as published research papers in journals, magazines, newspapers, and websites.
- Evidence that you received research grants from governmental, educational, or other for-profit or nonprofit grantors.
- Photographs of research.
- Written testimonials attesting to the research that you conducted. The testimonials should include the writer's name, address, and qualifications.

XXX[Adjudicators: do not request the following if you already know the petitioner is a nonprofit organization]XXX

Nonprofit organization or entity is an organization that is qualified as a tax exempt organization under section 501(c)(3), (c)(4) or (c)(6) of the Internal Revenue Code of 1986, as amended, and has received approval as a tax exempt organization from the Internal Revenue Service, as it relates to research or educational purposes.

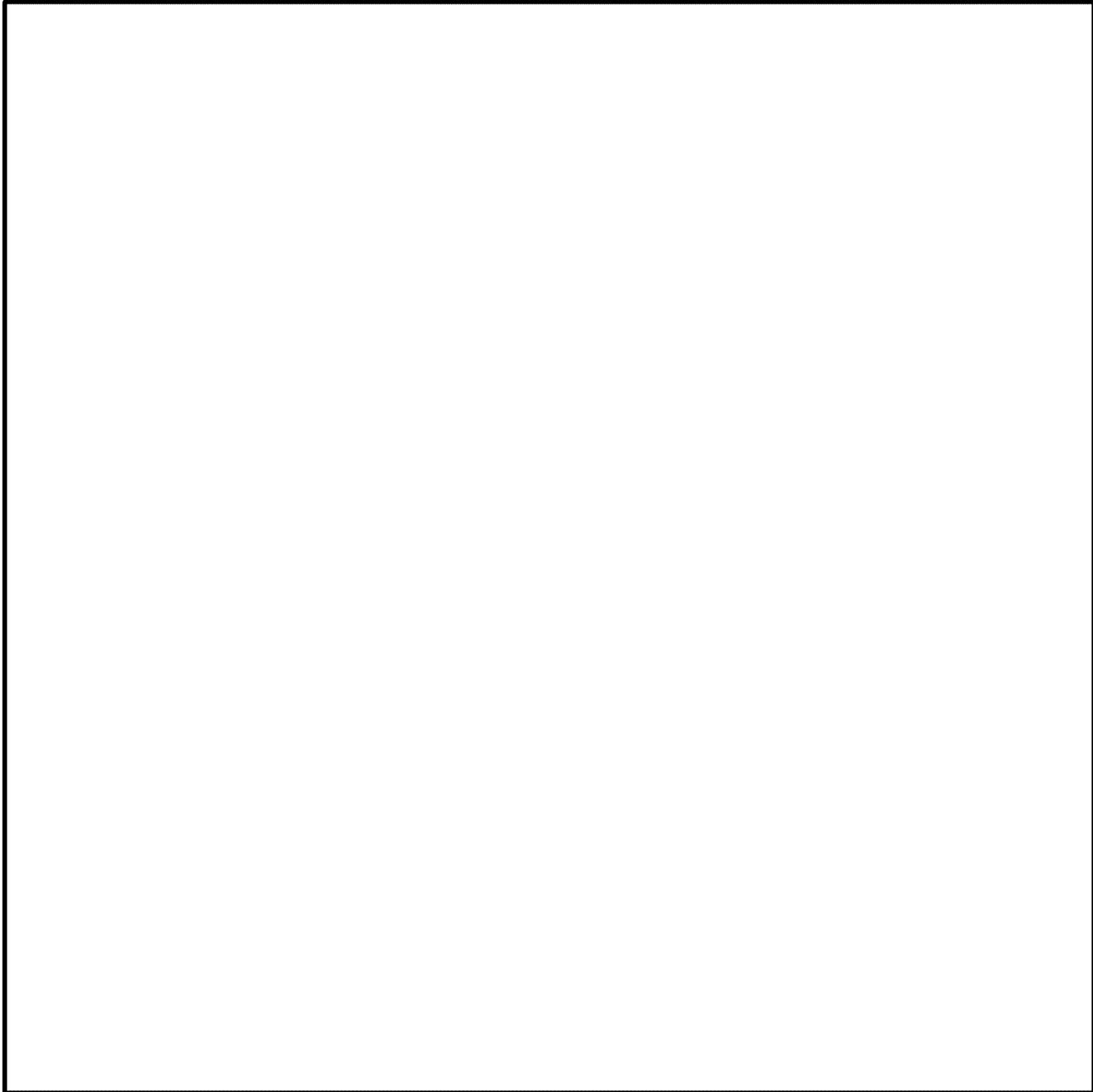
To establish that you are a nonprofit entity, you provided:

(b)(5)

- XXX[List evidence provided regarding nonprofit status]XXX

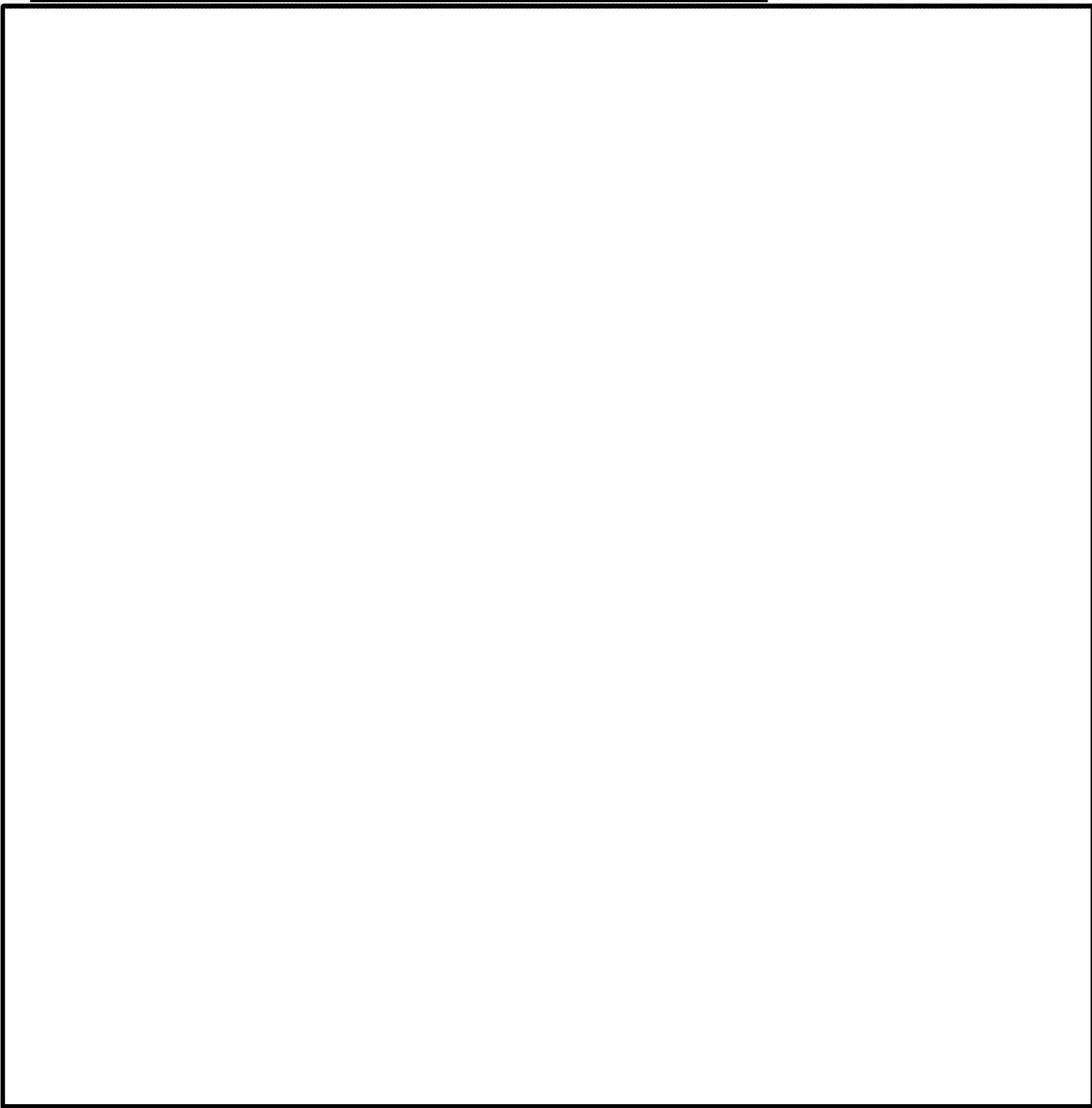
(b)(5)

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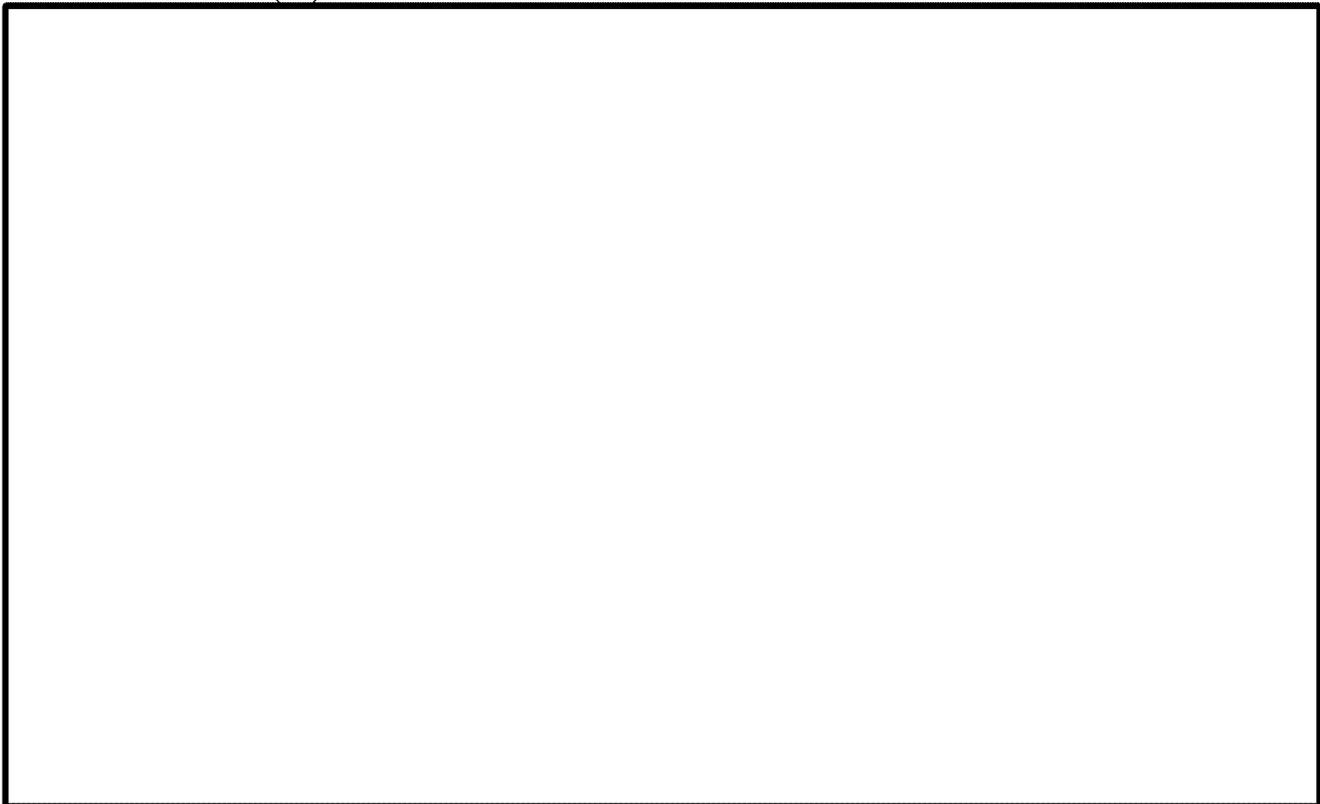
However, the record of proceeding does not establish that you qualify as an organization that engages in curriculum-related clinical training of students. XXX[OFFICER MUST EXPLAIN WHY EVIDENCE IS NOT SUFFICIENT.]XXX



(b)(5)

- Detailed descriptions and substantiating evidence regarding the curriculum-related clinical training program. Provide evidence such as program literature, brochures, applications, requirements, or contracts.
- Lists of students who are currently enrolled in the curriculum-related clinical training.
- Evidence that you qualify as a nonprofit organization with federal tax exempt status in the form of a signed letter from the Internal Revenue Service showing that you are exempt from taxation in accordance with the Internal Revenue Code as it relates to such nonprofit organizations.
- A complete copy of your most recent Form 990, Return of Organization Exempt from Income Tax. The copy of the tax return should include all required schedules and statements that identify your primary exempt purpose.

129 H1B RFE (FR) ACWIA Amended Petitions NOT EOS



(b)(5)

1-129 H1B RFE STANDARDS

Export Control: Any Form I-129 filed ~~in~~on behalf of an H-1B beneficiary on or after February 20, 2011 must include a response to Part 6, "Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States."

You did not answer the question in Part 6 of the Form I-129. Please complete Part 6 of the Form I-129 and submit it in response to this request for evidence. If the Part 6 of the Form I-129 is not returned, or if it is returned without one of the blocks checked, the petition will be denied as incomplete.

129 H1B RFE CAP EXEMPTIONS (CE)

H-1B Cap Exemptions

H-1B Numerical Limitation: Each year, USCIS grants a limited number of H-1B visas (H-1B Cap) for specialty occupation workers. Most employers and beneficiaries are subject to the H-1B Cap. However, several H-1B Cap exemptions are available to certain employers or beneficiaries. You seek to begin employing the beneficiary within the XXX[INSERT FISCAL YEAR START DATE]XXX fiscal year. On XXX[INSERT CAP CLOSURE ANNOUNCEMENT DATE]XXX, USCIS announced that it had reached the H-1B Cap for fiscal year XXX[INSERT FISCAL YEAR START DATE]XXX. USCIS stopped accepting H-1B filings for employment beginning in fiscal year XXX[INSERT FISCAL YEAR START DATE]XXX on XXX[INSERT H-1B CAP CLOSED DATE]XXX.

129 H1B RFE (CE) Higher Education Institution

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- XXX[List evidence provided]XXX

However, the record does not show that you are an institution of higher education because XXX[Explain why]XXX. Please provide additional evidence regarding this exemption. The evidence must show that:

- You admit as regular students only persons having a certificate of graduation from a secondary school, or the recognized equivalent of such a certificate, or persons who meet the requirements of secondary school graduation from a home school setting that is treated as a home school or private school under state law;
- You are legally authorized within a state to provide a program of education beyond secondary education;
- You provide an educational program for which you award a bachelor's degree or provide not less than a two-year program that is acceptable for full credit toward such a degree, or award a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary of the U.S. Department of Education;
- You are a public or other nonprofit institution; and
- You are accredited by a nationally recognized accrediting agency or association, or if not so accredited, you are an institution that has been granted pre-accreditation status by such an agency or association that has been recognized by the Secretary of the U.S. Department of Education for the granting of pre-accreditation status, and the Secretary of the U.S. Department of Education has determined that there is satisfactory assurance that you will meet the accreditation standards of such an agency or association within a reasonable time.

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129 H1B RFE (CE) Nonprofit Affiliated to Higher Education Institution

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1-129 H1B RFE STANDARDS

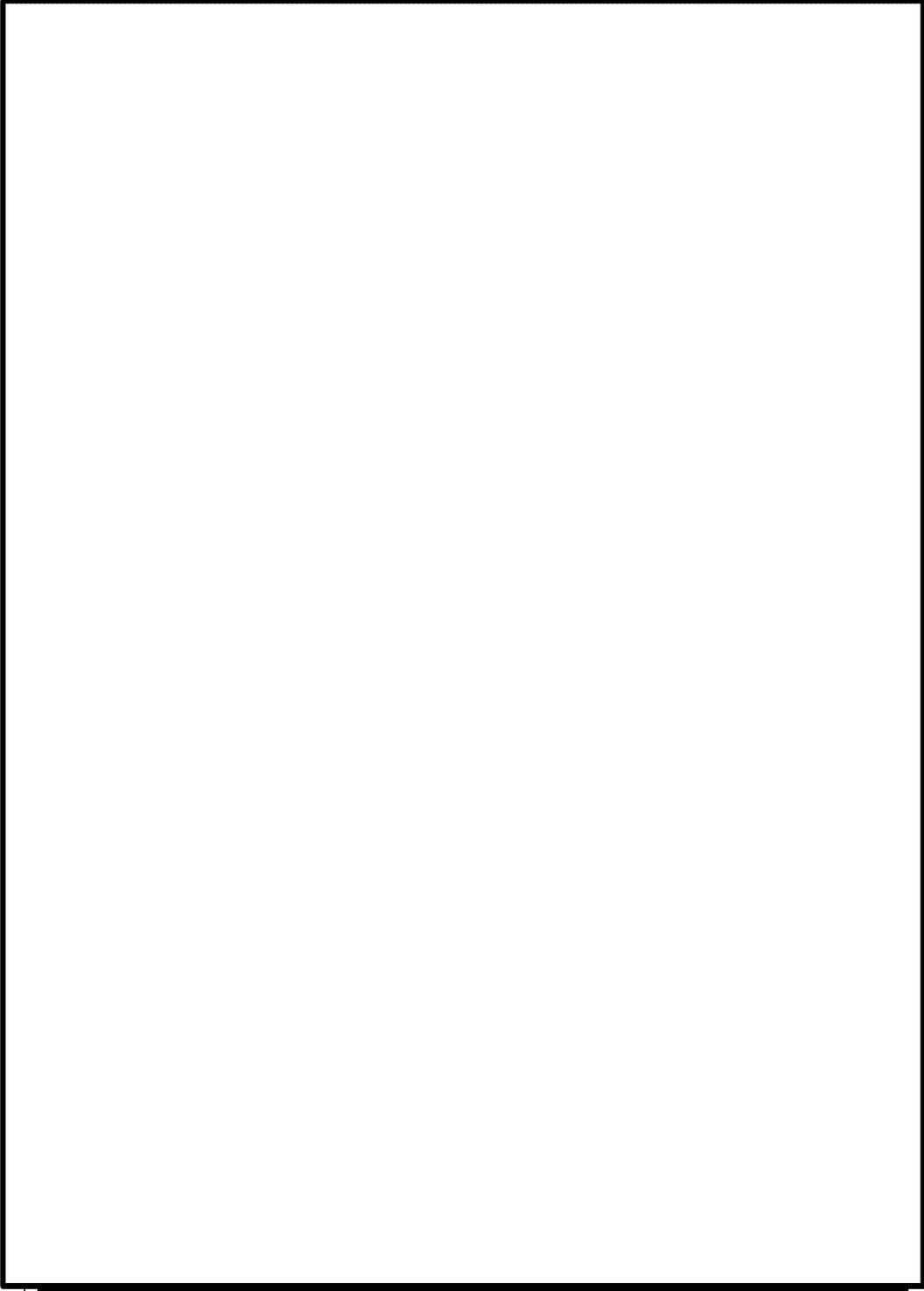


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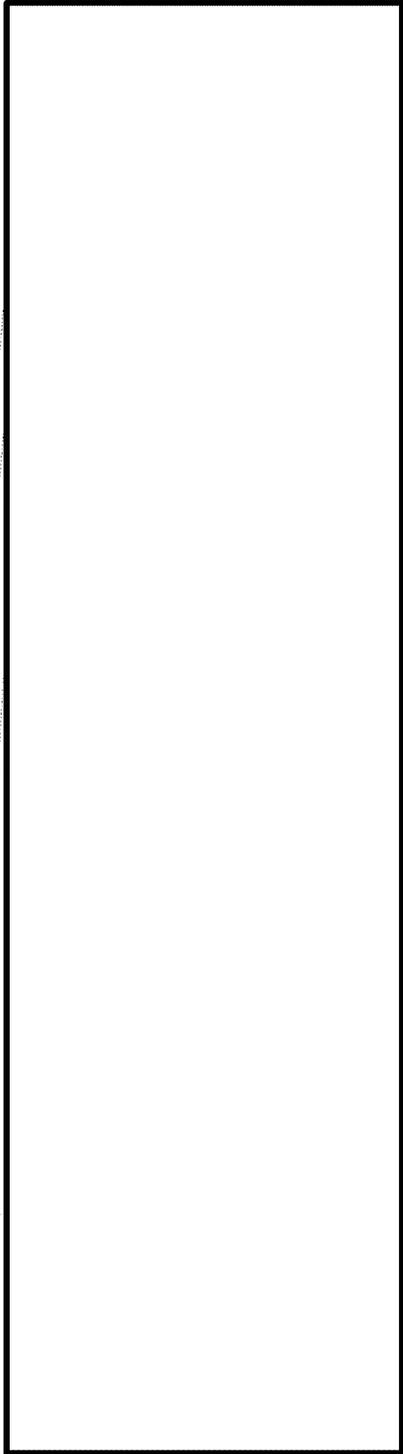
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1-129 H1B RFE STANDARDS



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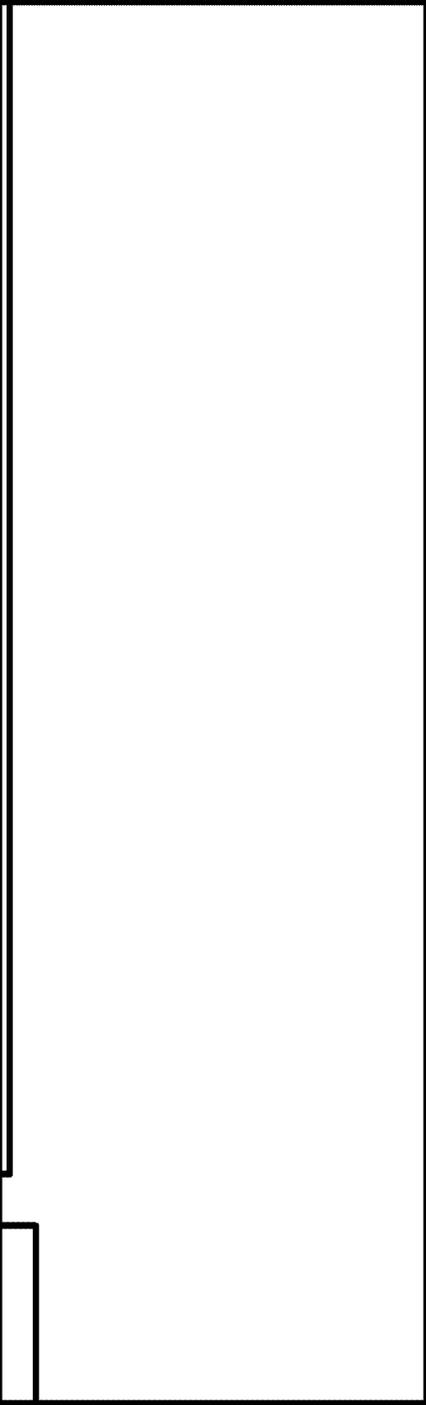
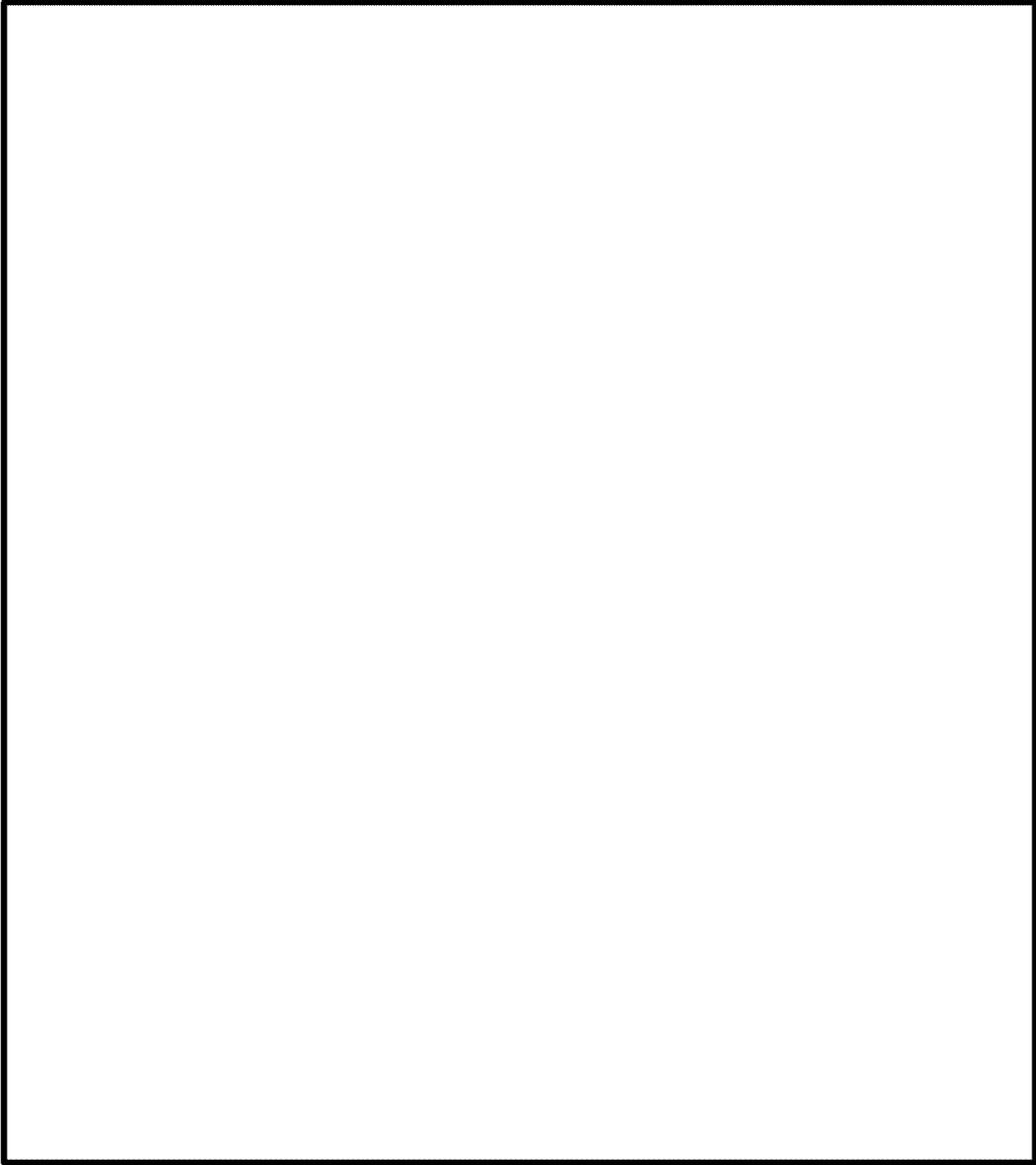


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1-129 H1B RFE STANDARDS



129 H1B RFE (CE) Nonprofit Research Organization



1-129 H1B RFE STANDARDS

Basic research is general research to gain more comprehensive knowledge or understanding of the subject under study, without specific applications in mind. Basic research also is research that advances scientific knowledge but does not have specific immediate commercial objectives although it may be in fields of present or potential commercial interest.

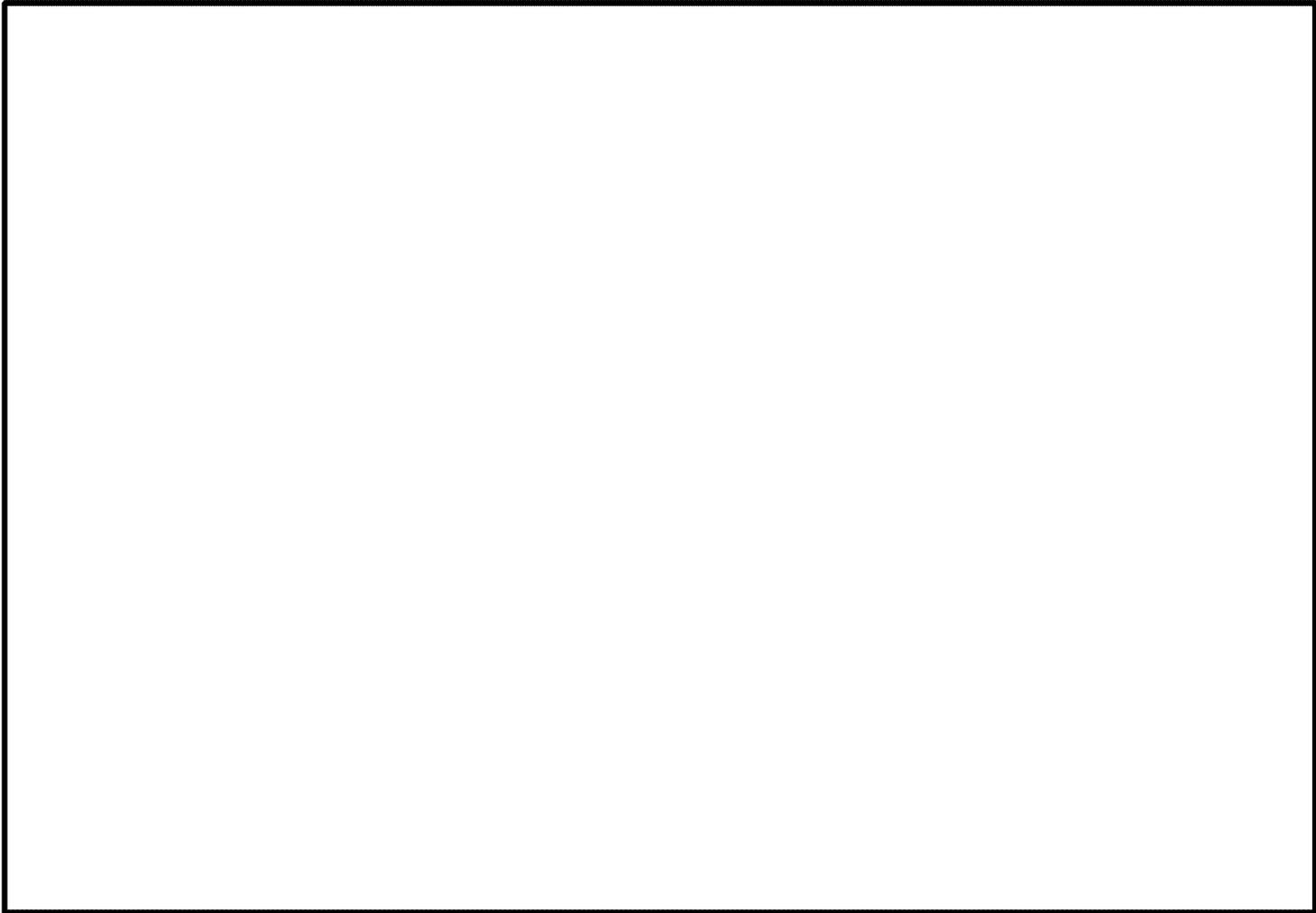
Applied research is research to gain knowledge or understanding to determine the means by which a specific, recognized need may be met. Applied research includes investigations oriented to discovering new scientific knowledge that has specific commercial objectives with respect to products, processes, or services.

You provided the following evidence to show that you primarily engage in basic and/or applied research:

- XXX[Lists evidence provided to show research]XXX

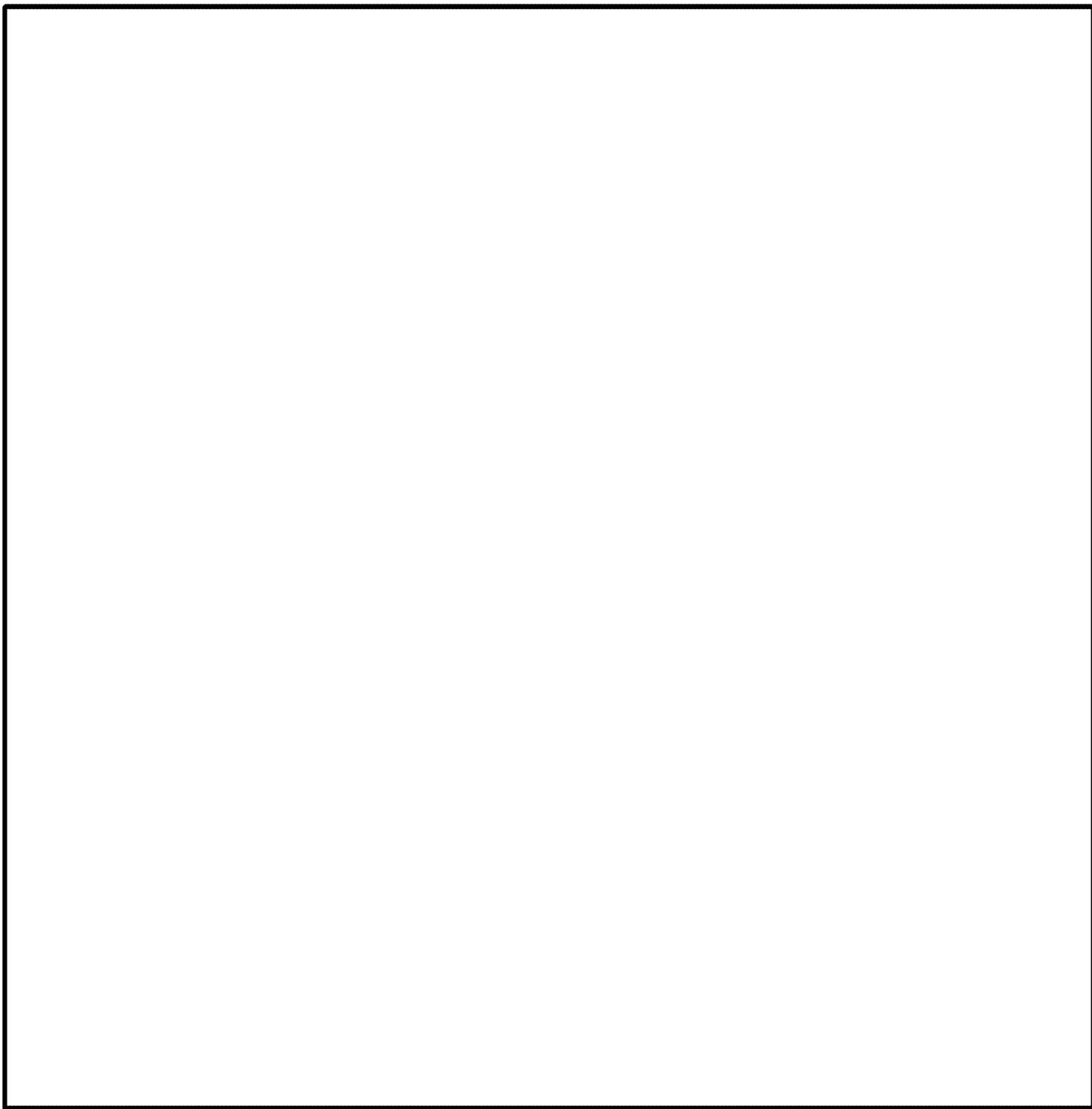
However, the record of proceeding does not establish that you qualify as an organization that primarily engages in basic and/or applied research. XXX[Explain why.]XXX Please submit evidence to show that you qualify as a nonprofit organization that primarily engages in basic and/or applied research. Evidence may include, but is not limited to, the following:

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1-129 H1B RFE STANDARDS

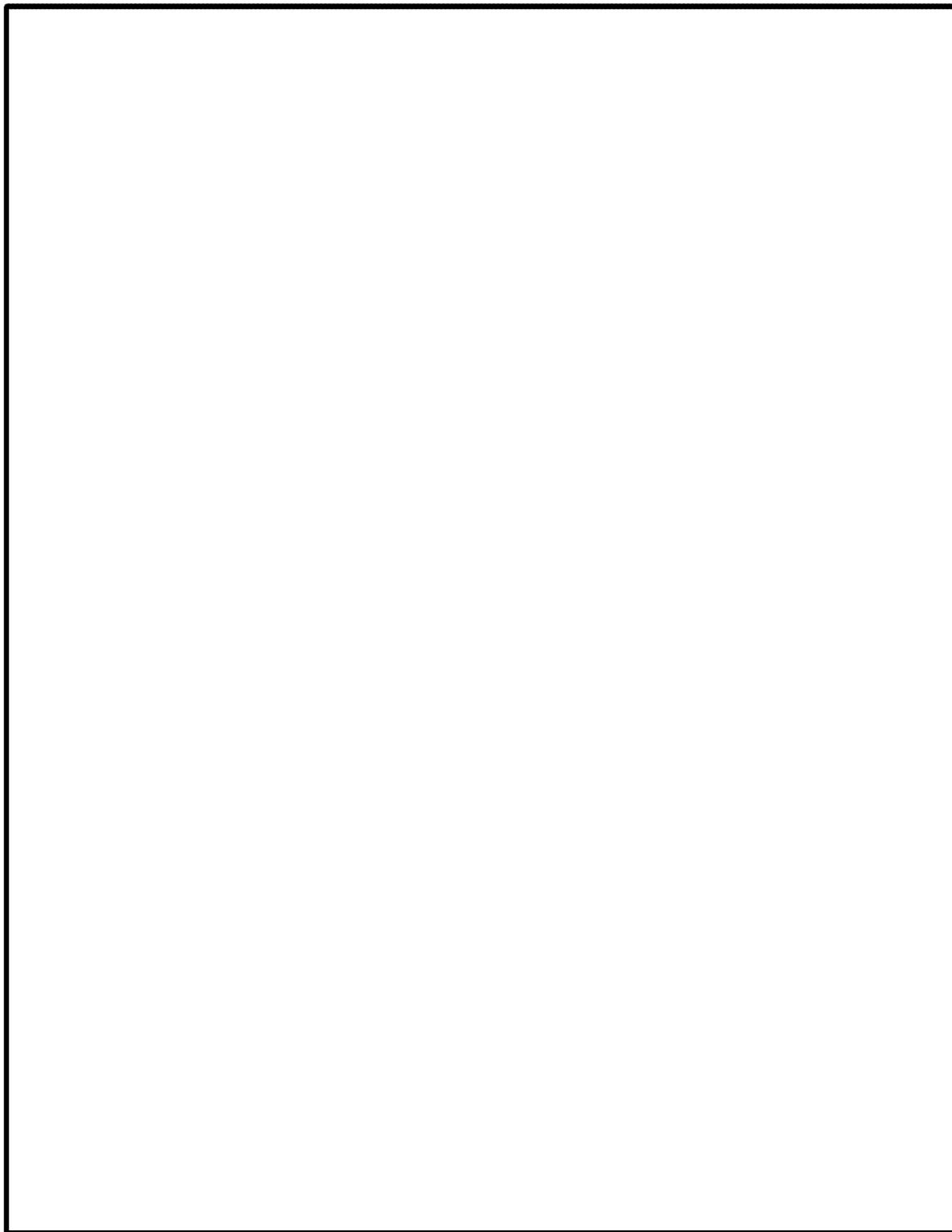


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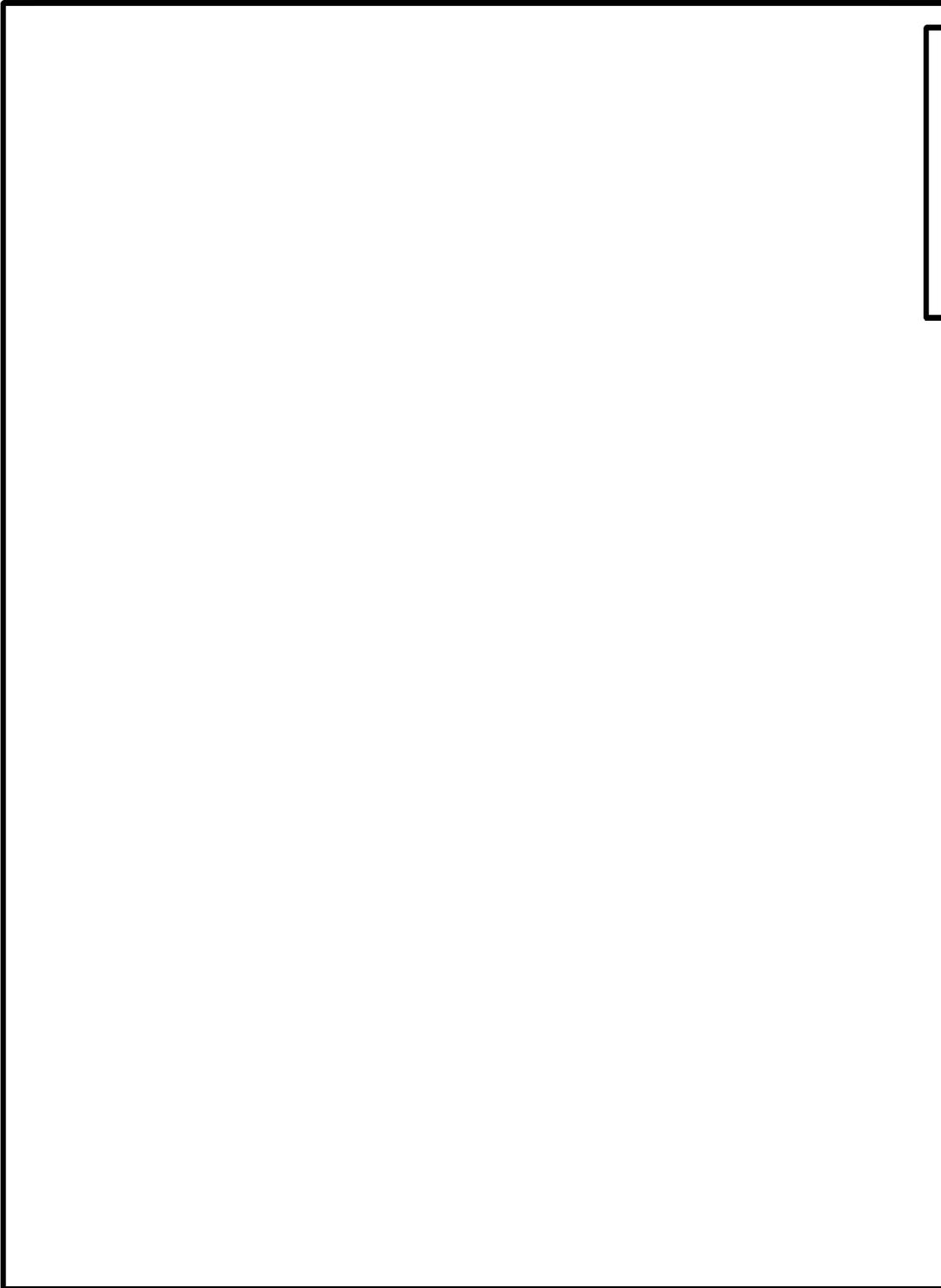
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1-129 H1B RFE STANDARDS



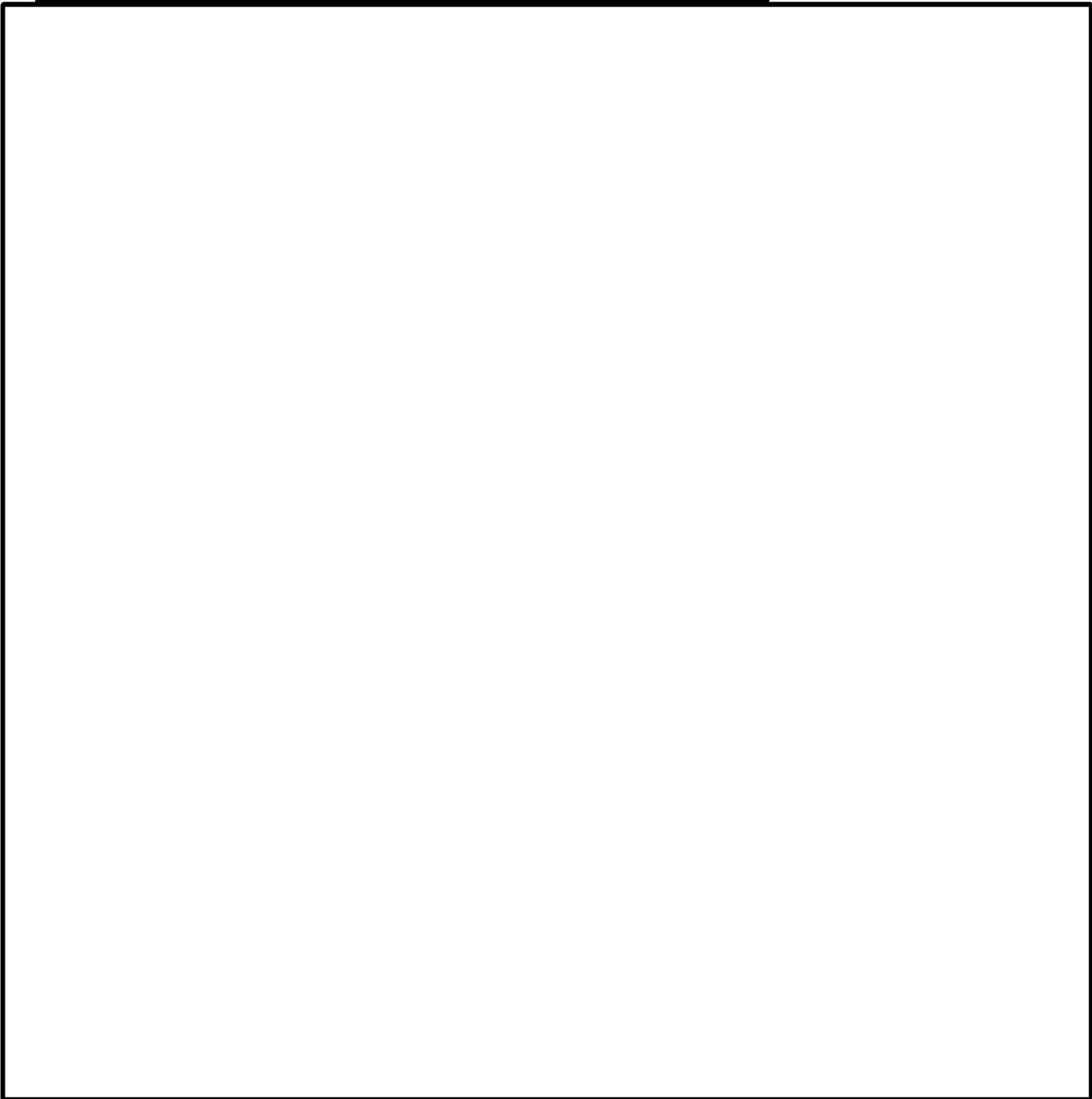
1-129 H1B RFE STANDARDS

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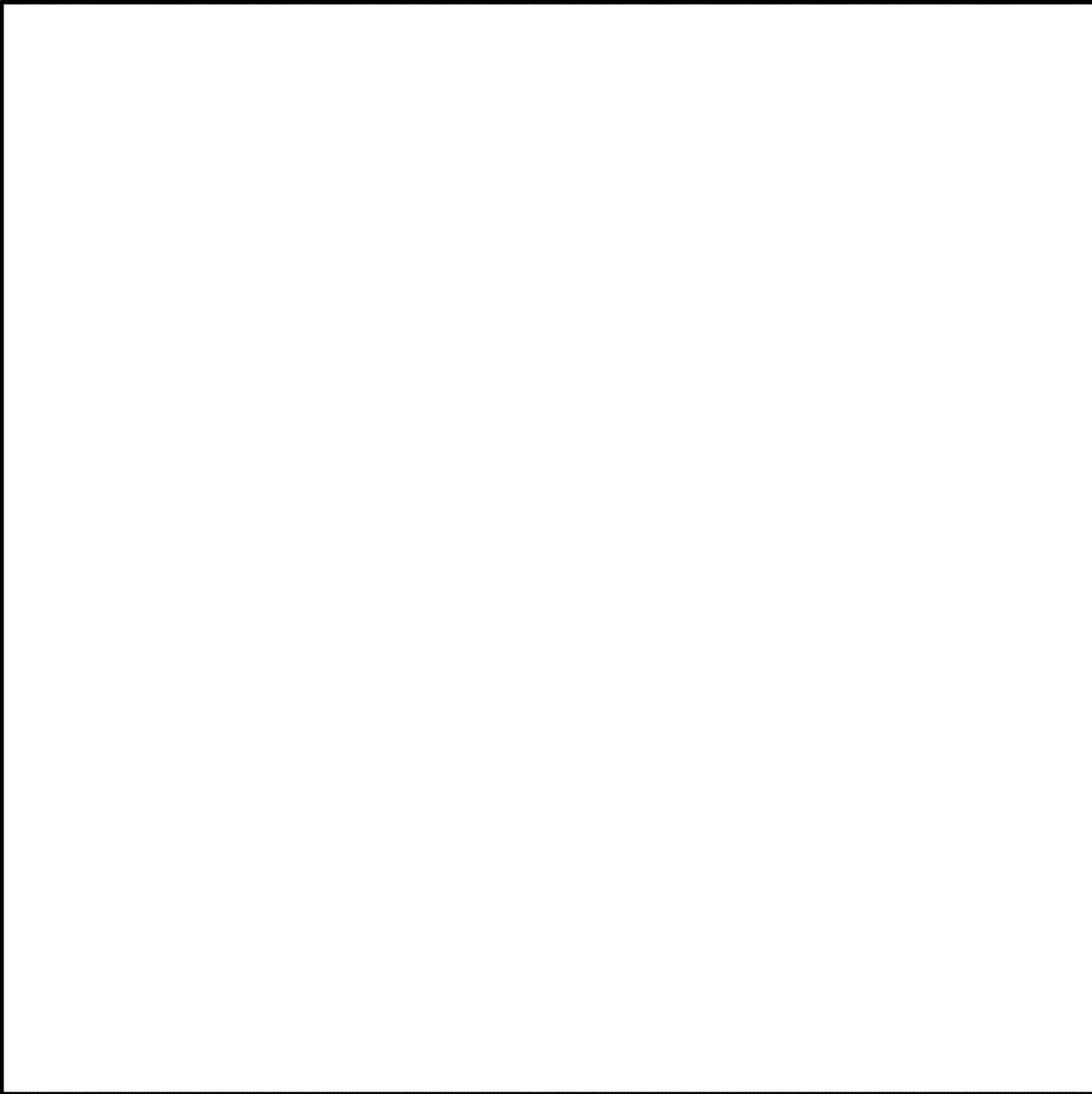
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1-129 H1B RFE STANDARDS



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1-129 H1B RFE STANDARDS

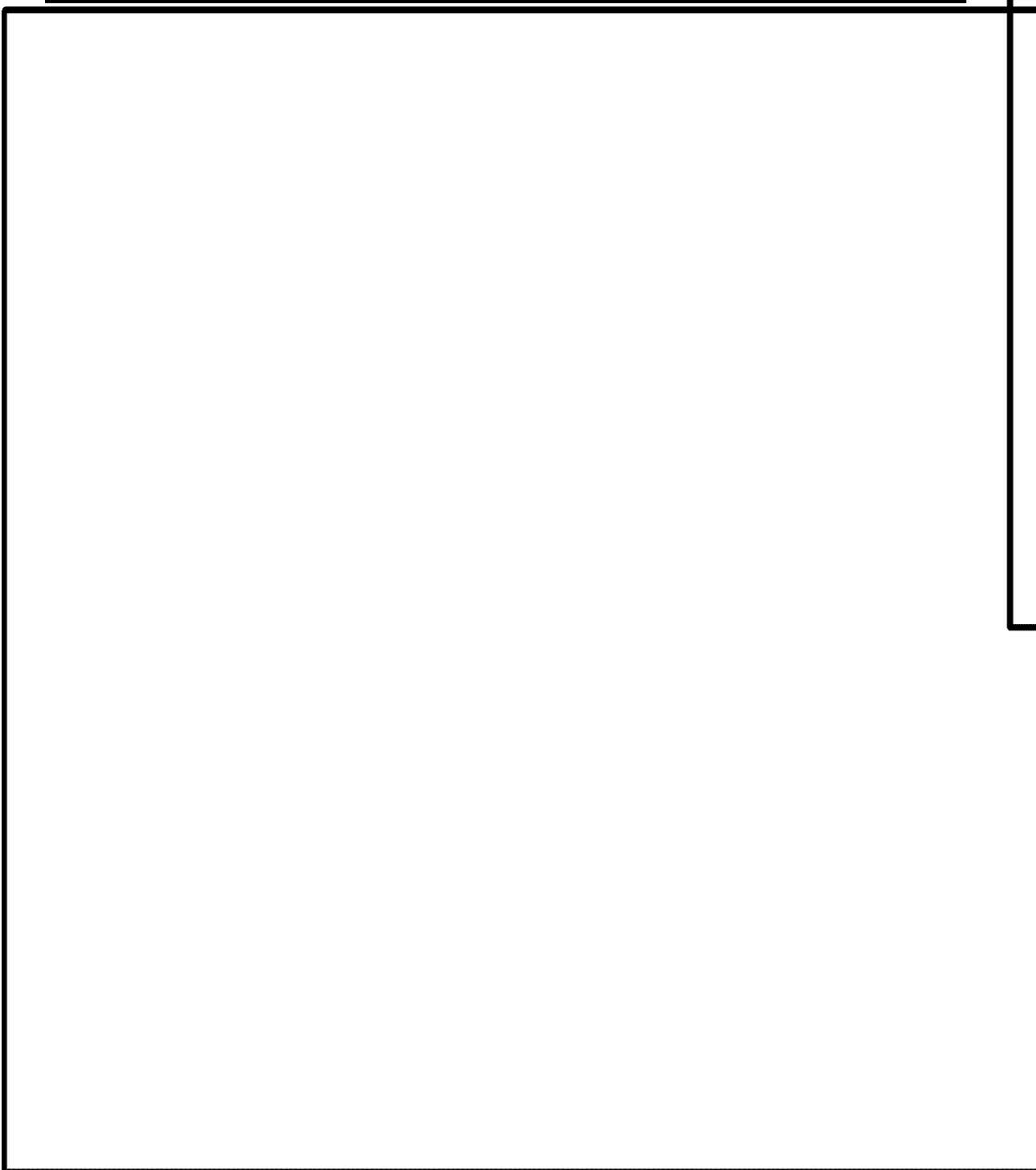


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1-129 H1B RFE STANDARDS



129 H1B RFE (CE) GUAM-CNMI Employment

Employer Subject to Guam-CNMI CAP Exemption: You indicate that the petition is exempt from the H-1B Cap because the employment is for an employer subject to the Guam-Commonwealth of the Northern Mariana Islands (CNMI) H-1B Cap exemption pursuant to Public Law 110-229.

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1-129 H1B RFE STANDARDS

However, you do not meet this requirement for H-1B Cap exemption because XXX[CHOOSE: the work location stated in the petition and in the Labor Condition Application (LCA) is [insert location] OR [INSERT YOUR OWN REASON]XXX.

Therefore, provide additional evidence to establish that the petition satisfies this criterion. Evidence you may submit to satisfy this requirement includes, but is not limited to, a combination of the following or similar types of evidence:

- Evidence that the employment is at a facility located on Guam or CNMI.
- A new Labor Condition Application that corresponds to the proffered position and work location(s) and was certified on or before the date of filing the petition.

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129 H1B RFE (CE) Master's Cap Exemption

You indicate on the H-1B Data Collection and Filing Fee Exemption Supplement that the beneficiary qualifies for the Master's Cap because the beneficiary earned a XXX[INSERT MASTER'S OR HIGHER DEGREE]XXX degree from XXX[INSERT SCHOOL NAME]XXX.

However, it does not appear that the beneficiary qualifies for Master's Cap exemption because XXX[Officer must insert the reason(s) why the evidence is not sufficient]XXX].

Therefore, provide additional evidence to establish that the petition satisfies this criterion. Evidence you may submit to satisfy this requirement includes, but is not limited to:

- Evidence that the beneficiary earned a master's or higher degree from a United States institution of higher education as defined in 20 U.S.C. § 1001(a) the H-1A, which may include a copy of the master's degree or academic transcript confirming the master's degree has been earned.
- A letter from the school's office of the registrar or an official of the school in charge of educational records addressing: 1) the completion of all degree requirements towards the master's degree; and 2) the date the degree requirements were completed.
- Evidence that a bachelor's degree is required in order to obtain the master's or higher degree earned by the beneficiary.

129 H1B RFE PETITIONER REQUIREMENTS (PR)

129 H1B RFE (PR) LCA

Petitioner Requirements

You are required to submit the following with an H-1B petition involving a specialty occupation:

- A certification from the Secretary of Labor that you have filed a labor condition application (LCA) with the Secretary.
- A statement that you will comply with the terms of the LCA for the duration of the beneficiary's authorized period of stay.

The following item(s) identify deficiencies within these requirements. Please review each section and address it accordingly.

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1-129 H1B RFE STANDARDS

129 H1B RFE (PR) LCA – No LCA Submitted

No LCA Submitted: Submit a certification from the U.S. Department of Labor (DOL) to establish that a Form ETA 9035, Labor Condition Application (LCA), has been properly filed, completed, and endorsed by the DOL. Eligibility for H-1B employment must be established as of the date of filing the Form I-129. Thus, the LCA must have been certified prior to the filing of the Form I-129.

129 H1B RFE (PR) LCA – Not Certified by DOL

LCA Not Certified by DOL: The Form ETA 9035, Labor Condition Application (LCA), that you submitted has not been certified by the U.S. Department of Labor (DOL) ~~to show the validity dates of employment.~~ Please submit a certified LCA from the DOL. Eligibility for H-1B employment must be established as of the date of filing the Form I-129. Thus, the LCA must have been certified prior to the filing of the Form I-129.

129 H1B RFE (PR) LCA – Expired Dates

Expired Dates on LCA: The validity dates on the Form ETA 9035, Labor Condition Application (LCA), from the U.S. Department of Labor that you submitted have expired. Submit evidence of a certified LCA for the beneficiary's specialty occupation that is valid for the period of intended employment. Eligibility for H-1B employment must be established as of the date of filing the Form I-129. Thus, the LCA must have been certified prior to the filing of the Form I-129.

129 H1B RFE (PR) LCA – Invalid Information on LCA

Invalid Information on LCA: The Form ETA 9035, Labor Condition Application (LCA), submitted with your petition is unacceptable because it contains invalid information such as illegible endorsements by the U.S. Department of Labor (DOL). DOL has indicated that invalid information occurs when you do not have the latest version of Adobe Acrobat Reader installed. Please submit an LCA that contains valid information with your response. Eligibility for H-1B employment must be established as of the date of filing the Form I-129. Thus, the LCA must have been certified prior to the filing of the Form I-129.

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129 H1B RFE (PR) LCA - Multiple Beneficiaries

Multiple Beneficiaries on LCA: The Labor Condition Application (LCA) submitted indicates that more than one H-1B nonimmigrant has been certified for employment with you. USCIS regulations state that in the situation where more than one individual has been approved for H-1B classification under this LCA, it will be necessary to identify all file numbers of these beneficiaries. You did not identify all the USCIS file numbers for H-1B beneficiaries who were previously approved under this LCA. Therefore, submit a list of all file numbers for beneficiaries who have been approved using this LCA.

129 H1B RFE (PR) LCA - Multiple Locations

1-129 H1B RFE STANDARDS

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129 H1B RFE (PR) LCA - Different Job Duties

Job Duties Different than Those of the Occupation Listed on LCA: You filed the petition to secure the beneficiary's services as XXX[a/an Job Title]XXX. Additionally, you described the duties of the position as follows:

- XXX[List the proffered duties here]XXX

However, the beneficiary's duties are not those of the occupational title shown in the submitted Labor Condition Application (LCA). You classified the proffered position under the SOC (ONET/OES) occupation title of XXX[occupation stated in the LCA]XXX with O*NET-SOC code XXX[SOC ONET/OES CODE XXXXXX]XXX. Under this occupational code, the duties are described as follows:

- XXX[List the duties described under the occupational code stated in the certified LCA]XXX

Prior to filing an H-1B petition, you must obtain a certified LCA from the U.S. Department of Labor (DOL) in the occupational specialty in which the H-1B worker will be employed. Here, the submitted LCA is not for the specialty occupation in which the beneficiary will be employed.

129 H1B RFE (PR) LCA - Dependent Employer

Not a Dependent Employer on LCA: You indicated on the submitted Labor Condition Application (LCA) that you are not an H-1B dependent employer. You also indicated that you are not H-1B dependent on the Form I-129.

An H-1B dependent employer is defined as an employer that:

- Has 25 or fewer full-time equivalent employees who are employed in the United States and employs more than seven H-1B nonimmigrants;
- Has at least 26 but not more than 50 full-time equivalent employees who are employed in the United States and employs more than 12 H-1B nonimmigrants; or
- Has at least 51 full-time equivalent employees who are employed in the United States and employs H-1B nonimmigrants in a number that is equal to at least 15 percent of the number of such full-time equivalent employees.

Based on your H-1B filing history with USCIS, documentation is needed to confirm your claim. To clarify this issue, it is requested that you comply with one of the following:

1. If you are an H-1B dependent employer, provide an appropriate LCA, certified by the U.S. Department of Labor prior to the filing date of the instant petition, which shows that you are H-1B dependent.

1-129 H1B RFE STANDARDS

To show that you are H-1B dependent, you must provide an appropriate response to Question 1, Subsection 1, Part I, "Additional Employer Labor Condition Statements – H-1B Employers Only". Also, if the response to Question 1, Subsection 1 is "Yes," Subsection 2 must be completed to show that you read and agreed to the "Additional Employer Labor Condition Statements"; or

2. If you are not an H-1B dependent employer, submit evidence regarding your employees. Evidence may include, but is not limited to, the following:
 - o A statement that explains how many U.S. and H-1B employees you employed at the time this Form I-129 was filed;
 - o A list of all of your H-1B employees with their names, USCIS receipt numbers, dates of birth, and identifiers such as Social Security Numbers (last four digits only);
 - o Copies of your Forms 941, Employer's Quarterly Federal Tax Returns, for the two quarters immediately prior to the filing date of this Form I-129;
 - o Copies of your state quarterly wage reports for all employees and for all states for the two quarters immediately prior to the filing date of this Form I-129.

129 H-1B RFE (PR) Simeio Compliance

Amended Petition Requirement: On April 19, 2015, USCIS's Administrative Appeals Office (AAO) published a precedent decision, *Matter of Simeio Solutions, LLC*, 26 I & N Dec. 542 (AAO 2015). In *Matter of Simeio Solutions, LLC*, the AAO held that:

1. A change in the place of employment of an H-1B beneficiary to a geographical area requiring a corresponding Labor Condition Application (LCA) be certified to the U.S. Department of Homeland Security (DHS) with respect to that beneficiary may affect eligibility for H-1B status; it is therefore a material change for purposes of Title 8, Code of Federal Regulations (8 CFR) §§ 214.2(h)(2)(i)(E) and (11)(i)(A); and
2. When there is a material change in the terms and conditions of employment, a petitioner must file an amended or new H-1B petition with the corresponding LCA.

Subsequently, on July 21, 2015, USCIS issued a Policy Memorandum (PM-602-0120), *USCIS Final Guidance on When to File an Amended or New H-1B Petition After Matter of Simeio Solutions, LLC*, which provided guidance on how USCIS would implement *Matter of Simeio Solutions, LLC*. In the Policy Memorandum, USCIS stated that a petitioner must file a new or amended H-1B petition if the petitioner changed the H-1B beneficiary's place of employment to a geographical area requiring a corresponding LCA to be certified to USCIS, even if a new LCA is already certified by the U.S. Department of Labor and posted at the new work location.

If the H-1B beneficiary's place of employment changed:

- During the period from April 9, 2015 to August 18, 2015, a new or amended H-1B petition must have been filed with USCIS by January 15, 2016.
- On or after August 19, 2015, a new or amended H-1B petition must be filed before the beneficiary begins work at the new location.

A new or amended H-1B petition is not required if one of the following conditions is met:

- An H-1B beneficiary is moving to a new job location within the same area of intended employment, a new LCA is not generally required.

1-129 H1B RFE STANDARDS

- An H-1B beneficiary may be placed at a new worksite for up to 30 days, and in some cases 60 days (where the employee is still based at the “home” worksite), without obtaining a new LCA.
- An H-1B beneficiary is going to a non-worksite location and there are no material changes in the authorized employment. A location is considered to be a “non-worksite” if:
 - The H-1B beneficiary is going to a location to participate in employee developmental activity, such as management conferences and staff seminars;
 - The H-1B beneficiary spends little time at any one location; or
 - The job is “peripatetic in nature,” such as situations where their job is primarily at one location but the H-1B beneficiary occasionally travels for short periods to other locations “on a casual, short-term basis, which can be recurring but not excessive (i.e., not exceeding five consecutive workdays for any one visit by a peripatetic worker, or 10 consecutive workdays for any one visit by a worker who spends most work time at one location and travels occasionally to other locations).”

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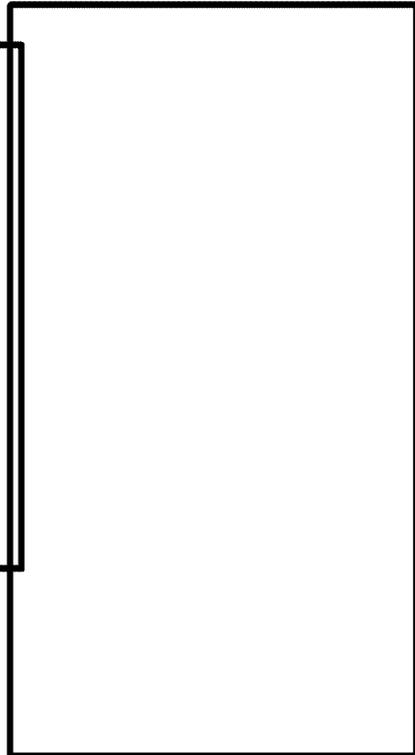
USCIS previously approved the beneficiary to work for you in XXX[INSERT WORK LOCATIONS FROM PREVIOUS APPROVAL]XXX.

- USCIS receipt numbers for all Forms I-129 filed by you in the beneficiary’s behalf.
- Copies of the relevant parts of the previously approved Forms I-129 that show the location(s) where the beneficiary was approved to work.
- An itinerary of all work location(s) in the United States where the beneficiary has worked since the most recent Form I-129 approval.
- Copies of certified LCAs for the new work location(s).
- Copies of the beneficiary’s pay records (leave and earnings statements, pay stubs, etc.) for the period of the previously approved H-1B status.
- Copies of the beneficiary’s payroll summaries and/or Forms W-2, Wage and Tax Statements, evidencing wages paid to the beneficiary during the period of previously approved H-1B status.
- Copies of work schedules from prior years.
- Copies of your state quarterly wage reports for the period of previously approved H-1B status that show the beneficiary’s work location(s).
- Copies of the beneficiary’s two or three most recently filed federal individual tax returns with all required schedules and statements, as appropriate.

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129 H1B RFE (PR) Itinerary

Itinerary of Employment and Work Site Information: From the information provided, it appears that you will employ the beneficiary at multiple work locations. USCIS regulations provide that petitions requesting services to be performed in more than one location must include an itinerary with the dates and locations of the services to be provided.

XXX[Your petition was filed without an itinerary of employment.]XXX

To satisfy this requirement, you submitted:

- XXX[LIST EVIDENCE SUBMITTED]XXX

The evidence you submitted is insufficient. XXX[Officer must insert the reason(s) why the evidence listed is not sufficient]XXX

You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to:

- An itinerary of services or engagements with the dates and locations of the services. The itinerary may also include documentation from you or the end-client(s) receiving the beneficiary's services that states:
 - The name of the project the beneficiary is assigned to;
 - The address where the beneficiary will perform the work;
 - The title and duties of the beneficiary's position;
 - The contracted employment dates;
 - Whether there is a vendor through whom the beneficiary's services are provided;
 - The name of the vendor(s), if applicable;
 - Contact information from the end-client, if applicable, that includes the name, address, email, and telephone number where the contact can be reached; and/or
 - The name, title, and contact information of the person who will supervise the beneficiary at the work site.

129 H1B RFE (PR) Agents

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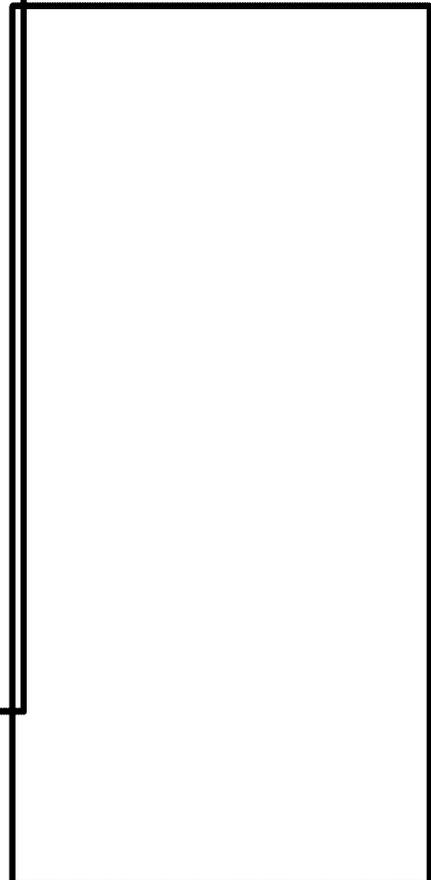
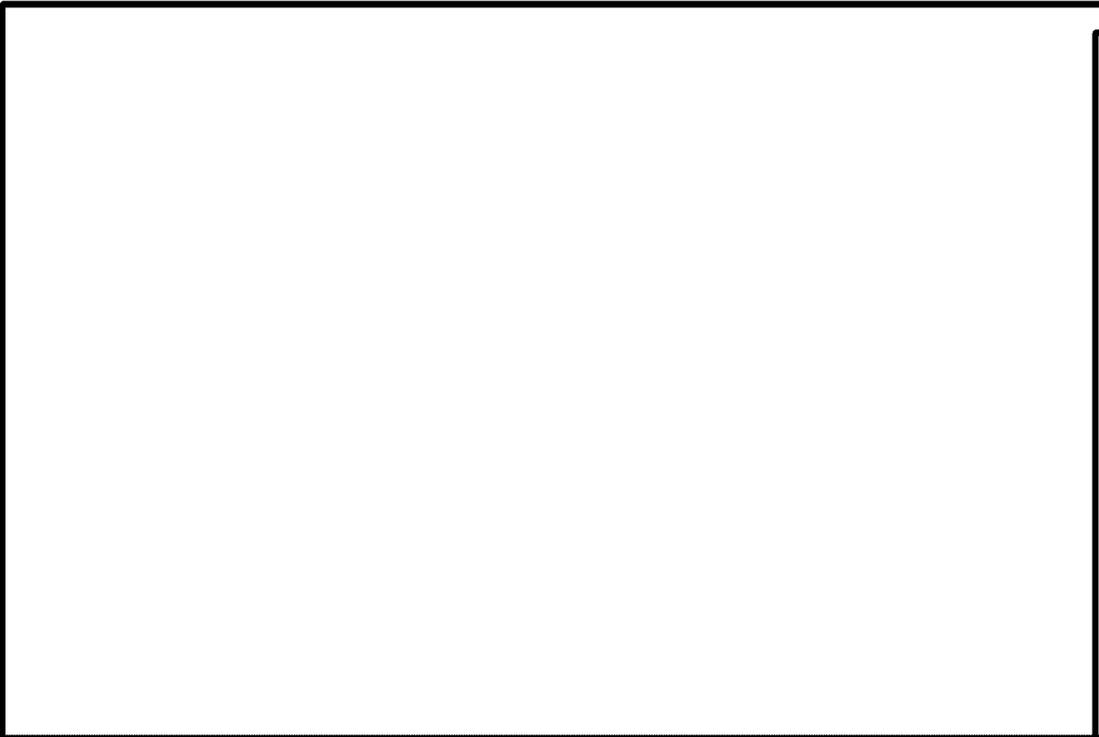
Therefore, if you are filing as a U.S. agent, you are requested to identify the category of worker you represent as an agent by providing one of the following:

1. Evidence that XXX[Insert Job Title]XXX are traditionally self-employed; or
2. Evidence that XXX[Insert Job Title]XXX use agents to arrange short term employment on their behalf with numerous employers. Include statements from each employer showing who will actually employ the beneficiary; or
3. Evidence that a foreign employer has authorized you to act on its behalf by submitting documentary evidence, such as contracts between you and the foreign employer.

A. Agents as Employers

If you are filing the petition as an agent performing the function of an employer, submit the following:

(b)(5)



C. Agents Representing a Foreign Employer

If you are an agent filing for a foreign employer, submit evidence that:

1-129 H1B RFE STANDARDS

- You are authorized to act on behalf of the foreign employer;
- The foreign employer will be responsible for complying with all the employer sanctions provisions in the statute INA 274A and 8 CFR part 274 regulations;

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129 H1B RFE (PR) Residential Work Site (generally used where CFDO has fraud concerns with petitioner)

Provide additional evidence to rebut this information and evidence to show that the work location listed on the petition is a fully functioning place of employment that can accommodate your current employees as well as future employees. The evidence should also show that you own, lease, or otherwise have permission to occupy the space; that you have appropriate permits or licenses to conduct business at the location; and that business is presently being conducted at the location. Such evidence may include, but is not limited to, the following:

- Indicate whether the work location is owned or leased. If owned, submit documentation to establish the owner(s) and the relationship to you. If leased, submit a copy of the lease or rental agreement. The lease or rental agreement should specify the date the lease began, subsequent renewal dates, the amount of space rented, and the monthly rent.
- Copies of your current valid city, county, state, and/or federal government business licenses.
- Provide documentation from the local authority to establish that non-resident/owner employees are permitted to work at your business location.
- A more detailed description about your business. Include evidence such as copies of company brochures, pamphlets, internet website, or any other printed work published by you that outline the products or services you provide.
- Color photos of your business premises. Color photos should show both the inside and outside of all production, warehouse, and office spaces with equipment, merchandise, products, and employees visible. Also, include any company logos, emblems, or signs displayed on and in buildings and on products.
- Clarify where the beneficiary will actually work. Define the workplace as a sales office, representative agency, distributorship, etc. Explain what type of building the office is in, office suite, warehouse, apartment, residence, etc. State how many hours the beneficiary will actually work at this location each week and specify the business hours. Provide copies of city- and county-zoning documents to verify the listed address is zoned for commercial enterprises.
- Evidence of business conducted at the work location. Evidence may include telephone bills, utility bills, rent receipts, payroll documents, bank statements, or business licenses.
- Any other evidence to support your claim that ~~this-is~~you are a bona fide employer and an ongoing business entity.

129 H1B RFE (PR) Virtual Office/Shared Work Site

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- Indicate whether the work location is owned or leased. If owned, submit documentation to establish the owner(s) and the relationship to you. If leased, submit a copy of the lease or rental agreement. The lease or rental agreement should specify the date the lease began, subsequent renewal dates, the amount of space rented, and the monthly rent.
- Copies of your current valid city, county, state, and/or federal government business licenses.
- A more detailed description about your business. Include evidence such as copies of company brochures, pamphlets, internet website, or any other printed work published by you that outline the products or services you provide.
- Color photos of your business premises. Color photos should show both the inside and outside of all production, warehouse, and office spaces with equipment, merchandise, products, and employees visible. Also, include any company logos, emblems, or signs displayed on and in buildings and on products.
- Clarify where the beneficiary will actually work. Define the workplace as a sales office, representative agency, distributorship, etc. Explain what type of building the office is in, office suite, warehouse, apartment, residence, etc. State how many hours the beneficiary will actually work at this location each week and specify the business hours. Provide copies of city- and county-zoning documents to verify the listed address is zoned for commercial enterprises.
- Evidence of business conducted at the work location. Evidence may include telephone bills, utility bills, rent receipts, payroll documents, bank statements, or business licenses.
- Any other evidence to support your claim that ~~this is you~~ are a bona fide employer and an ongoing business entity.

129 H1B RFE (PR) Entrepreneur-In-Residence (EIR)

XXX[Should be used in connection with H-1B petitions where: 1) it appears the beneficiary may be the sole or majority owner of the petitioning entity; and 2) the record fails to establish that a valid employer-employee relationship will exist between the petitioner and the beneficiary.]XXX

Employer-Employee Relationship: As a U.S. employer who seeks to sponsor a temporary worker in an H-1B specialty occupation, you are required to establish by a preponderance of the evidence that a valid employer-employee relationship will exist between you and the beneficiary, and that you have the right to control the beneficiary's employment, which includes the ability to hire, fire, pay, supervise, or otherwise control the work of the beneficiary. You should be able to establish that your right to control the beneficiary's employment will continue to exist throughout the duration of the requested H-1B validity period.

XXX[You did not submit any evidence for this requirement.]XXX

In support of the petition, the following evidence was submitted:

- XXX[LIST SUBMITTED EVIDENCE]XXX

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You may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to:

- Documents that show whether or not the beneficiary has an ownership interest in your organization. If the beneficiary has an ownership interest, indicate what the percentage of ownership interest is.
- If the beneficiary is an owner, partner, or founder of your organization, evidence that you have a valid employer-employee relationship with the beneficiary in that you have the right to hire, fire, pay, supervise, or otherwise control the beneficiary.
- Documentation showing how the beneficiary will be employed by you, such as:
 - A copy of signed employment agreement between you and the beneficiary detailing the terms and conditions of employment;
 - A copy of an employment offer letter describing the nature of the employer-employee relationship and the services to be performed by the beneficiary;
 - A description of the performance review process; and/or
 - A copy of your organizational chart demonstrating the beneficiary's supervisory chain.
- Evidence of your business structure, such as:
 - Articles of incorporation and/or articles of organization;
 - Company bylaws;
 - Shareholder agreement/founder agreement;
 - Evidence of your board of directors or governing body;
 - Minutes from business meetings; and/or
 - Joint-venture agreements.
- Evidence of shareholder ownership or investment, such as:
 - A detailed list of owners, which includes the owners' names and what percentages they own;
 - Copies of investor term sheets;
 - Copies of stock purchase agreements;
 - Copies of investor rights agreements;
 - Copies of first-right-of-refusal and co-sell agreements;
 - A copy of a capitalization table;
 - Copies of voting agreements;
 - A copy of an equity incentive plan or copies of stock certificates; and/or
 - A copy of a stock agreement/restricted stock agreement.
- Copies of your most recently filed federal income tax returns, if available. The copies of the tax returns should include all required forms, schedules, and statements.

129 H1B RFE (PR) Not a U.S. Employer

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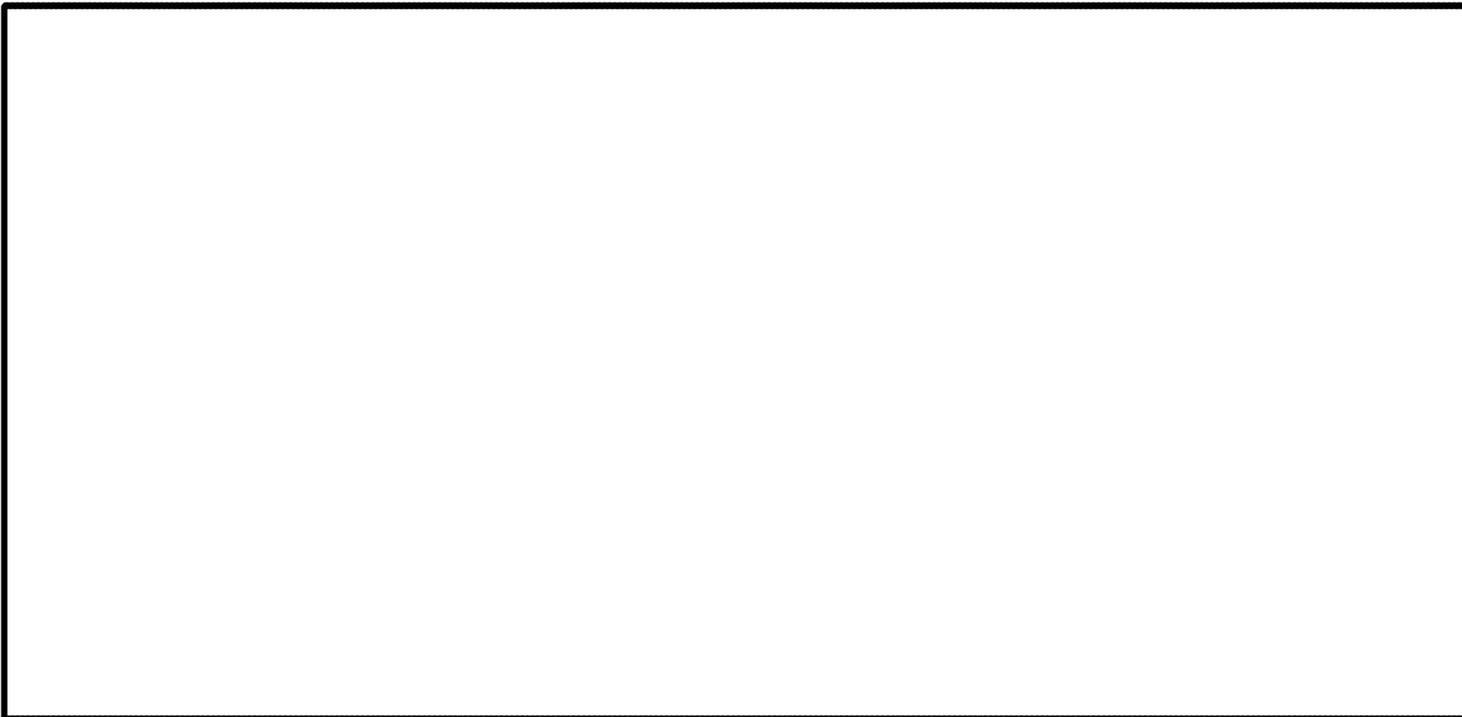
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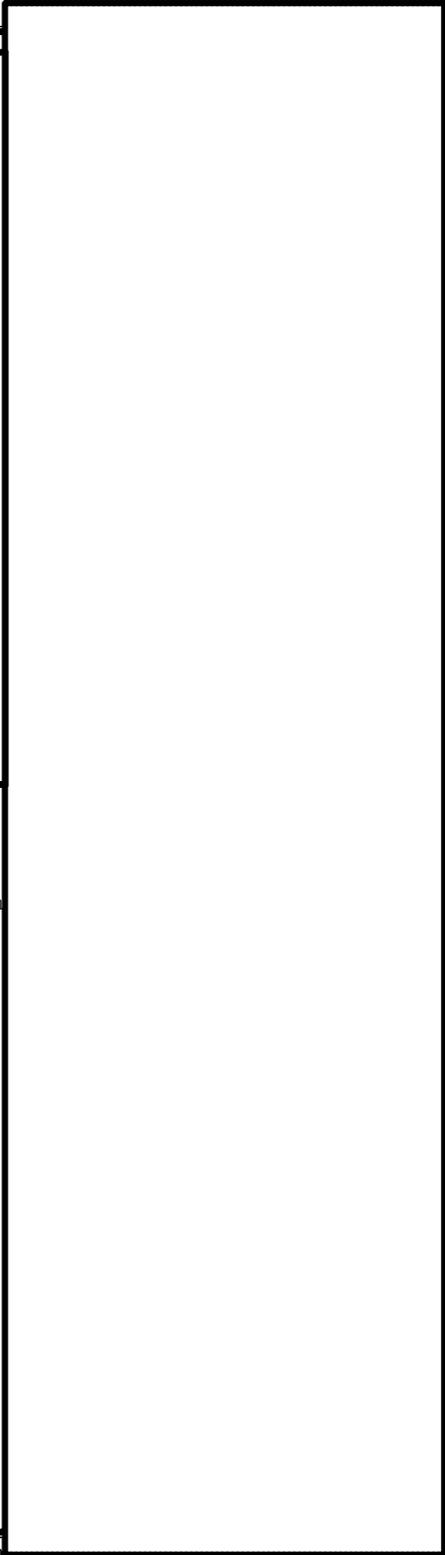
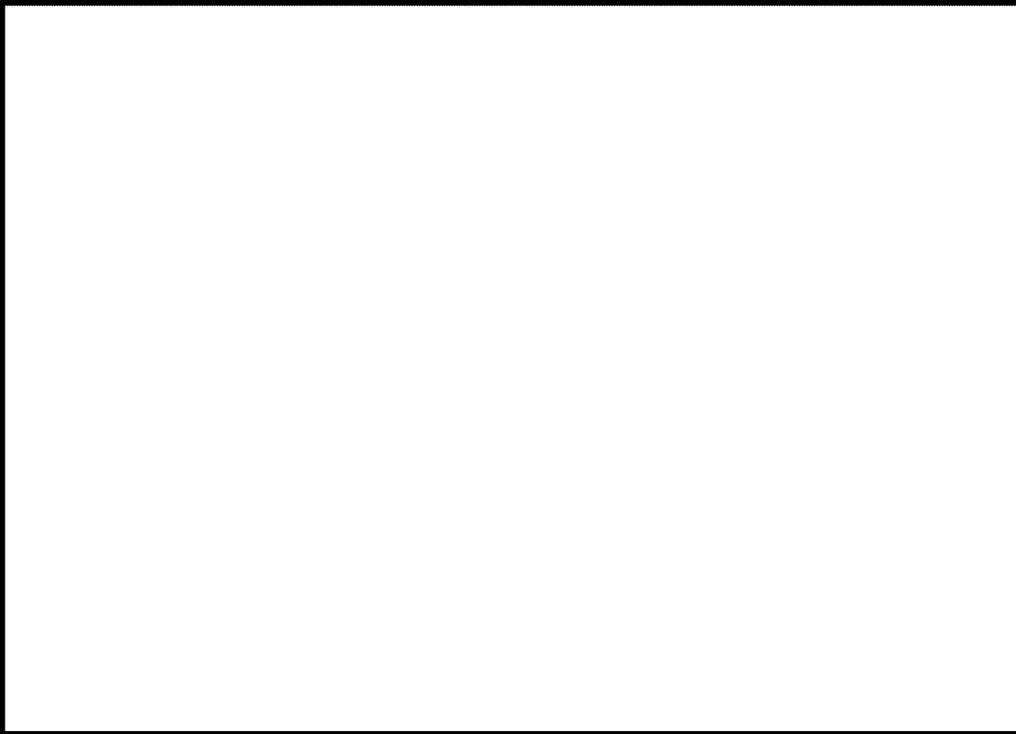
- **Federal Income Taxes:** Provide signed copies of your filed federal income taxes. The copies of the tax returns should include Forms 1120, 2220, 4562, 5472, and 1065 with all required schedules (K, K-1, L, M-1, etc.) and statements, as appropriate, for the years: ____.
- **Quarterly Wage Reports:** Submit copies of your Quarterly Wage Reports for all employees for the last ____ quarters that were accepted by the state where they were filed. The forms should include the names, social security numbers (last four digits only), and number of weeks worked for all employees.
- **Form 941, Quarterly Wage Reports:** Provide copies of your Federal Forms 941, Quarterly Wage Reports for all employees for the last ____ quarters. The forms should include the names, social security numbers (last four digits only), and number of weeks worked for all employees.
- **Business Licenses:** Submit copies of your current valid city, county, state, and federal government business licenses, as applicable.
- **Company Profile:** Provide a more detailed description about your business. Include evidence such as copies of company brochures, pamphlets, internet website, or any other printed work published by you that outlines, in detail, the products or services provided by your company.

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129 H1B RFE (PR) Employer-Employee Relationship



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To satisfy this requirement, you submitted:

- XXX[INSERT EVIDENCE SUBMITTED]XXX

The evidence is insufficient to establish that a valid employer-employee relationship will exist for the duration of the requested validity period and to establish that you have the right to control the beneficiary.

XXX[Officer must insert the reason(s) why the evidence listed is not sufficient.]XXX

You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to:

- A complete itinerary of services or engagements that specifies the dates of each service or engagement and the names and addresses of any end-client where the services will be performed for the requested employment period of time requested;
- A copy of a signed employment agreement between you and the beneficiary detailing the terms and conditions of employment;
- A copy of an employment offer letter that describes in detail the nature of the employer-employee relationship and the services to be performed by the beneficiary;
- Copies of relevant portions of valid contracts between you and a client that establishes that while your employees are placed at the third-party work site, you will continue to have the right to control your employees;
- Copies of signed contractual agreements, statements of work, work orders, service agreements, or letters between you and the authorized officials of the ultimate end-client companies where the work will actually be performed by the beneficiary. The documentation should provide information such as:
 - a detailed description of the duties the beneficiary will perform;
 - the qualifications that are required to perform the job duties;

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- salary or wages paid, hours worked, benefits;
- a brief description of who will supervise the beneficiary; and
- any other related evidence.
- A copy of the end client's position description and/or any other documentation that describes:
 - the skills required to perform the job;
 - the source of the instrumentalities and tools needed to perform the job;
 - the product to be developed or the service to be provided;
 - the location where the beneficiary will perform the duties;
 - the duration of the relationship between you and the beneficiary;
 - whether you have the right to assign additional duties;
 - the extent of your discretion over when and how long the beneficiary will work;
 - the method of payment;
 - your role in paying and hiring assistants to be utilized by the beneficiary;
 - whether the work to be performed is part of your regular business;
 - the provision of employee benefits; and/or
 - the tax treatment of the beneficiary in relation to you.
- A description of the performance review process;
- A copy of your organizational chart, demonstrating the beneficiary's supervisory chain; or
- Any other evidence you feel will meet the requirement.

129 H1B RFE (PR) Maintained Valid Employer-Employee Relationship

Maintenance of Initial Employer-Employee Relationship: In filing an extension petition, you must provide sufficient evidence to document that you maintained a valid employer-employee relationship with the beneficiary throughout the previous H-1B approval period.

XXX[You did not submit any evidence for this requirement.]XXX

XXX[The evidence you submitted is insufficient. [Officers must insert the reason(s) why the evidence listed above is insufficient to meet this requirement.]]XXX

You may provide a combination of the following or similar types of evidence to document maintenance of a valid employer-employee relationship throughout the H-1B approval period:

- Copies of the beneficiary's pay records (leave and earnings statements, and pay stubs, etc.) for the period of the previously approved H-1B status;
- Copies of the beneficiary's payroll summaries and/or any Form W-2, evidencing wages paid to the beneficiary during the period of previously approved H-1B status;
- Copies of work schedules from prior years;
- Copies of your state quarterly wage reports for the last four quarters that contain the name, social security numbers (last four digits only), and number of weeks worked by the beneficiary;
- Copies of the beneficiary's two or three most recently filed federal individual tax returns with all required schedules and statements, as appropriate;
- Documentary examples of work product created or produced by the beneficiary for the past H-1B validity period, (e.g., i.e., copies of: business plans, reports, presentations, evaluations, recommendations, critical reviews promotional materials, designs, blueprints, newspaper articles, website text, news copy, and photographs of prototypes). Note: The materials should show the author and date created;
- Copies of dated performance reviews; and/or

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- Copies of any employment history records, including, but not limited to, documentation showing date of hire and dates of job changes (i.e., promotions, demotions, transfers, layoffs, and pay changes with effective dates).

129 H1B RFE (PR) In-House Employment

In-House Employment: You indicated that the beneficiary will work at your own business location. You must demonstrate that you have sufficient specialty occupation work that is immediately available at your location and throughout the entire requested H-1B validity period.

XXX[You did not submit any evidence for this requirement.]XXX

XXX[The evidence you submitted is insufficient.]XXX XXX[Officers must insert the reason(s) why the evidence listed above is insufficient to meet this requirement.]XXX

You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to:

- A copy of signed employment agreement between you and beneficiary detailing the terms and conditions of employment;
- A copy of an employment offer letter that describes the nature of the employer-employee relationship and the services to be performed by the beneficiary;
- Copies of relevant portions of valid contracts, statements of work, work orders, service agreements, and letters between you and the authorized officials of the ultimate end-client companies to whom the end product or services worked on by the beneficiary will be delivered;
- A copy of a position description or any other documentation that describes the skills required to perform the job offered, the tools needed to perform the job, the product to be developed or the service to be provided, the method of payment, whether the work to be performed is part of your regular business, the provision of employee benefits, and the tax treatment of the beneficiary by you;
- Copies of your most recently filed federal income tax returns, including all required schedules and statements;
- Copies of company brochures, pamphlets, internet website, or any other printed work published by you that outlines, in detail, the products or services provided by your company;
- Evidence of sufficient production space and equipment to support the beneficiary's specialty occupation work.

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XXX[You did not submit any evidence for this requirement.]XXX

XXX[The evidence you submitted is insufficient to satisfy this requirement.]XXX XXX[Officer must insert the reason(s) why the evidence listed is not sufficient.]XXX

Therefore, provide additional evidence to establish that you will employ the beneficiary in a specialty occupation. Evidence may include, but is not limited to, the following types of evidence:

- Copies of signed contractual agreements, statements of work, work orders, service agreements, or letters between you and the authorized officials of the ultimate end-client companies where the work will actually be performed by the beneficiary. The documentation should provide information such as:
 - A detailed description of the duties the beneficiary will perform;
 - The qualifications that are required to perform the job duties; and
 - Dates of services requested, work schedule.
- Documentary evidence showing that:
 - The end-client requires the beneficiary's services; and
 - The end-client's requirements (if any) for the position, for all of the client facilities where the beneficiary will be employed.
- A copy of the end client's position description and/or any other documentation that describes:
 - The skills required to perform the job;
 - The source of the instrumentalities and tools needed to perform the job;
 - The product to be developed or the service to be provided; and
 - The location where the beneficiary will perform the duties.

129 H1B RFE (PR) Specialty Occupation

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- **Organizational Chart:** Submit a copy of a line-and-block organizational chart showing all employees in the beneficiary's immediate division, department, or team by name, job title, summary of duties, and salary. Identify the proffered position in the chart.

Specialty Occupation: A specialty occupation is one that requires the theoretical and practical application of a body of highly specialized knowledge and which requires the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent, as a minimum, for entry into the occupation in the United States.

To qualify as a specialty occupation, the position must meet at least one of the following criteria:

- 1) Bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- 2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- 3) The employer normally requires a degree or its equivalent for the position; or
- 4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree.

The following is a discussion of the four criteria for a position to qualify as a specialty occupation; why the position presently does not appear to qualify; and/or additional requested documentation to submit in support of the petition.

- 1) **A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;**

XXX[No evidence to meet this criterion was submitted. Therefore, the beneficiary has not met this criterion.]XXX

XXX[Officer must insert analysis of the evidence here.]XXX

Therefore, the proffered position does not meet under this criterion.

- 2) **The degree requirement is common to the industry in parallel positions among similar organizations (i.e., organizations with [INSERT NUMBER] employees) or, in the alternative, an**

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employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

XXX[No evidence to meet this standard was submitted. Therefore, the beneficiary has not met this criterion.]XXX

XXX[Officer must insert analysis of the evidence here.]XXX XXX[Therefore, the proffered position does not meet under this criterion.]XXX

3) The employer normally requires a degree or its equivalent for the position;

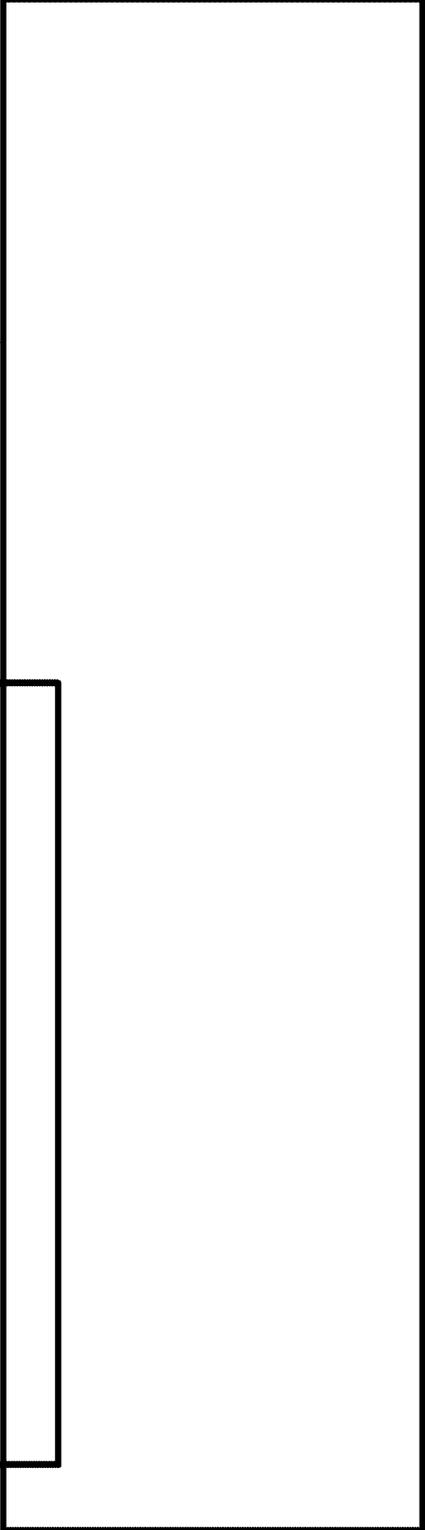
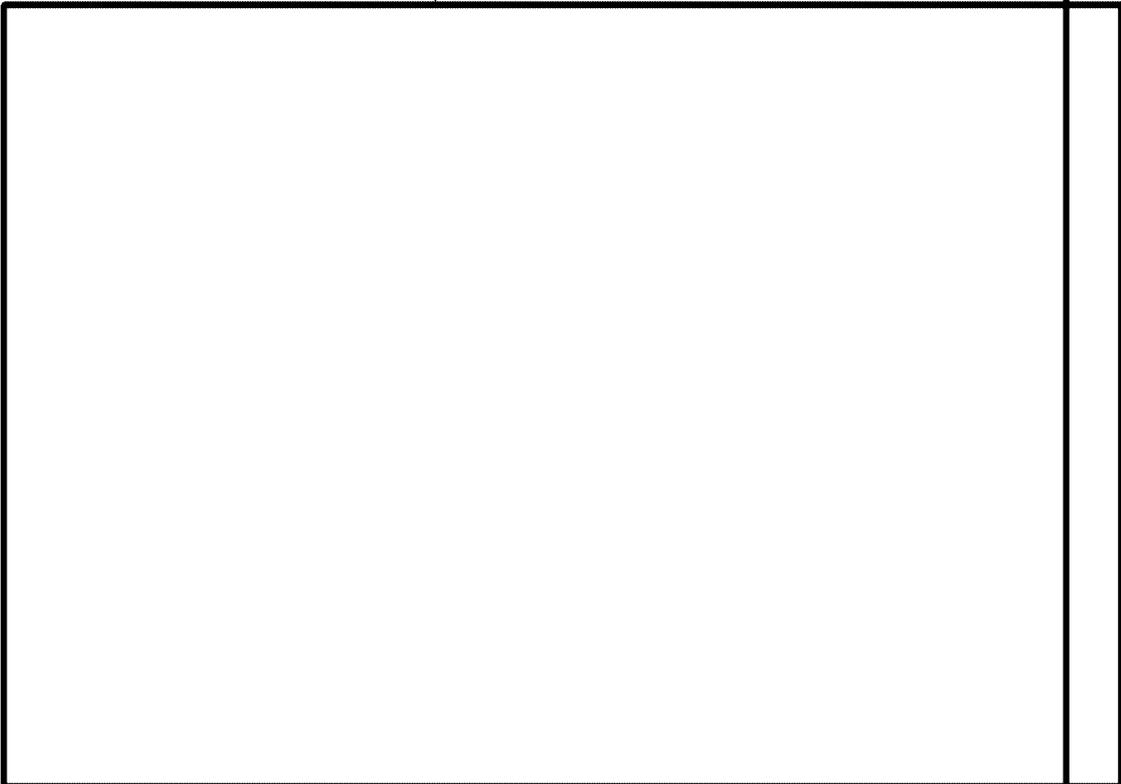
XXX [No evidence to meet this criterion was submitted. Therefore, the beneficiary has not met this criterion.]XXX

XXX[Officer must insert analysis of the evidence here.]XXX XXX[Therefore, the proffered position does not meet under this criterion.]XXX

4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

XXX[No evidence to meet this criterion was submitted. Therefore, the beneficiary has not met this criterion.]XXX

XXX[Officer must insert analysis of the evidence here.]XXX XXX[Therefore, the proffered position does not meet under this criterion.]XXX



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1. The writer's qualifications as an expert;
2. The writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom;
3. How the conclusions were reached; and
4. The basis for the conclusions supported by copies or citations of any research material used

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prototypes that substantiate claims of complexity and specialization above that experienced in the industry or the field.

129 H1B RFE Beneficiary Requirements (BR)

129 H1B RFE (BR) Degree Requirement

Degree Requirement: To qualify to perform services in a specialty occupation, the beneficiary must meet one of the following criteria:

- Hold a United States bachelor's or higher degree required by the specialty occupation from an accredited college or university;
- Hold a foreign degree determined to be equivalent to a United States bachelor's or higher degree required by the specialty occupation from an accredited college or university;
- Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States bachelor's or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

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2. **Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;**

XXX[No evidence to meet this criterion was submitted. Therefore, the beneficiary has not met this criterion]XXX

XXX[You submitted a copy of the beneficiary's foreign degree.]XXX XXX[Officer must insert the reason(s) why the evidence listed is not sufficient.]XXX

You may submit additional evidence to satisfy this requirement to meet the degree requirement under this criterion. Evidence may include, but is not limited to:

- **Foreign Degree:** Copies of the beneficiary's foreign degree(s).
- **Transcripts:** Copies of the beneficiary's college or university transcripts, which include all courses taken toward the degree. The transcripts should be signed and dated by the person in charge of the records.

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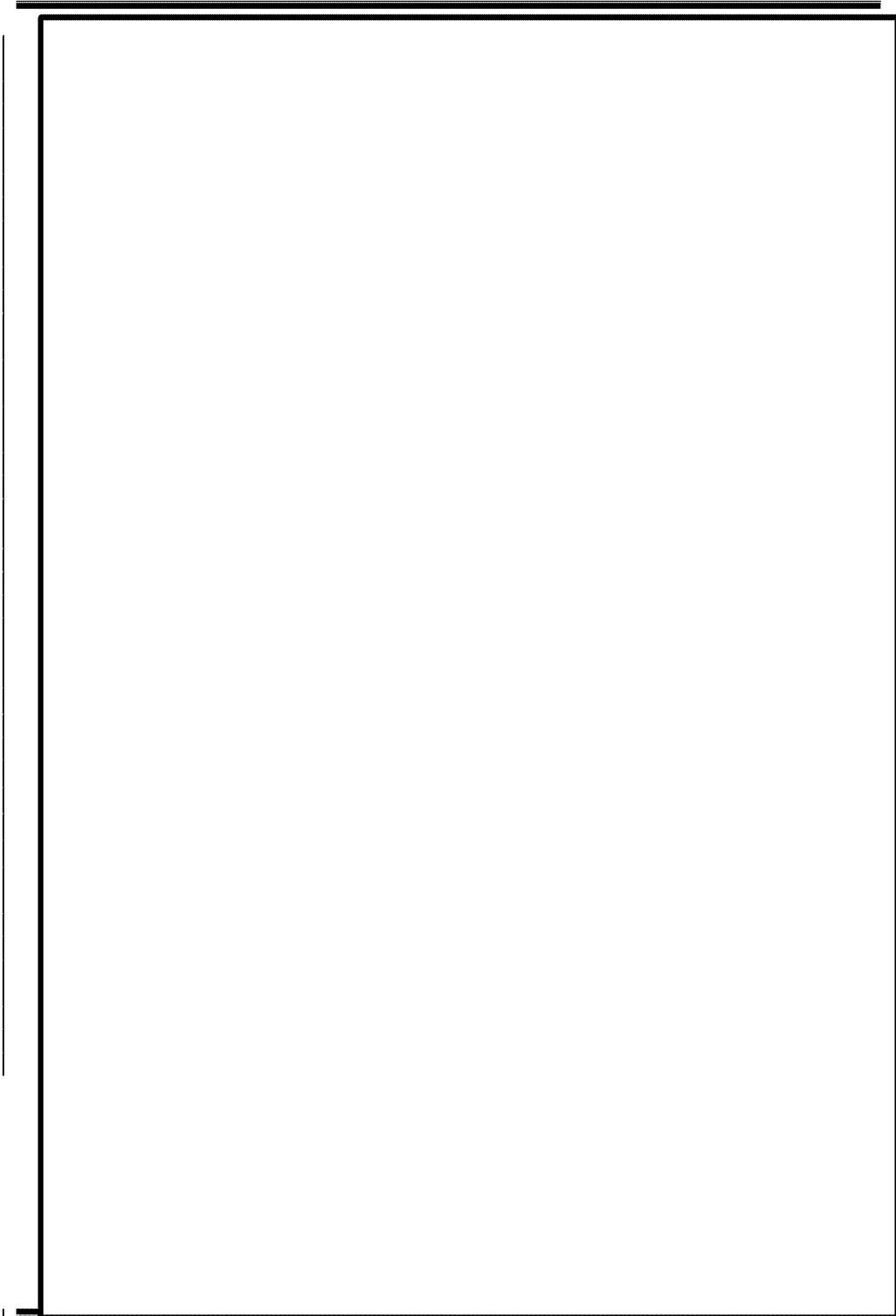


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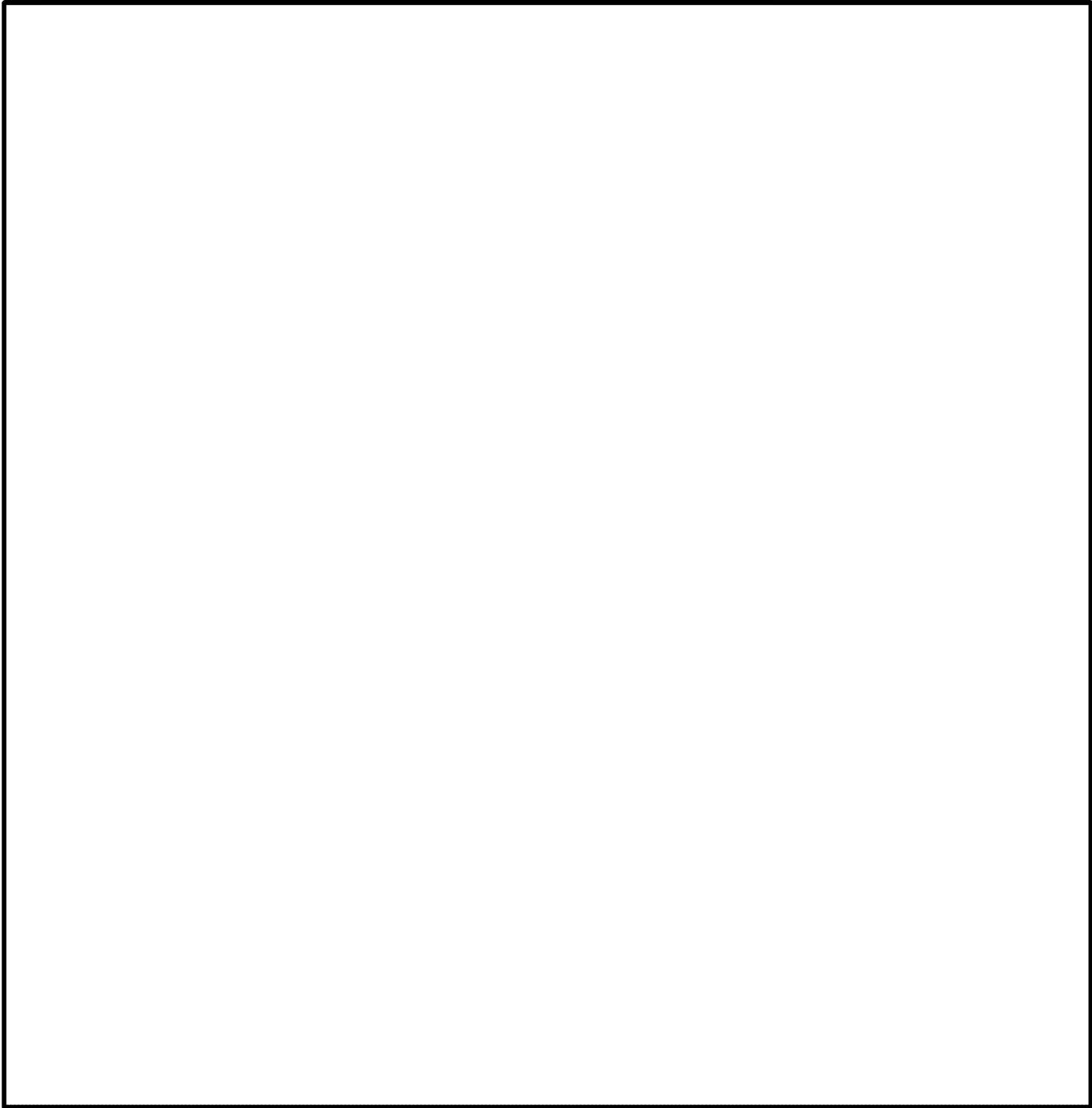
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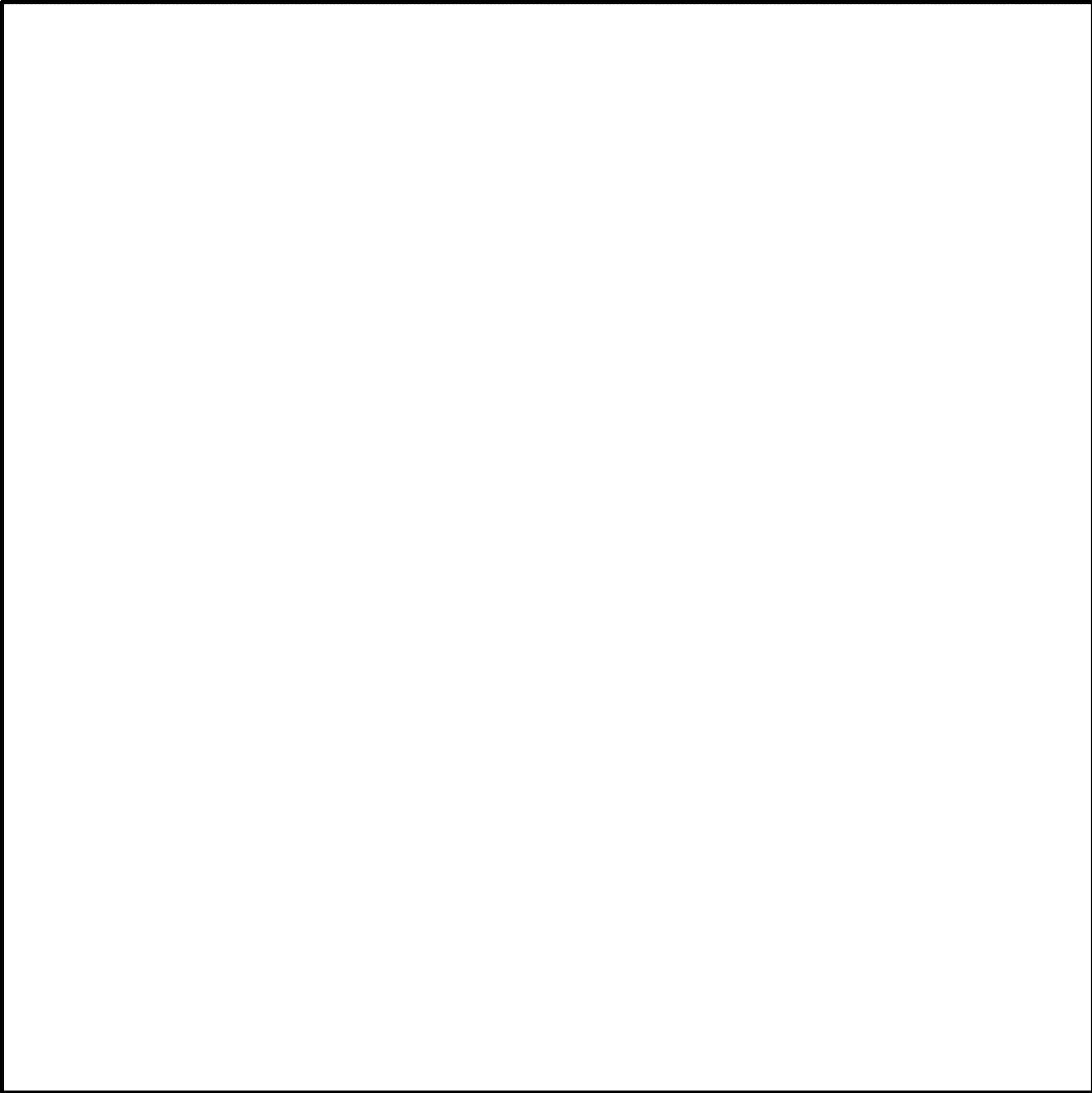
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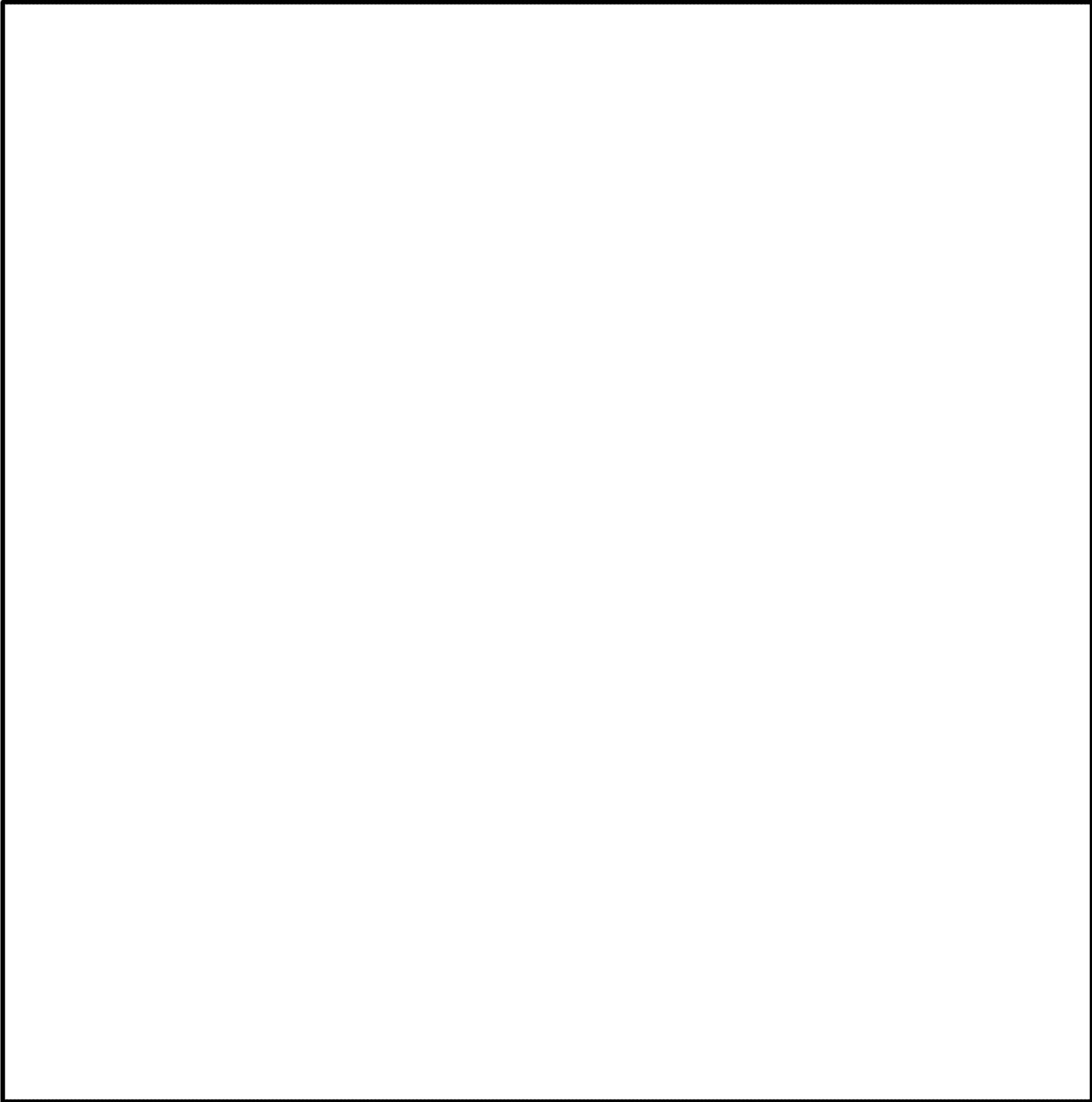


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- Evidence that the XXX[ASHA or NAME of the submitted organization]XXX has an approved Application for Authorization to Issue Certification for Health Care Workers (Form I-905).

The certification must contain the following elements:

- The name, address, and telephone number of the credentialing organization, and a point of contact to verify the validity of the certificate or certified statement;
- The date the certificate or certified statement was issued;
- The health care occupation for which the certification was issued; and
- The beneficiary's name, and date and place of birth.

129 H1B RFE (BR) Nurses

129 H1B RFE (BR) Nurses - Certification

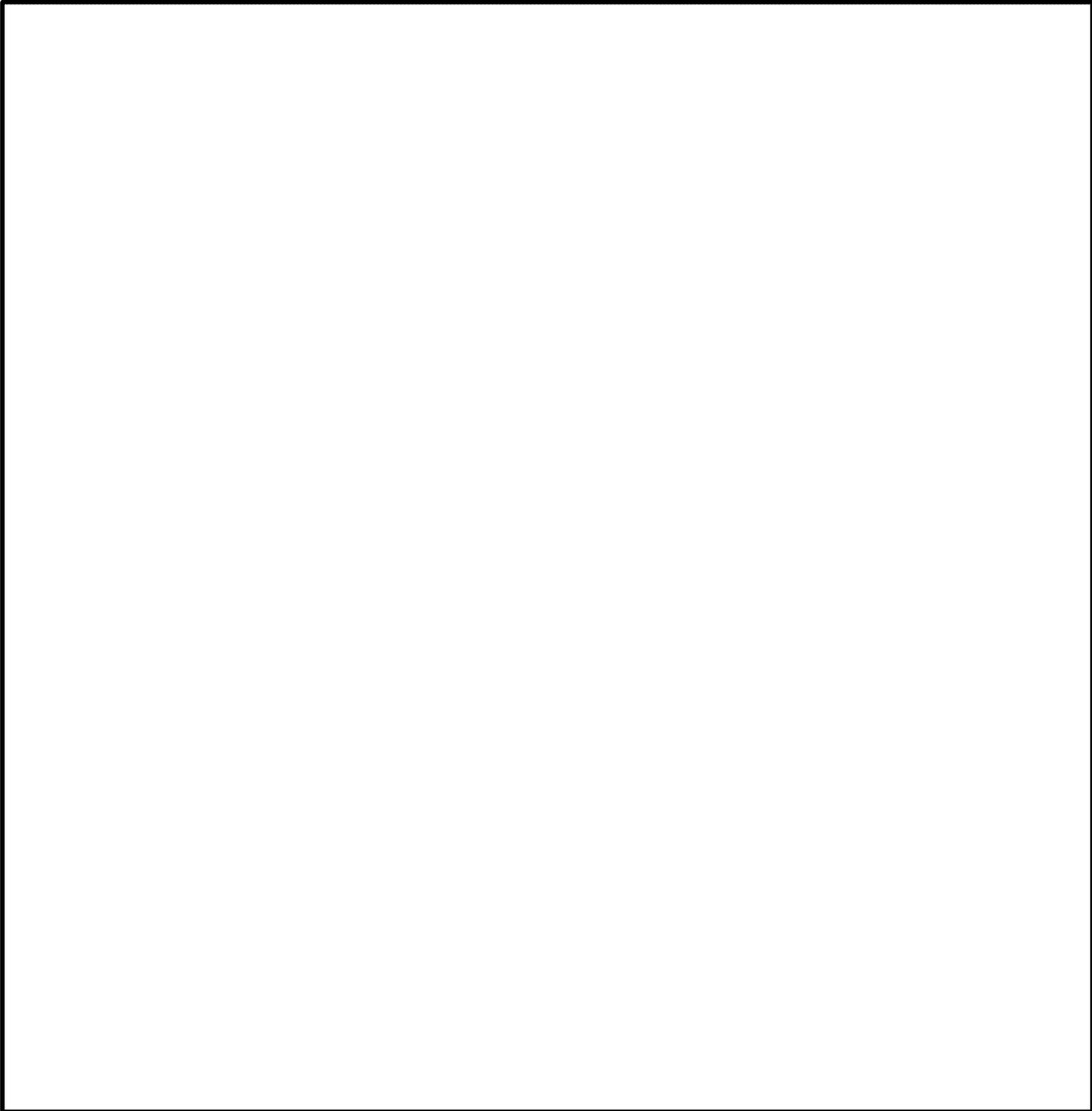
Certification for Nurses: You indicate that the beneficiary will be working as a nurse. Any beneficiary who seeks to enter the United States for the primary purpose of performing labor as a health care worker, other than a physician, is inadmissible unless the beneficiary can present a certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS) or a certificate from an equivalent independent credentialing organization approved by the Attorney General (now the U.S. Secretary of Homeland Security). Moreover, ~~there is an~~ alternative certification process for nurses.

A certifying organization generally must verify that the foreign health care workers' education, training, licensing, experience, and English competency meet all statutory and regulatory requirements. The regulations do not provide exceptions for health care workers who are educated in the United States or who are currently licensed to practice in the United States. Therefore, the above described certification must be provided for any beneficiary who will be employed as a health care worker other than a physician.

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129 H1B RFE (PR) Nurses – Proffered Position

Nurse Position: To establish that the position qualifies as a specialty occupation, you must submit evidence that demonstrates by a preponderance of the evidence that the position meets at least one of the following criteria: (1) a bachelor's or higher degree, or its equivalent, is normally the minimum requirement for entry into the particular position; (2) the degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, you, the employer, may show that the particular position is so complex or unique that it can be performed only by an individual with a degree; (3) you, the employer, normally require a degree, or its equivalent, for the offered position; or (4) the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree.

XXX[You did not submit any evidence for this requirement.]XXX

You may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to, the following:

- **Job Description:** Provide a detailed list of the beneficiary's proposed duties and responsibilities. The list should include the percentage of time that the beneficiary will perform each duty each day, and the level of responsibility involved with each duty. In addition, explain how the knowledge gained through a bachelor's or higher degree in a specific specialty, or its equivalent, is required for the satisfactory execution of the duties. This explanation should be corroborated by supporting documentation.
- **Hierarchy of the Offered Position:** If the beneficiary will supervise employees, please provide a statement with the names, job titles, and highest level of education of all employees that the beneficiary will supervise. In addition, submit documentary evidence establishing the academic credentials of the supervised employees, particularly if any of the employees hold a bachelor's or higher degree in a specific specialty (or its equivalent). The statement and supporting documentation should include all registered nurses, licensed practical nurses, nursing aides, and other employees that the beneficiary will supervise. In addition, provide an organizational chart of the department where the beneficiary will be assigned. The chart should indicate (1) the beneficiary's position within the organization; (2) the name and job title of the beneficiary's supervisor; and (3) the names and job titles of subordinates.

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- **Others Employed in the Position within Your Organization:** If you normally require a bachelor's degree for the offered position, submit evidence of such employment, which may include a statement with the names, job titles, and highest level of education of all employees that serve in the offered position. The statement should be accompanied by documentary evidence of the employees' academic degrees and employment with your company. Evidence of an academic record may include, but is not limited to, copies of academic transcripts, academic diplomas, and the documentation and records corresponding to training that you claim should be credited towards the beneficiary's qualification for the position. Evidence of employment may include, but is not limited to, copies of the employees' pay stubs or Forms W-2, Wage and Tax Statements. Résumés alone, without primary documentation to support what is asserted on the résumé, are generally not sufficient evidence of a degree.

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When referencing other organizations in your industry, please demonstrate how the other organizations are similar to your business and in the same industry. When referencing an industry-related professional association, please provide the requirements and criteria used to apply for membership in the association. Also, include evidence that lists the number of current members, the status held by the association in the national community in the medical field and any other conditions or requirements for membership.

- **Advanced Practice Certification:** Advanced Practice Registered Nurse (APRN) defines a level of nursing practice that utilizes advanced skills, experience and knowledge in assessment, planning, implementation, diagnosis and evaluation of the care required. If applicable, please provide evidence that the beneficiary has obtained an Advanced Practice Certification. Examples of Advanced Practice Certification include, but are not limited to, the following occupations:
 - Certified Nurse-Midwife (CNM);
 - Certified Nurse Practitioner (CNP): Acute Care, Adult, Family Gerontological, Pediatric, Psychiatric & Mental Health, Neonatal, and Women's Health;
 - Certified Clinical Nurse Specialists (CCNS): Acute Care, Critical Care, Gerontological, Family, Hospice and Palliative Care, Neonatal, Pediatric, Psychiatric and Mental Health-Adult, Psychiatric and Mental Health-Child, and Women's Health; and
 - Certified Registered Nurse Anesthetist (CRNA).

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- **Facility License:** If you require Advanced Practice certification, provide documentation regarding your facility license. Evidence may include State Operating or Facility License or other state law that shows staffing requirements to include an Advanced Practice Nurse in the particular certification.

129 H1B RFE (PR) Nurses – Petitioner’s Evidence

Petitioner requirements: Please submit evidence regarding the offered position and your business operations. Your response should address each of the following issues. In addition, you may provide any additional evidence that will show the position meets the requirements for the H-1B classification.

Employer Information: Based on the evidence you have provided, the nature of your business is unclear. Please submit additional evidence describing the scope and nature of your business to demonstrate that the beneficiary will be employed in a qualifying specialty occupation. Such evidence may include, but is not limited to the following:

- A more detailed description about your business.
- Copies of your company’s brochures, pamphlets, internet website, or any other printed work which outlines, in detail, your services.
- A copy of your most recently filed federal income tax return, including all forms and required schedules.

Nursing Registries or Staffing Agencies: From the evidence provided it appears that you are engaged in business as a XXX[nursing registry, health care staffing agency, etc.]XXX and are seeking the beneficiary’s services to perform work for clients outside your work site. A petition that indicates that the beneficiary will perform services in more than one location must include an itinerary with the dates and locations of the services to be performed. XXX[Insert the following bullet in cases where the petition indicates multiple work locations]XXX According to your petition, the beneficiary will work at multiple client locations. Therefore, please submit the following evidence regarding the offered position and your business operations. Evidence may include but is not limited to:

- An itinerary of employment, listing any location and organization where the beneficiary will be providing services. The itinerary should specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishment, venue, or locations where the service will be performed by the beneficiary. The itinerary should include all service planned for the period of time requested – in this case until XXX[Enter the ending date of the validity period requested on the petition]XXX.



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- **Contracts:** Copies of any written agreements between you and the beneficiary, along with copies of agreements between you and any client medical facilities at which the beneficiary will be providing services, and any agreements between the beneficiary and the client medical facilities.

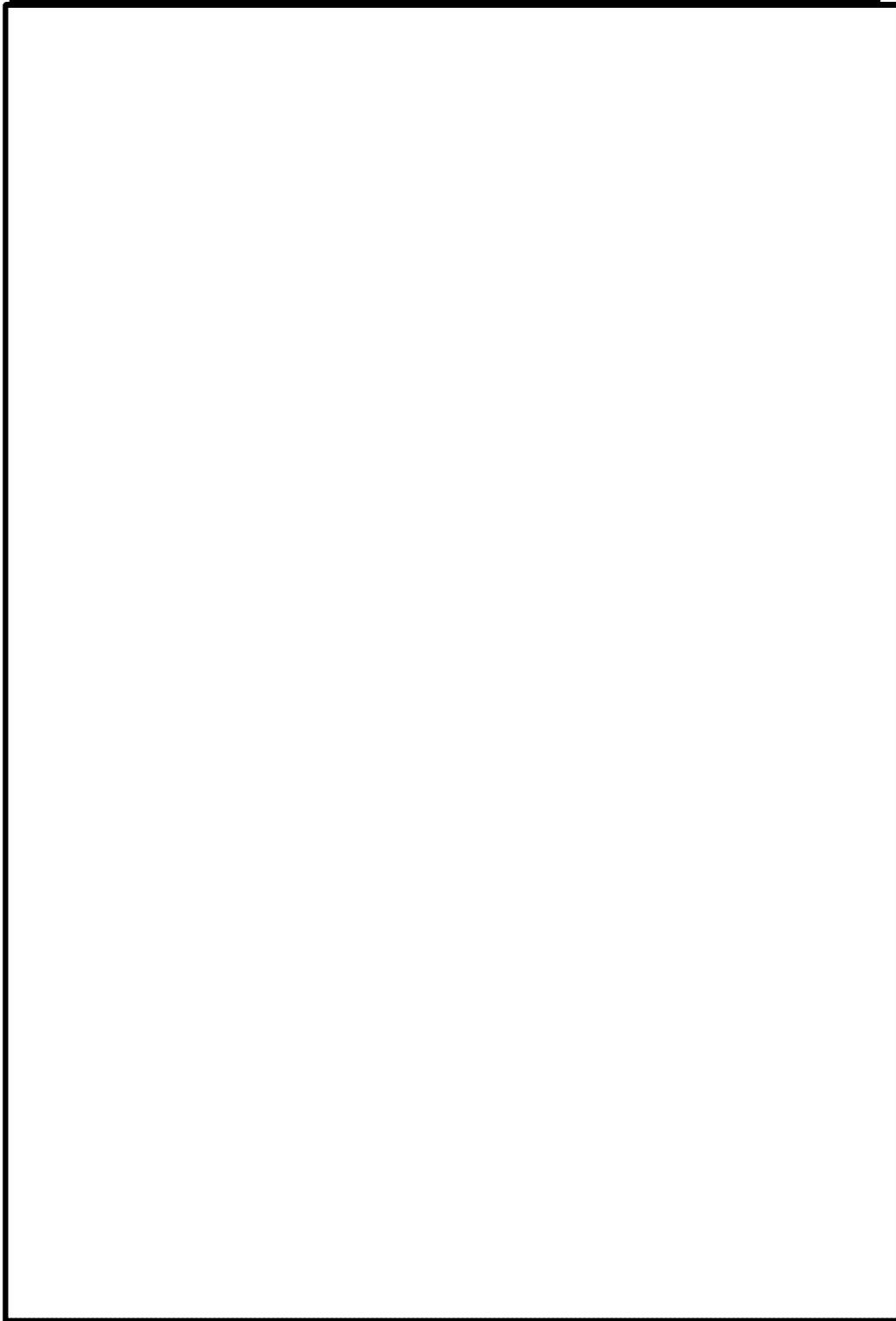
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The agreements should specify the exact duties to be performed by the beneficiary while working for the client. Include copies of the statements of work, work orders, and any other documents or appendices. Documentation should specify duties, dates of services requested, work schedule, and pay schedule.

- **Client Position Requirements:** Evidence (1) that the facility requires the services of a XXX[position]XXX; and (2) the facility's requirements (if any) for the position for all of the client medical facilities where the beneficiary will be employed.
- **Client Information:** Evidence that substantiates that your clients are *bona fide* medical facilities, such as copies of the client organization's current license to operate a medical facility and a letter from an authorized official of the facility, institution, or organization explaining your business relationship. If the client is a government agency, you may provide the contract number and the name of the company that has the primary contract. If the client(s) produce an annual report, you may submit the most recent copy.
- **End Client Profile:** Provide a more detailed description about the end client's business. Include evidence such as copies of company's brochures, pamphlets, internet website, or any other printed work which outlines, in detail, their services.
- **Past Employment Practices:** Evidence to establish that your client has a history of hiring XXX[position]XXX with a bachelor's or higher degree in a specific specialty, or its equivalent, to perform the same or similar duties that the beneficiary will perform at the client location. Indicate the number of persons employed in similar positions and provide a list of their names, job titles, and highest educational level obtained, along with the particular Advanced Practice Certification (if any) they have obtained. Further, provide copies of their academic credentials (establishing the level of education and discipline(s) studied) and Advanced Practice Certificates (if applicable).

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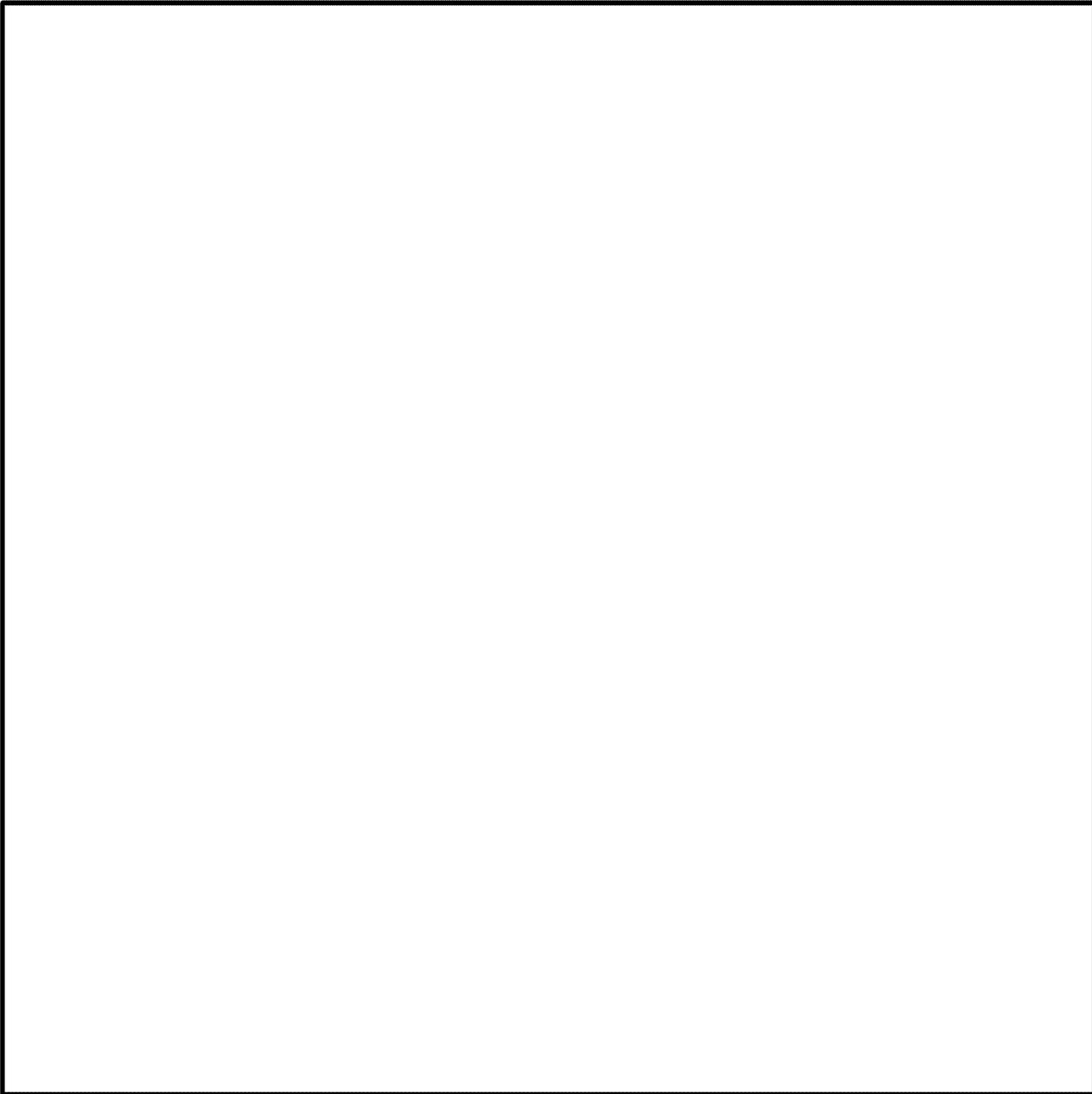
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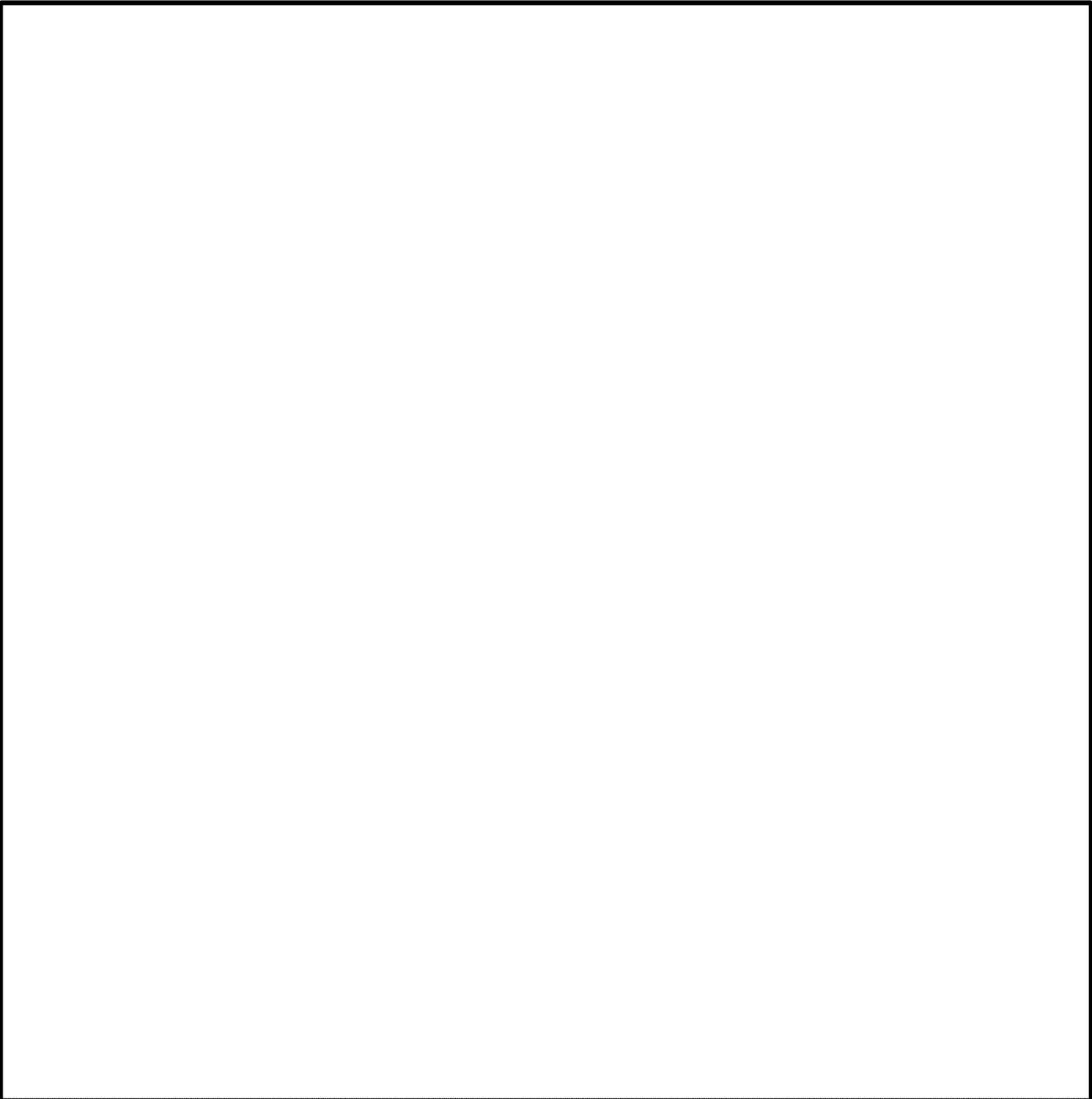
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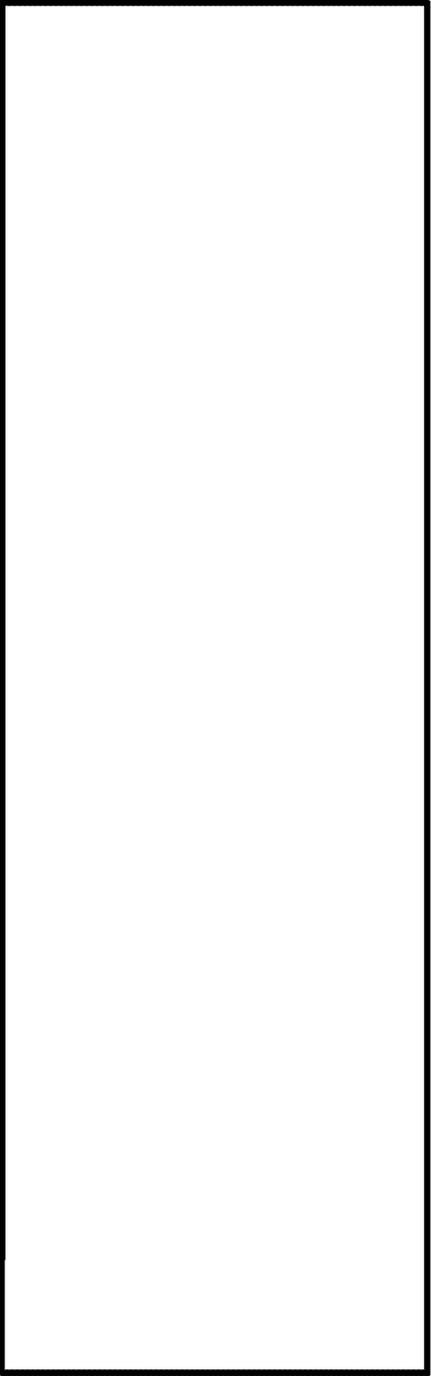
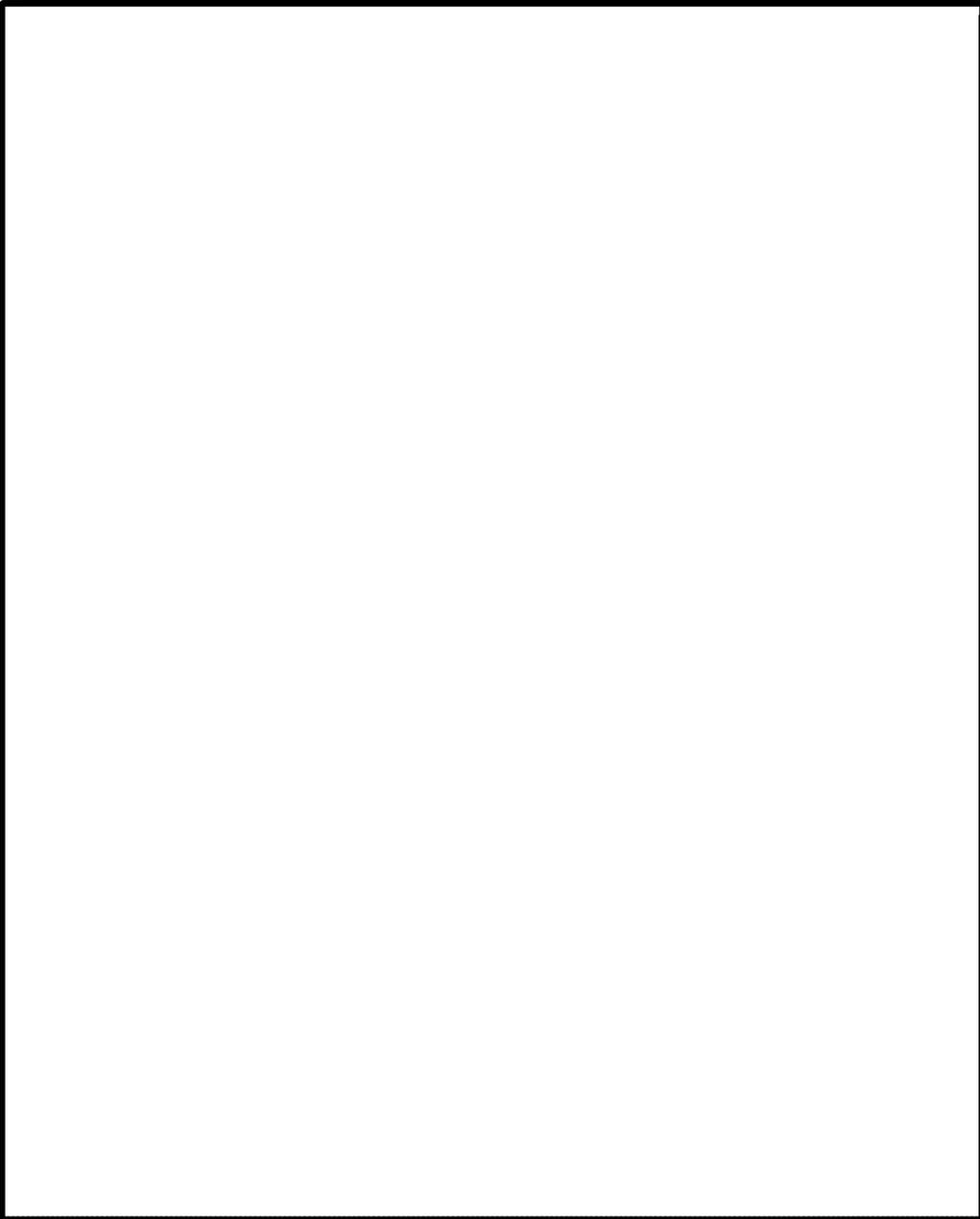
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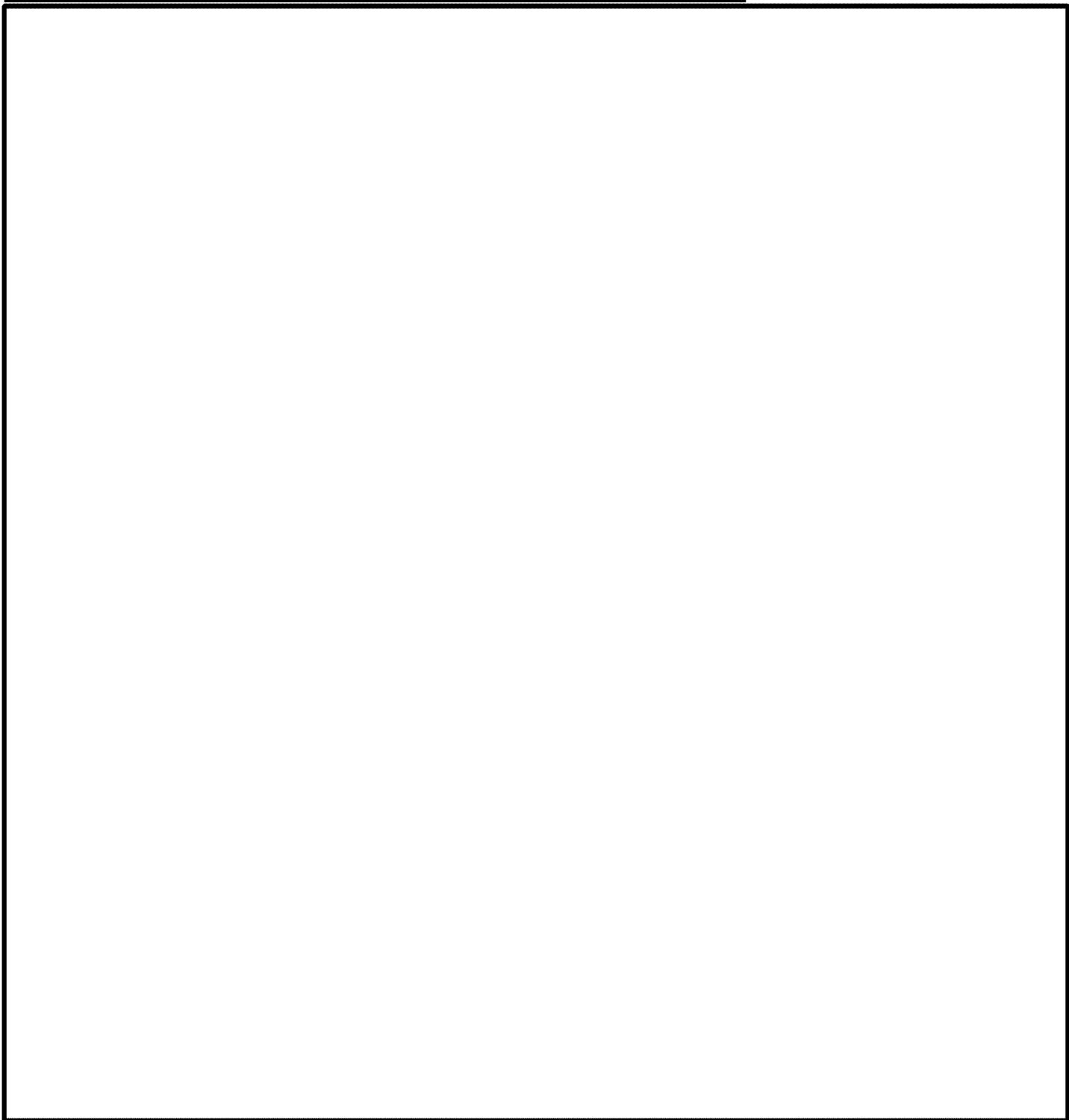


129 H1B RFE (BR) Physicians – Conrad Early Termination

H-1B Conrad Physicians Requesting Early Termination: You indicate the beneficiary is exempt from the numerical limitations based on the beneficiary having an approved waiver of the two-year foreign residency requirement. You indicate that the beneficiary now seeks to have early termination of employment excused due to extenuating circumstances.

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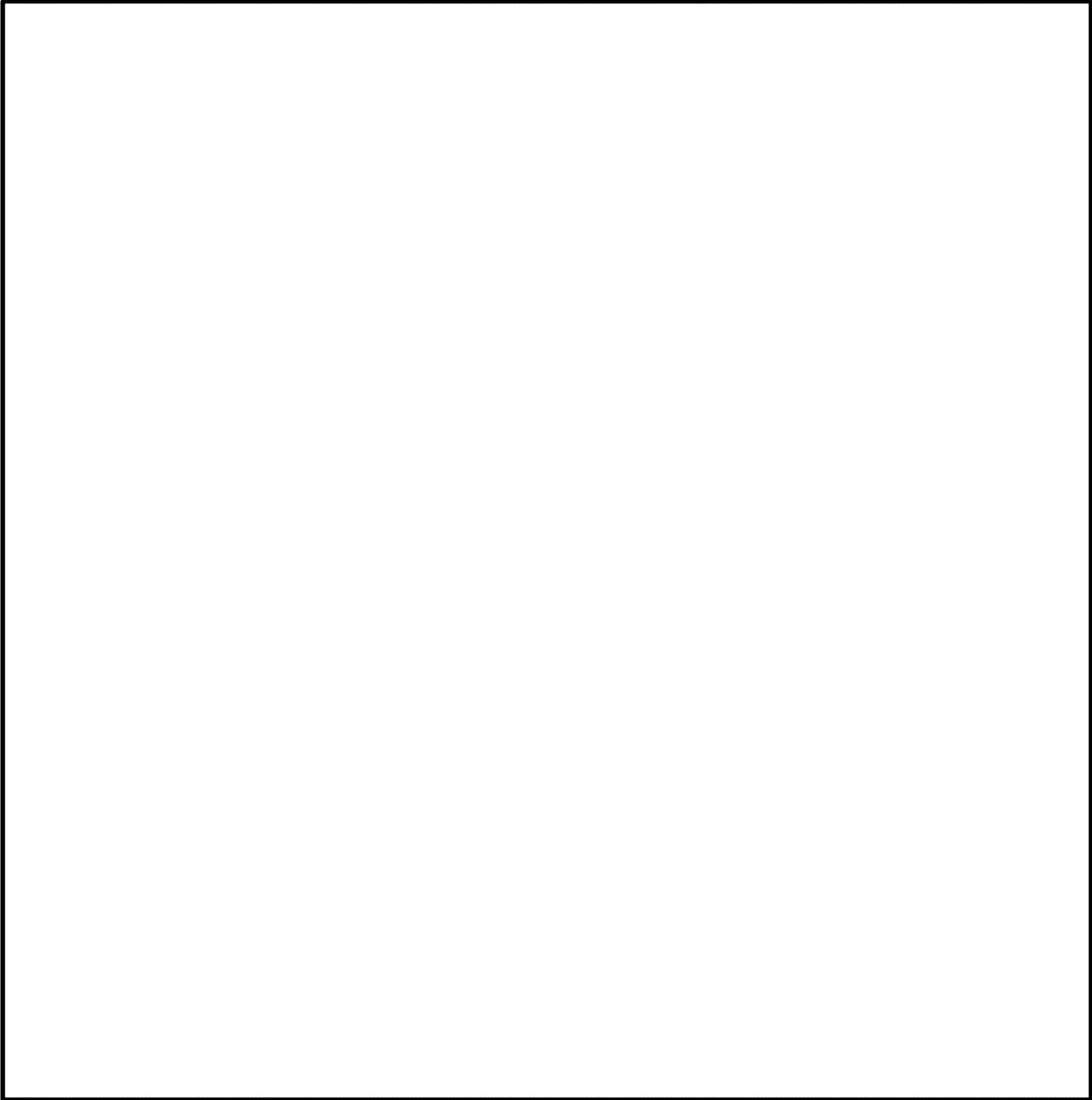


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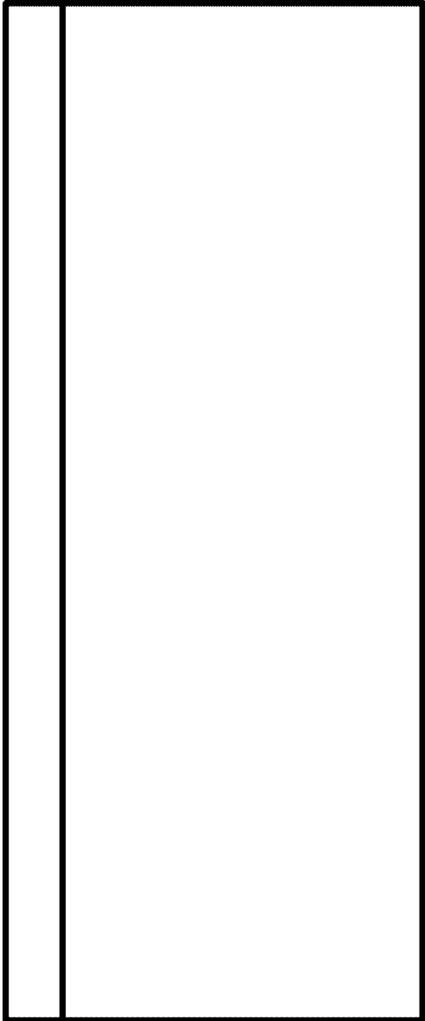
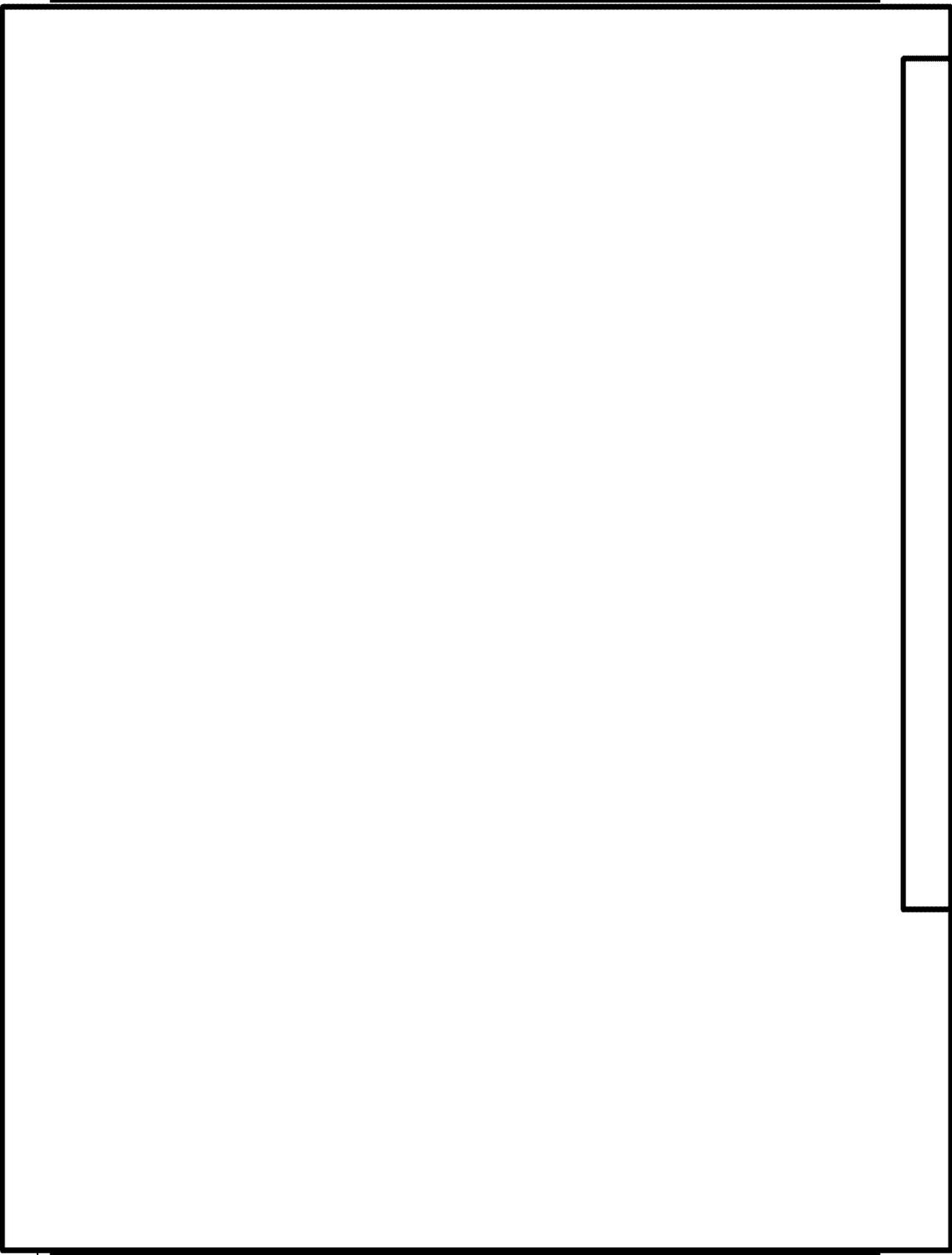


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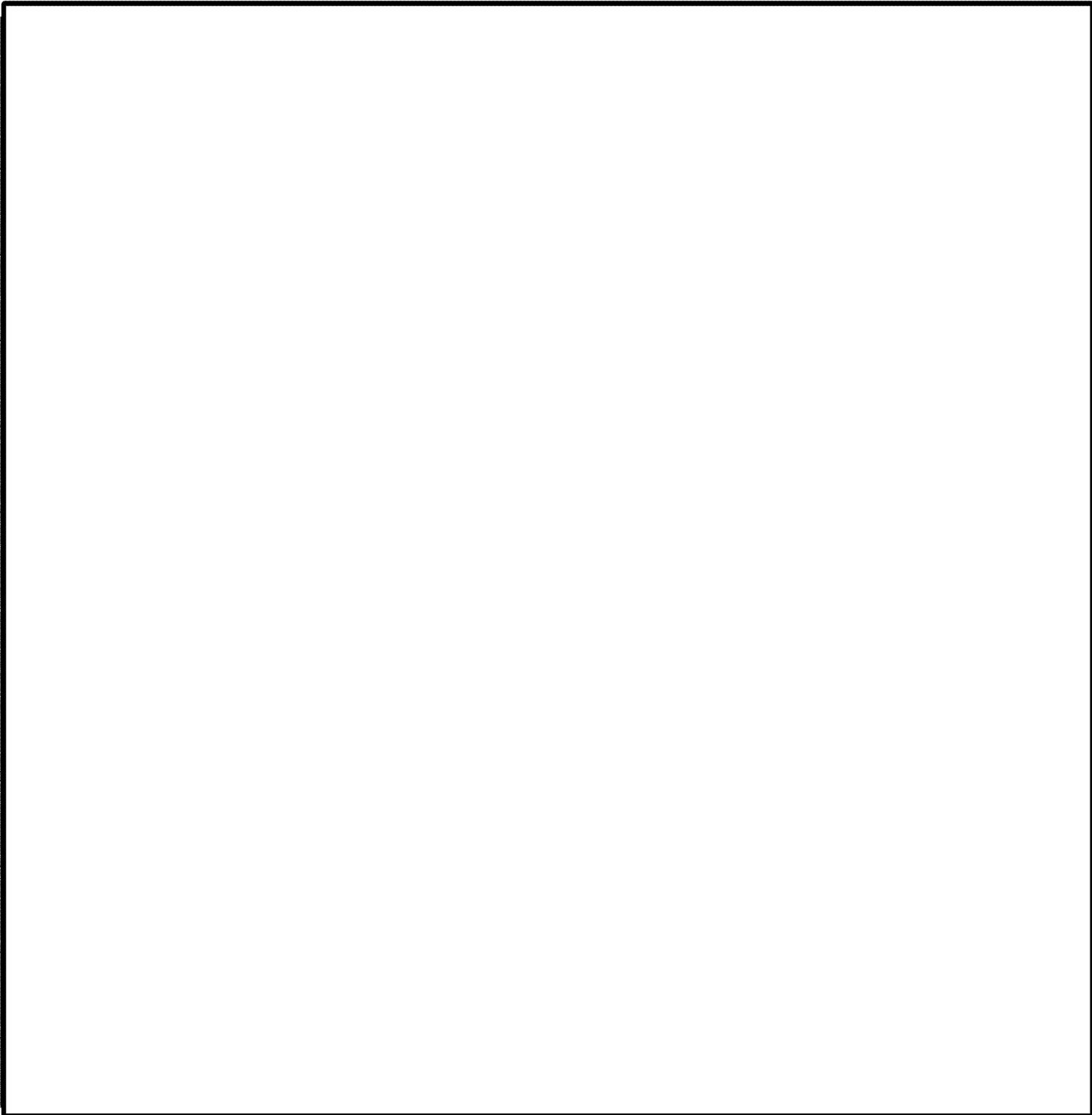


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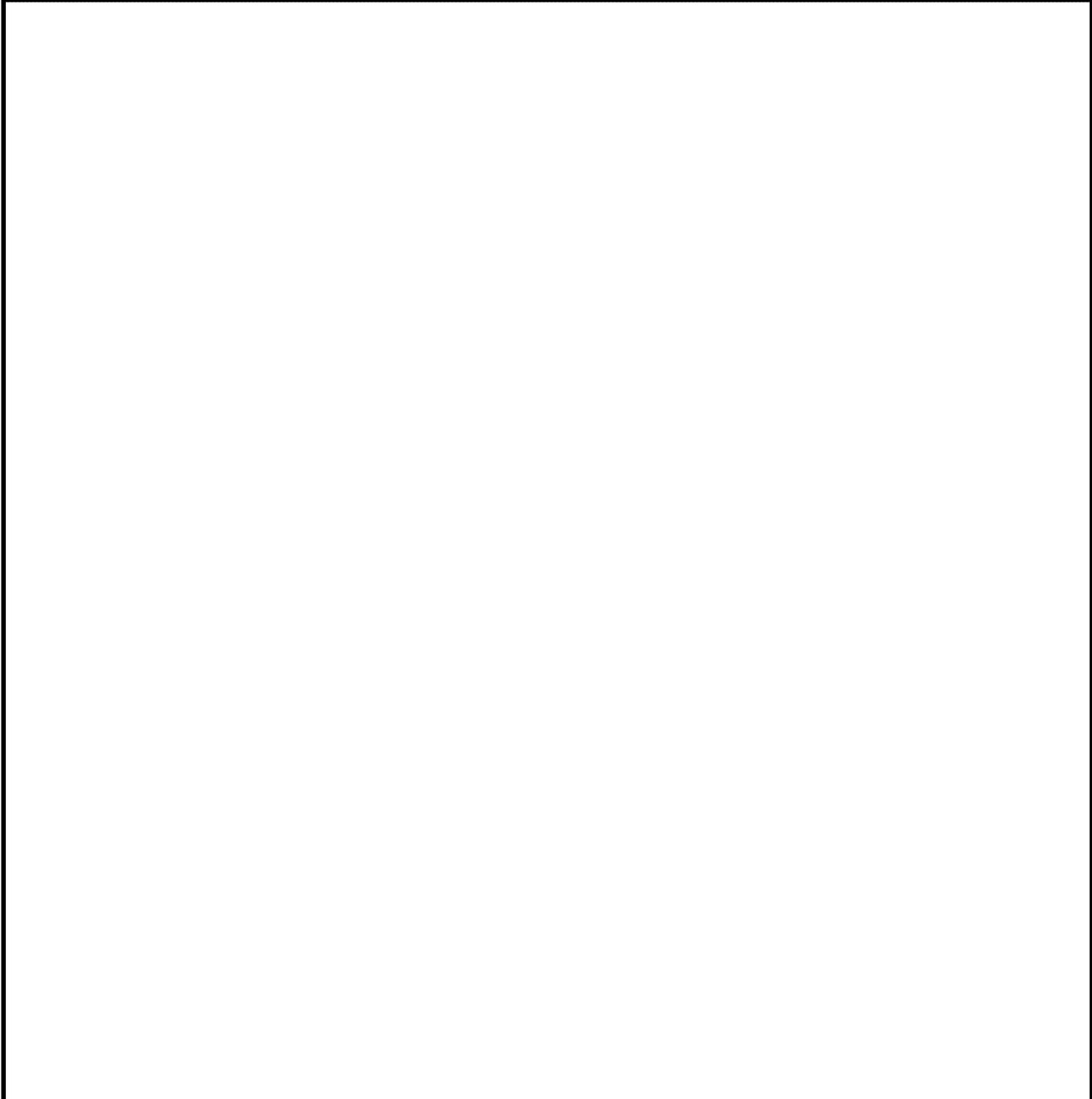


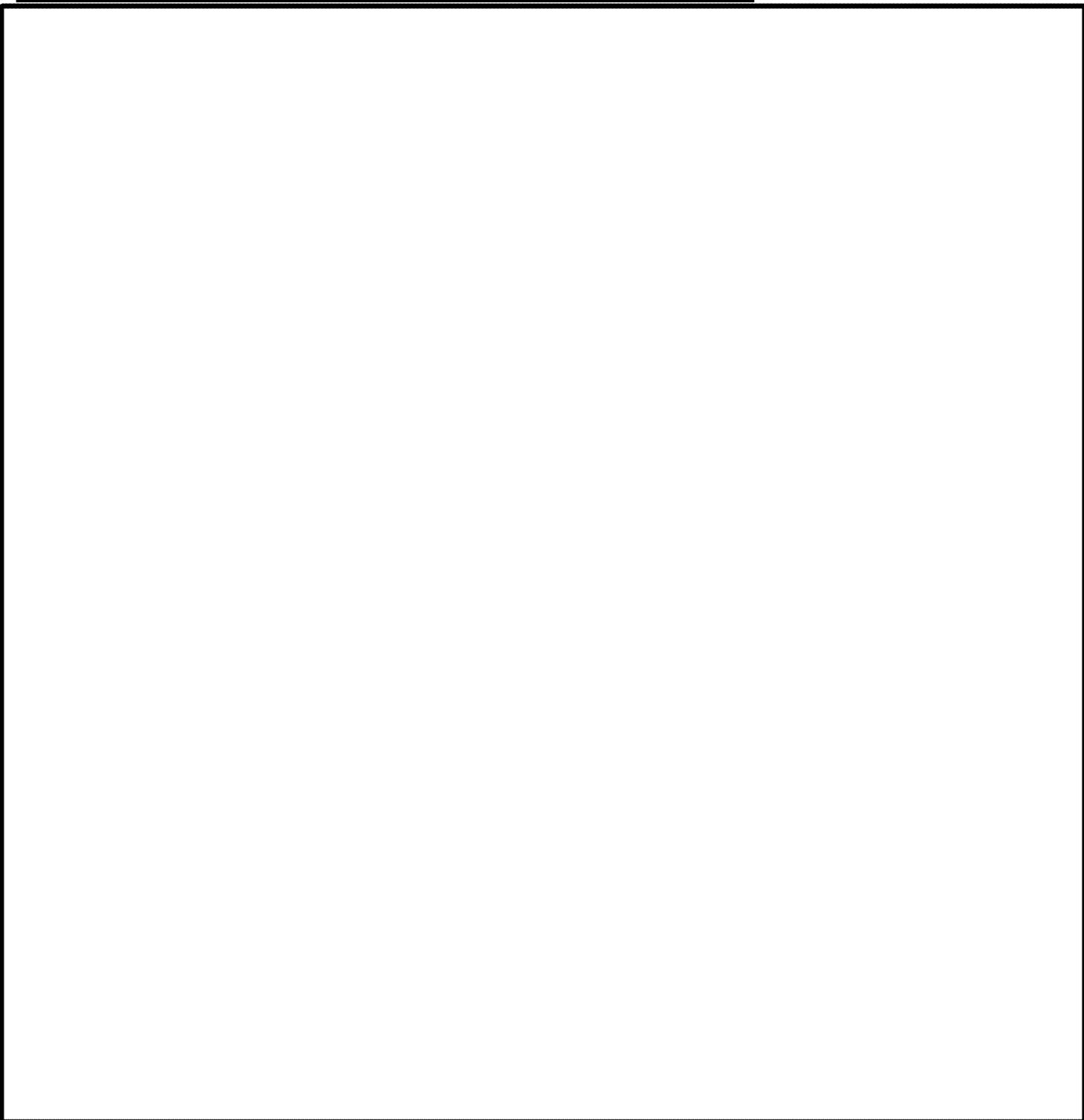
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129 H1B RFE (BR) Beyond Six-Year – Resident or Commuter Exception

Resident or Commuter Exception: Your petition requests an extension of the beneficiary's stay beyond the six-year limit. USCIS regulations provide that an H-1B beneficiary is exempt from the usual six-year time limitation if the beneficiary does not reside continually in the United States and the beneficiary's employment in the United States is seasonal, intermittent, an aggregate of six months or less per year, or if the beneficiary resides abroad and regularly commutes to the United States to engage in part-time employment.

XXX[You did not submit any evidence to show that the beneficiary may be employed beyond the six-year limit.]XXX

To show that the beneficiary is eligible to extend employment beyond the six-year limit, you submitted:

- XXX[INSERT EVIDENCE SUBMITTED]XXX

The evidence you submitted was insufficient. XXX[OFFICER MUST INSERT THE REASON(S) WHY THE EVIDENCE LISTED ABOVE IS INSUFFICIENT HERE.]XXX

You may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to, the following:

- A listing of the dates the beneficiary was outside the United States;
- Arrival and departure records;
- The beneficiary's residence in the United States and abroad;
- Copies of tax returns; and
- Records of employment in ~~U.S.~~ the United States and abroad.

129 H1B RFE Beneficiary Status

Nonimmigrant Status: The record lacks sufficient evidence regarding the beneficiary's status. The following item(s) explain why the submitted evidence is deficient and requests additional evidence to render a final decision.

1-129 H1B RFE STANDARDS

129 H1B RFE (BR) Did Not Indicate Consular Post

Did Not Provide Consular Post: You did you state a consular post on your petition where the beneficiary will apply for a nonimmigrant visa (if necessary) if USCIS is unable to grant the extension of stay or change of status. Provide a consular post where the beneficiary will apply for a nonimmigrant visa if USCIS is unable to grant the beneficiary an extension of stay or change of status.

(b)(5)

129 H1B RFE (BR) Status COS - Beneficiary Departed the U.S.

Change of Status Request Where the Beneficiary Departed the United States: You requested that USCIS change the beneficiary's nonimmigrant status. To qualify for a change of status, the beneficiary must maintain the beneficiary's current nonimmigrant status.

You indicate that the beneficiary is presently in the United States as XXX[INSERT NONIMMIGRANT STATUS]XXX. U.S. Department of Homeland Security's records indicate that the beneficiary departed the United States on XXX[INSERT DEPARTURE DATE]XXX. The Form I-129 was filed on XXX[INSERT I-129 FILING DATE]XXX. Because the beneficiary departed from the United States, the beneficiary did not maintain

(b)(5)

1-129 H1B RFE STANDARDS



129 H1B RFE (BR) Status EOS - Not Present in U.S.

Extension of Stay Request Where the Beneficiary Departed the United States Prior to Filing: You requested that USCIS extend the beneficiary's stay. To qualify for an extension of stay, the beneficiary must be present in the United States at the time the extension of stay request was filed. Here, USCIS records show that the beneficiary departed the United States on XXX[INSERT DEPARTURE DATE]XXX, which is prior to the filing date of the Form I-129. Accordingly, the beneficiary is ineligible for an extension of stay. Please provide an explanation or evidence regarding whether the beneficiary was present in the United States at the time the extension of stay request was filed.

(b)(5)

129 H1B RFE (BR) Status - Change of Work Location

Change in Work Location: You requested that USCIS XXX[extend the beneficiary's stay OR change the beneficiary's status]XXX. To qualify for XXX[an extension of stay OR change of status]XXX, the H-1B beneficiary must maintain nonimmigrant status by working under the terms and conditions that USCIS approved. USCIS previously approved the beneficiary to work for you in XXX[INSERT WORK LOCATIONS FROM PREVIOUS APPROVAL]XXX. The documents you provided suggest that the beneficiary has been working in XXX[INSERT CURRENT WORK LOCATION]XXX. XXX[Officer must insert the analysis of the evidence.]XXX

You are required to notify USCIS immediately when there are changes in the terms and conditions of employment that may affect the beneficiary's eligibility as an H-1B worker. USCIS records do not show that you previously filed amended petitions with USCIS to change the beneficiary's work location so that the beneficiary may begin work in XXX[INSERT NEW WORK LOCATION]XXX. Hence, it appears that the beneficiary has not maintained the beneficiary's nonimmigrant status and that you have not complied with the terms and conditions of employment in this instant petition. Please provide evidence and an explanation regarding how the beneficiary maintained the nonimmigrant status in light of the changes in the terms and conditions of employment noted above.

129 H1B RFE (BR) Status – A, G, or NATO COS H-1B

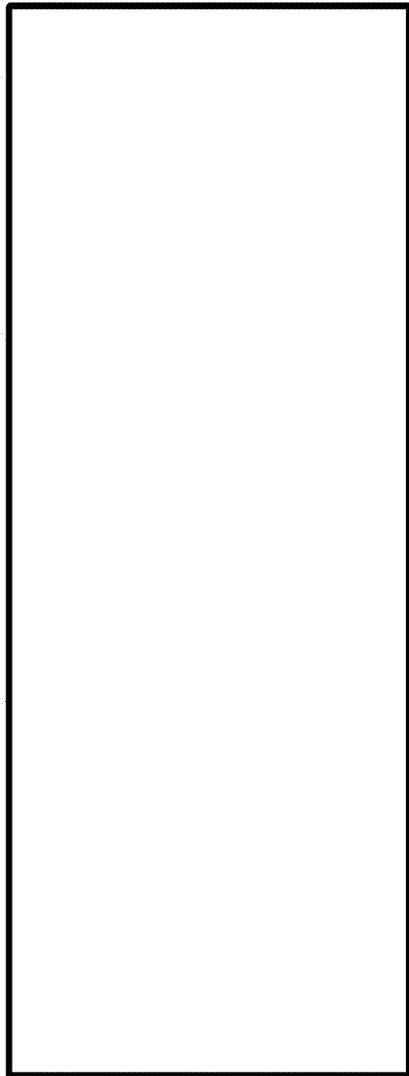
A, G, or NATO Nonimmigrant Status: You seek to change the beneficiary's status to H-1B. The beneficiary was admitted to the United States as XXX[Insert as appropriate: an A OR a G OR a NATO nonimmigrant]XXX. To change status from an A, G, or NATO nonimmigrant status, the beneficiary must submit a properly completed and endorsed:

- Interagency Record of Request -- A, G, or NATO Dependent Employment Authorization or Change/Adjustment to/from A, G, or NATO Status (Form I-566); and
- Arrival/Departure Record (Form I-94).

Please review the instructions to the Form I-566 on USCIS's website at www.uscis.gov/forms regarding the procedures to complete and obtain endorsement of the Form I-566. The adjudication of the Form I-129 cannot be completed until USCIS receives the preceding items.

In addition, submit a legible photocopy of both sides of the beneficiary's Arrival-Departure Record (Form I-94).

Until USCIS changes the beneficiary's status, the beneficiary may not be employed in the United States as an H-1B nonimmigrant.



1-129 H1B RFE STANDARDS

129 H1B RFE (BR) Status – J-1 Maintenance of Status

J-1 Maintenance of Status: You seek to change the beneficiary's nonimmigrant status from exchange visitor (J-1) to H-1B. Before a change of nonimmigrant status may be granted, it must be demonstrated that the beneficiary was maintaining a valid nonimmigrant status at the time the petition was filed.

Submitted with the petition is a photocopy of the beneficiary's Certificate of Eligibility for Exchange Visitor (J-1) Status (Form DS-2019) for an exchange visitor program at XXX[program sponsor]XXX. A review of the Student and Exchange Visitor Information System (SEVIS) record that corresponds to this Form DS-2019 shows that the beneficiary's J-1 status was terminated on XXX[termination date]XXX, or XXX[amount of time]XXX prior to the filing of this petition. The evidence does not demonstrate that the beneficiary was maintaining a valid nonimmigrant status at the time this petition was filed.

Please submit evidence to show that the beneficiary was maintaining a valid nonimmigrant status at the time this petition was filed. A letter from the Program Sponsor for XXX[program sponsor]XXX may not suffice. It is the Program Sponsor's responsibility to contact the Student and Exchange Visitor Program (SEVP) or the SEVIS help desk and have the electronic system corrected before the requested change of status may be granted.

129 H1B RFE (BR) Status – J-1 212(e) Waivers for J-1s Other Than Foreign Medical Graduates

XXX[ONLY USE THIS RFE IF THE BENEFICIARY WHO IS NOT A FOREIGN MEDICAL GRADUATE AND IS SUBJECT TO INA 212(e)]XXX

Two-Year Foreign Residence Requirement: You requested a change of nonimmigrant status from exchange visitor (J-1) to H-1B. It appears that the beneficiary may be subject to the two-year foreign residence requirement because the beneficiary participated in a U.S.- or foreign government-financed J-1 exchange visitor program or the beneficiary became a J-1 as a national from a country designated as clearly requiring the services of persons with their specialized knowledge or skill. These J-1 nonimmigrants are ineligible to change nonimmigrant status until the two-year foreign residence requirement has been met or the J-1 receives a I-612 waiver.

XXX[You did not submit any evidence to show that the beneficiary has met the two-year foreign residence requirement or obtained a waiver of the two-year foreign residence requirement]XXX

You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to, a combination of the following or similar types of evidence:

- Evidence that the beneficiary has resided in the beneficiary's country of nationality or last residence for an aggregate of at least two years following the beneficiary's departure from the United States as a J-1; or
- Evidence that the beneficiary was granted an Application for Waiver of the Foreign Residence Requirement (under section 212(e) of the Immigration and Nationality Act, as amended) (Form I-612) for the above requirement.

If you have any questions concerning the Form I-612, please review the Form I-612 instructions at USCIS's website www.uscis.gov/forms.

129 H1B RFE (BR) Status – Waivers for J-1 Foreign Medical Graduates

XXX[USE THIS RFE IF THE BENEFICIARY IS A FOREIGN MEDICAL GRADUATE]XXX

1-129 H1B RFE STANDARDS

(b)(5)

To satisfy this requirement, you submitted:

- XXX

The evidence you submitted is insufficient. XXX[Officer must insert the reason(s) why the evidence listed is not sufficient]XXX.

You may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to:

129 H1B RFE (BR) Status – J-2 Subject to Residency Requirement

J-2 Residency Requirement: The beneficiary's nonimmigrant status appears to be that of a dependent of an exchange visitor (J-2). Further, it appears that the J-1 principal alien is subject to the two-year foreign residence requirement. Accordingly, the beneficiary is also subject to the same two-year residence requirement as the J-1 principal alien.

XXX[You did not submit any evidence for this requirement.]XXX

To satisfy this requirement, you submitted:

- XXX

The evidence you submitted is insufficient. XXX[Officer must insert the reason(s) why the evidence listed is not sufficient.]XXX

You may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to:

- Evidence that the beneficiary has resided in the beneficiary's country of nationality or last residence for an aggregate of at least two years following the beneficiary's departure from the United States as a J-2; or
- Evidence that the J-1 principal alien was granted an appropriate Application for Waiver of the Foreign Residence Requirement (under section 212(e) of the Immigration and Nationality Act, as amended) (Form I-612).

1-129 H1B RFE STANDARDS

129 H1B RFE (BR) Status – J-2 Spouse of a J-1 Foreign Medical Graduate

J-2 Spouse of a J-1 Foreign Medical Graduate: The beneficiary's nonimmigrant status is a J-2 dependent of a J-1 nonimmigrant foreign medical graduate subject to the two-year foreign residence requirement, who has obtained a waiver of the foreign residence requirement under Public Law 103-416 (Conrad Amendment).

Due to the restriction of this waiver, a request to change status to any other nonimmigrant classification other than a dependent status may not be granted until the principal J-1 fulfills the requisite 3-year employment contract or otherwise complies with the terms and conditions imposed on the waiver.

(b)(5)

129 H1B RFE (BR) Status – H-4 Spouse of an H-1B Conrad

H-4 Spouse of an H-1B Conrad: The beneficiary's nonimmigrant status is an H-4 dependent of an H-1B nonimmigrant, who has obtained a waiver of the foreign residence requirement under Public Law 103-416 (Conrad Amendment).

Provide evidence that the principal H-1B has satisfied the waiver's requirements in accordance with the regulations.

129 H1B RFE (BR) Status - F-1 Student Status

F-1 Academic Student Status: The record lacks sufficient evidence regarding the beneficiary's F-1 status. The following item(s) explain why the submitted evidence is deficient and USCIS requests additional evidence to render a final decision.

129 H1B RFE (BR) Status – F-1 Student Employment

F-1 Student Employment: USCIS was unable to find a record for the beneficiary in the Student and Exchange Visitor Information System (SEVIS). Submit a properly executed SEVIS Form I-20 and a legible copy of the beneficiary's Form I-766, Employment Authorization Document (if applicable).

129 H1B RFE (BR) Status – F-1 Student Employment - More Detailed

129 H1B RFE (BR) F-1 OPT Unemployment

F-1 OPT Unemployment: Students engaging in F-1 post-completion OPT may not accrue an aggregate of more than 90 days of unemployment during the initial post-completion OPT period. Students granted 24-month OPT extension may not accrue an aggregate of more than 120 days of unemployment during the total OPT period including any initial OPT and the 24-month OPT extension.

1-129 H1B RFE STANDARDS

Evidence in the record indicates that the beneficiary does not appear to comply with this requirement. XXX[Officer must insert analysis of evidence here.]XXX

(b)(5)

129 H1B RFE (BR) Status – F-1 Student Terminated/Cancelled/Deactivated

F-1 Student Terminated/Cancelled/Deactivated: You seek to change the beneficiary's nonimmigrant status from F-1 student to H-1B. Before a change of nonimmigrant status may be granted, it must be demonstrated that the beneficiary was maintaining a valid nonimmigrant status at the time the petition was filed.

You submitted a copy of the beneficiary's Student and Exchange Visitor Information System (SEVIS) Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, for attendance at XXX[INSERT SCHOOL]XXX. A review of SEVIS shows that the beneficiary's student status was [INSERT AS APPROPRIATE: canceled, completed, deactivated, terminated] on [INSERT DATE], [prior to the filing of this petition.

Please submit evidence to show that the beneficiary was maintaining a valid nonimmigrant status at the time you filed this petition. A letter from the Designated School Official (DSO) of [will not suffice. It is the DSO's responsibility to correct SEVIS to "Active" before the requested change of status may be granted.

129 H1B RFE (BR) Status –F-2 Dependent

F-2 Dependent: You indicate that the beneficiary is a nonimmigrant dependent of an academic student (F-2). As a dependent of an academic student (F-1), the beneficiary's status is subject to the principal alien's status. Therefore, submit the Student and Exchange Visitor Information System (SEVIS) Form I-20 for the principal alien; a letter from the school stating that the F-1 principal alien is currently attending; and copies of the F-1 principal's school transcripts. If the principal alien is not currently in a nonimmigrant status, the request for a change of status may be denied and the petition (if approved) will be forwarded abroad for processing.

(b)(5)

129 H1B RFE (BR) Status – F-1 Student

F-1 Misclassification: The evidence in the record shows that the beneficiary is currently attending [INSERT SCHOOL NAME] as an F-1 nonimmigrant. It appears that [is a vocational, technical, or non-academic program.

According to the U.S. Immigration and Custom Enforcement's Student and Exchange Visitor Program, [INSERT SCHOOL NAME] is authorized to issue Certificates of Eligibility for Nonimmigrant Student Status (Form I-20 A-B) for F-1 classification only to students who will engage in the school's Language Training programs. Although the school may be authorized to accept foreign students in vocational, technical, or non-academic education programs, students enrolled in these programs would be issued a Certificate of Eligibility for Nonimmigrant (M-1) Student Status For Vocational Students (Form M-N).

Please provide documentary evidence to establish that the beneficiary has, and continues to maintain, valid F-1 status.

F-1 Full Course of Study: You stated that the beneficiary is a nonimmigrant academic student (F-1). [An F-1 nonimmigrant must maintain a full-course of study. Here, the record does not contain evidence regarding the beneficiary's full-course of study. Please submit addition evidence regarding the beneficiary's full-course of study. Evidence that you may submit include, but is not limited to:

1-129 H1B RFE STANDARDS

- Copies of all pages of all SEVIS Certificates of Eligibility for Nonimmigrant Student Status (Forms I-20) issued to the beneficiary from all of the beneficiary's schools in the United States;
- Official copies of the beneficiary's transcripts issued by all of the beneficiary's schools in the United States;
- Copies of degrees and/or certificates issued to the beneficiary showing course completions;
- Receipts for tuition payments made by the beneficiary to [INSERT SCHOOL];
- Receipts for books, parking passes, and school supplies for the period of time that the beneficiary was a student at [INSERT SCHOOL];
- The beneficiary's student ID for [INSERT SCHOOL];
- The beneficiary's course syllabi or outlines for the beneficiary's program at [INSERT SCHOOL];
- Documentary evidence to show that the beneficiary was physically attending the courses in which the beneficiary was enrolled, including transportation receipts, confirmed transportation reservations, attendance records, etc.;
- Evidence of the beneficiary's U.S. residence (utility bills, rental contracts or receipts, etc.);
- Evidence showing the number of online or distance education class credits the beneficiary enrolled in for each academic period for the duration of the time the beneficiary was a student at [INSERT SCHOOL];
- Evidence to show the beneficiary is making progress toward completion of a program of study; or
- Any other documentary evidence to establish the beneficiary has been engaged in a full course of study and working towards program completion.

F-1 Curricular Practical Training: Since the evidence of record indicates that the beneficiary is or was participating in Curricular Practical Training (CPT), provide the following:

- The name of the course and course code in which the beneficiary is or was enrolled that requires CPT;
- Documentary evidence that immediate participation in CPT was required for the beneficiary's studies;
- Documentary evidence establishing both the beneficiary's current major and that CPT is/was an integral (essential) part of the beneficiary's degree program at ;
- A letter from the beneficiary's CPT employer(s), explaining the beneficiary's job duties, pay, and period of employment;
- Evidence of the cooperative agreement(s) between the beneficiary's CPT employer and the school; or
- Evidence that the beneficiary's CPT is or was directly related to the beneficiary's major area of study.

F-1 Optional Practical Training: Since the evidence of record indicates that the beneficiary is or was participating in Optional Practical Training (OPT), provide the following:

- Evidence demonstrating that the OPT is directly related to the beneficiary's major area of study;
- Copies of all Employment Authorization Documents (EADs) issued to the beneficiary by USCIS for OPT; [It appears that the beneficiary was granted a 24-month OPT period. Please submit copies of all six-month validation reports submitted to the Designated School Official (DSO) for this OPT STEM employment; or
- Students engaging in F-1 post-completion OPT may not accrue an aggregate of more than 90 days of unemployment during the initial post-completion OPT period. Students granted 24-month OPT extension may not accrue an aggregate of more than 120 days of unemployment during the total OPT period including any initial OPT and the 24-month OPT extension.

1-129 H1B RFE STANDARDS

Please provide evidence that the beneficiary maintained the beneficiary's F-1 status during post-completion OPT. Evidence may include but is not limited to the following:

- o A list of all employers the beneficiary has worked for under post-completion OPT and the periods the beneficiary worked for those employers; and
- o Copies of all pay records/stubs for the beneficiary from the starting date of post-completion OPT to the present time.

129 H1B RFE (BR) Status – M-1 Student Status

M-1 Vocational Student Status: You indicate that the beneficiary is currently a nonimmigrant vocational student (M-1). Please submit evidence that the beneficiary is maintaining the beneficiary's M-1 status. This evidence may be in the form of one or more of the following:

- Arrival/Departure Record (Form I-94);
- Approval Notice (Form I-797/A/B);
- All Forms I-20AB/I-20ID;
- A copy of the visa page showing the M-1 visa; and
- Evidence to establish that the beneficiary did not receive education or training as an M-1 student that enabled the beneficiary to meet the qualifications for H-1B classification.

129 H1B RFE (BR) Admissibility Issues Requiring Waiver

Inadmissibility Waiver: Every nonimmigrant who applies for admission to or an extension of stay in the United States must establish that the person is admissible to the United States or that any ground of inadmissibility has been waived.

The beneficiary appears to be inadmissible pursuant to section 212(a)() () XXX[FILL IN SUBSECTION OF INADMISSIBILITY]XXX of the Immigration and Nationality Act for XXX[INADMISSIBILITY REASON]XXX. On XXX[DATE]XXX, the beneficiary was XXX[DESCRIBE THE CRIME OR OTHER ACTION THAT LED TO INADMISSIBILITY]XXX.

Submit evidence that the beneficiary has received a nonimmigrant waiver of inadmissibility which covers the period of the requested extension of stay in the United States.

129 H1B RFE (BR) Admissibility Issues Disposition of Charges

Disposition of Charges: Law enforcement records show that the beneficiary was arrested and charged with the following crime(s):

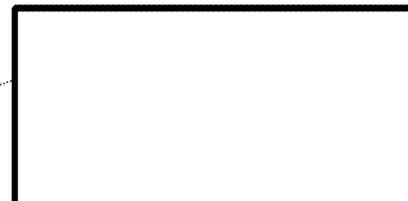
1. XXX[]XXX
2. XXX[]XXX
3. XXX[]XXX

If there are other arrests not listed above, provide the additional charge(s) and date(s).

For all arrests, submit copies of court documents showing the disposition. Provide the relevant excerpts of law from each jurisdiction where the arrest took place showing the maximum possible penalty for each arrest/charge.

(b)(5)

|129 H1B RFE (BR) Status – Payroll Records Same Employer Extension|



1-129 H1B RFE STANDARDS

Payroll Records Same Employer Extension: You seek to extend the beneficiary's employment. XXX[You provided the beneficiary's pay records/stubs for the period from [INSERT PAY STUBS START DATE] to [INSERT PAY STUBS END DATE].]XXX However, this evidence does not show that the beneficiary maintained his/her nonimmigrant status at the time the Form I-129 was filed.

Submit copies of the beneficiary's pay records (leave and earnings statements, and pay stubs, etc.) with you from XXX[INSERT REQUESTED PERIOD START DATE]XXX to XXX[INSERT REQUESTED PERIOD END DATE]XXX to show that the beneficiary maintained his/her nonimmigrant status.

129 H1B RFE (BR) Status – Payroll Records Change of Employer

Payroll Records Change of Employer: The record indicates that the beneficiary was previously employed as an H-1B nonimmigrant with another employer and is now attempting to extend that status with a new H-1B employer. XXX[You provided the beneficiary's pay records/stubs with the beneficiary's previous employer for the period from [INSERT PAY STUBS START DATE] to [INSERT PAY STUBS END DATE].]XXX However, this evidence does not show that the beneficiary maintained his/her nonimmigrant status at the time the Form I-129 was filed.

Submit copies of the beneficiary's pay records (leave and earnings statements, pay stubs, W-2 etc.) with his/her previous employer from XXX[INSERT REQUESTED PERIOD START DATE]XXX to XXX[INSERT REQUESTED PERIOD END DATE]XXX to establish that the beneficiary was in a valid nonimmigrant status at the time the present petition was filed. Also, submit copies of the beneficiary's pay records (leave and earnings statements, pay stubs, etc.) with the beneficiary's present employer (you), if applicable.

129 H1B RFE (BR) Status – Payroll Records Change of Status

Payroll Records Change of Status: The record indicates that the beneficiary is currently employed as a XXX[L-1/E-1/E-2 nonimmigrant]XXX with another employer and is now attempting to change status to a new H-1B employer. You provided the beneficiary's payroll records with the beneficiary's current employer for the period from XXX[INSERT PAY STUBS START DATE]XXX to XXX[INSERT PAY STUBS END DATE]XXX. However, this evidence does not show that the beneficiary maintained his/her nonimmigrant status at the time the Form I-129 was filed.

Please submit copies of the beneficiary's pay records (leave and earnings statements, pay stubs, etc.) with the beneficiary's current employer from XXX[INSERT REQUESTED PERIOD START DATE]XXX to XXX[INSERT REQUESTED PERIOD END DATE]XXX to show that the beneficiary maintained his/her nonimmigrant status.

129 H1B RFE (BR) Status – Beneficiary is Dependent Spouse of a Nonimmigrant Worker

Dependent Spouse of a Nonimmigrant Worker: The record indicates that the beneficiary is a dependent spouse of XXX[INSERT NONIMMIGRANT DESCRIPTORS HERE: a specialty occupation worker (H-4) / an intracompany transferee (L-2) / a treaty investor (E-2)]XXX.

You provided the beneficiary's spouse's pay records with the spouse's current employer for the period from XXX[INSERT PAY STUBS START DATE]XXX to XXX[INSERT PAY STUBS END DATE]XXX.

Since the beneficiary's status is dependent upon his/her spouse's nonimmigrant status, you must show that the beneficiary's spouse has maintained nonimmigrant status at the time the Form I-129 was filed.

Submit copies of the beneficiary's spouse's pay records (leave and earnings statements, pay stubs, etc.) with the current employer from XXX[INSERT REQUESTED PERIOD START DATE]XXX to XXX[INSERT REQUESTED PERIOD END DATE]XXX.

1-129 H1B RFE STANDARDS

PERIOD END DATE]XXX. Also, submit copies of the beneficiary's pay records (leave and earnings statements, and pay stubs, etc.), if applicable.

129 H1B RFE (BR) Valid Passport

Valid Passport: To qualify for an extension of stay, the beneficiary must possess a valid passport at the time the petition was filed. The record shows that the beneficiary's passport expired on XXX[INSERT PASSPORT EXPIRATION DATE]XXX. Provide a copy of biographical page of the beneficiary's current and unexpired passport. If the beneficiary does not possess a current and unexpired passport, please provide a detailed explanation and substantiating evidence.

129 H1B RFE (BR) Status – Periods in H and/or L Status

Periods in H and/or L Status: The record does not show all the time the beneficiary has spent in the United States in H and/or L nonimmigrant status. To establish eligibility, list all periods in which the beneficiary has been in the United States in an H and/or L classification. Submit legible copies of all passports and all pages of those passports, including identification pages, visa pages, any pages with entry and exit stamps, and blank pages to substantiate all periods in the United States in H or L status. Be advised that color copies are preferred because of the various color inks used for admission and departure control may not be as legible in black and white copies.

129 H1B RFE (BR) Status – Current Status

Current Immigration Status: Provide evidence regarding the beneficiary's current immigration status. If the beneficiary is not currently in a nonimmigrant status, the request for an extension of stay or change of nonimmigrant status may not be approved and the petition (if approved) will be forwarded abroad. Therefore, identify a location abroad (if not already identified) for visa notification and submit a duplicate set (if not already submitted) of all documentation previously submitted.

129 H1B RFE (BR) Beneficiary Became LPR During Pendency of I-129

Lawful Permanent Resident (LPR): You seek H-1B classification for the beneficiary. USCIS records indicate that the beneficiary was granted Lawful Permanent Resident (LPR) status on XXX[INSERT DATE]XXX.

It appears that the beneficiary no longer requires nonimmigrant H-1B classification and status and that adjudication of the instant Form I-129 is not necessary. If you wish to continue seeking the adjudication of this Form I-129, please state so in response to this Request for Evidence. If you do not wish to continue seeking the adjudication of this Form I-129, please submit a written withdrawal request in response to this Request for Evidence.

(b)(5)

Please note that as an LPR, the beneficiary is ineligible for an extension of stay or change of status to an H-1B worker. If USCIS approves the Form I-129, any extension of stay or change of status request will be denied.



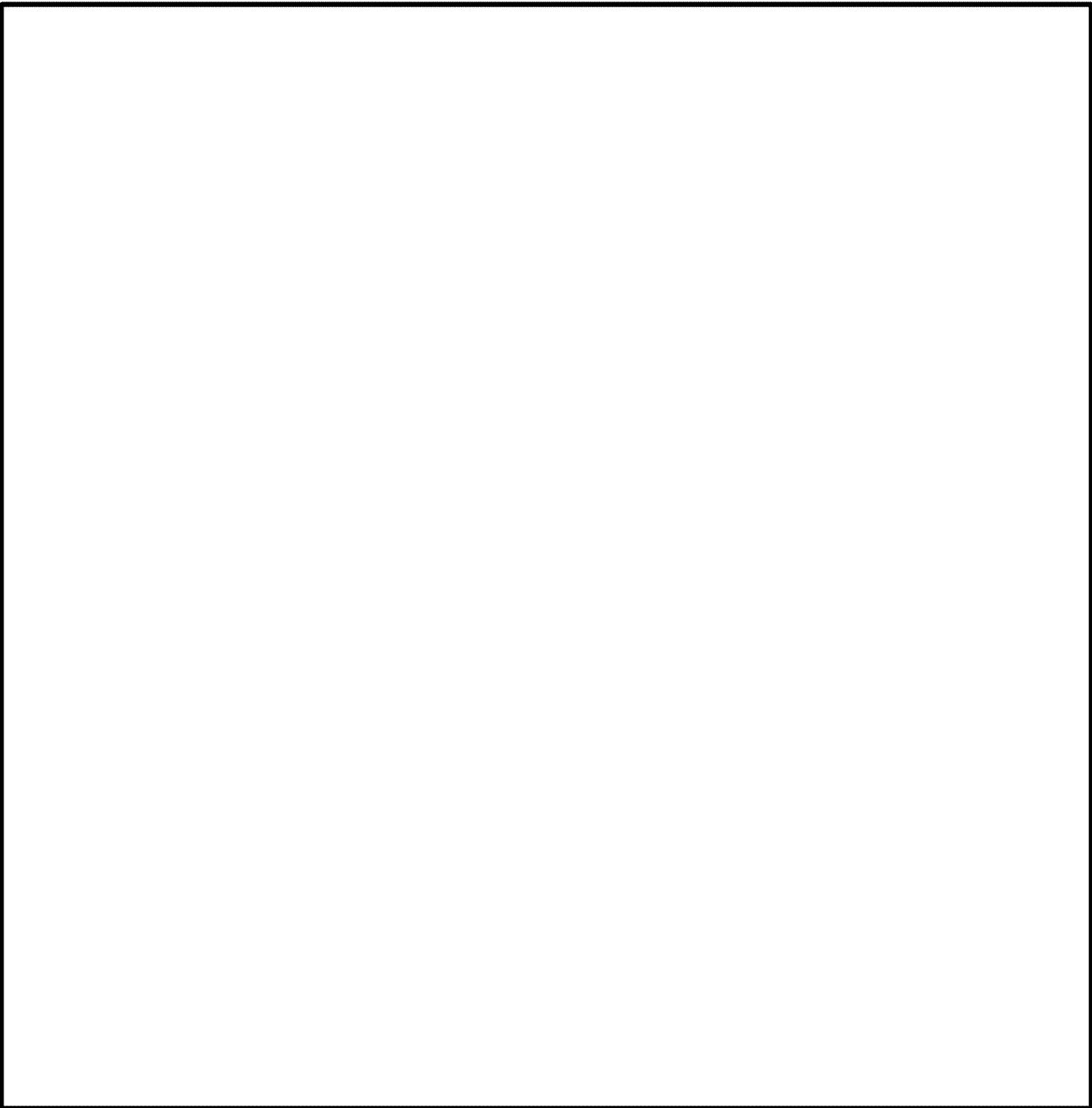
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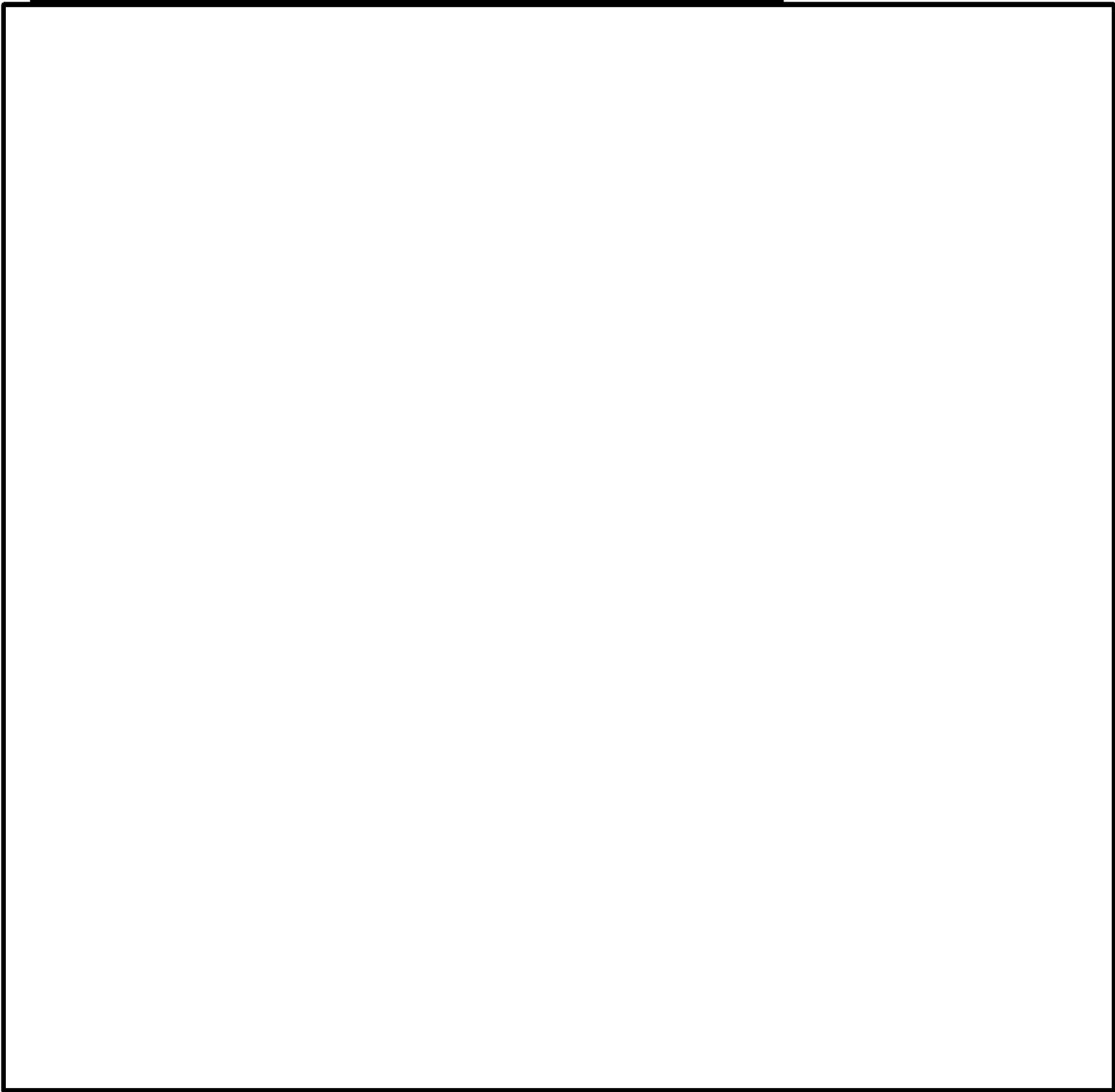
1-129 H1B RFE STANDARDS



Revised ~~March 23, 2017~~ February 3, 2016

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129 RFE CONCLUSION

General Requests

If you are submitting evidence in response to this request, please follow the below guidelines:

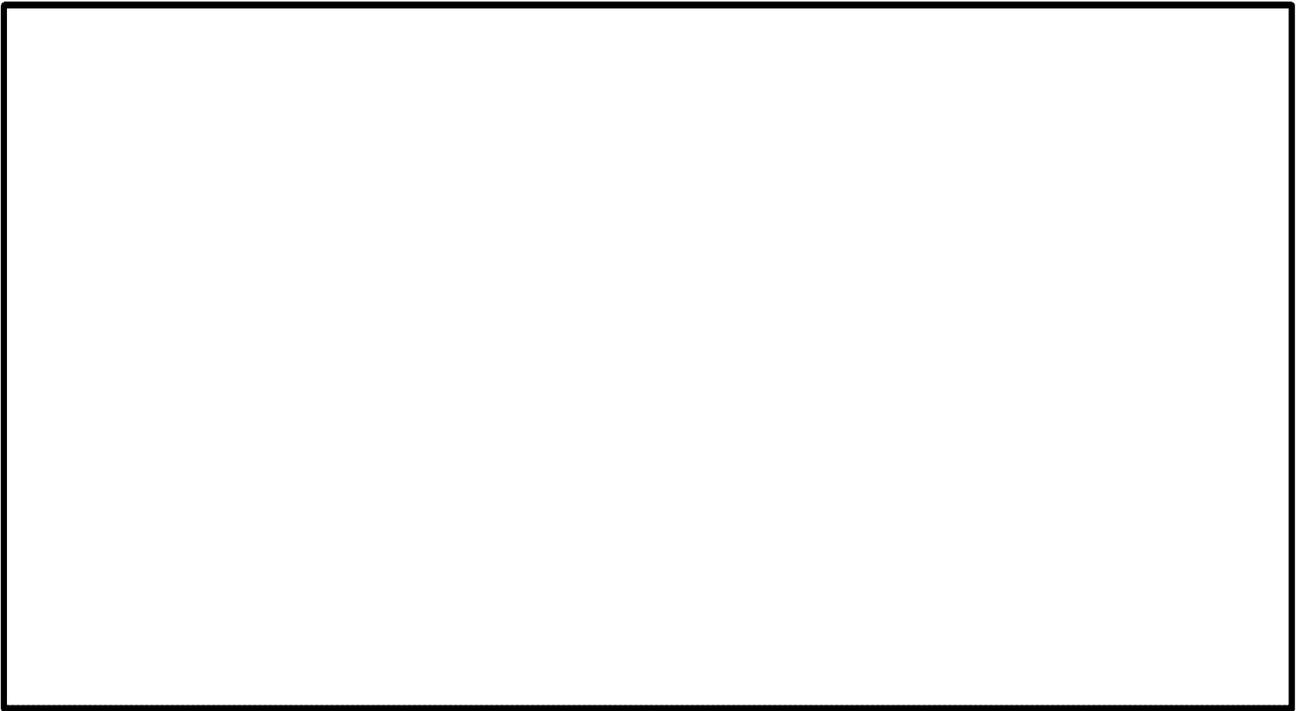
- An index of the evidence and include corresponding tabs for each section of evidence.
- Clear and legible copies of the evidence. If legible copies are not possible, submit the original documents. These originals will be returned, if requested.
- If you are requesting consulate notification, provide a duplicate copy of:
 - Form I-129;
 - Initial evidence; and
 - Any evidence submitted in response to this request.
- If the beneficiary is in the United States and you are requesting a change of status or extension of stay, you may also choose to submit a duplicate copy of the Form I-129 and supporting evidence in case the beneficiary decides to seek a visa at a consular office abroad.

(b)(5)

CSC SNIPIT



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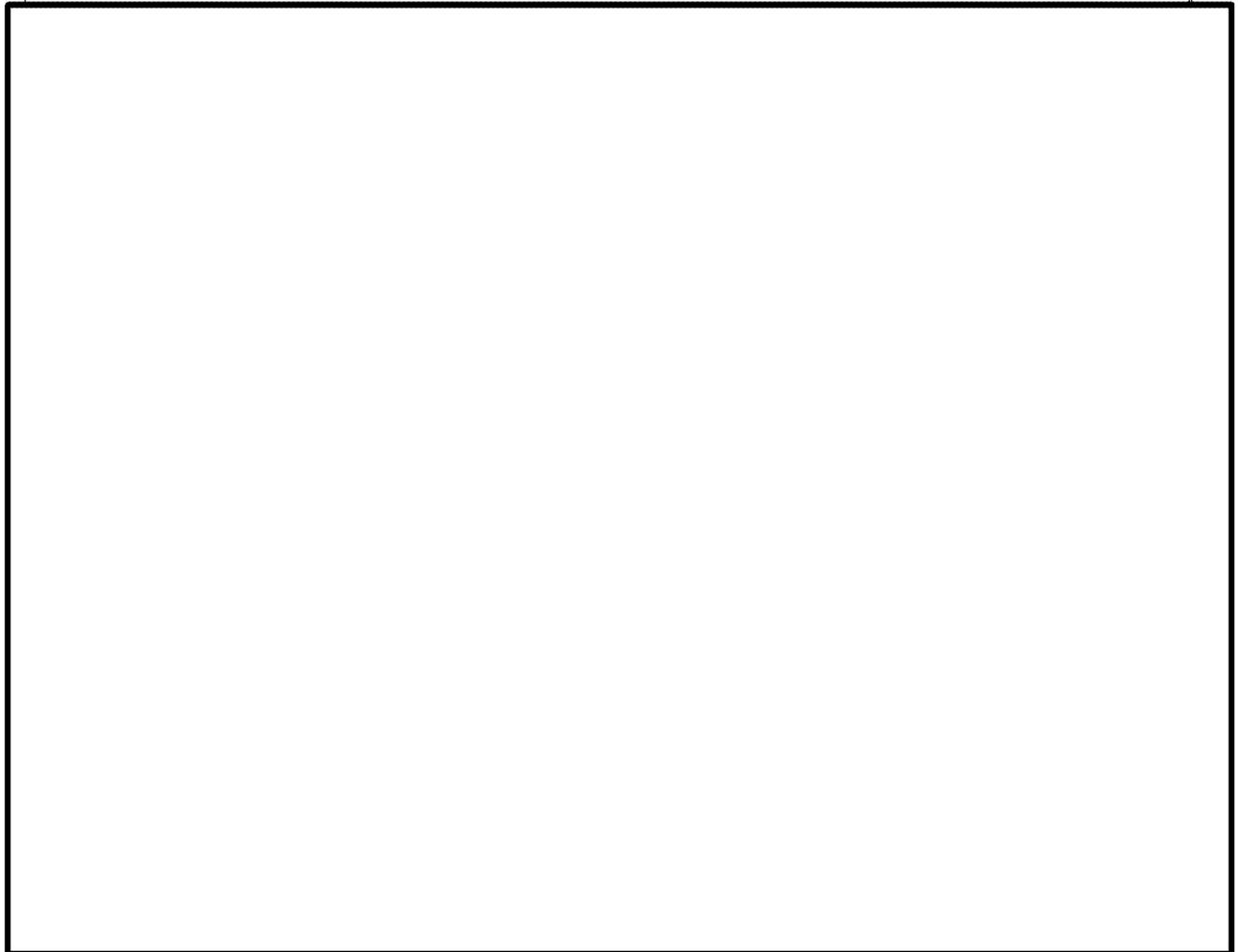


SCOPS MDW: Deleting this snip it as it is incorrect. Officers will need to address each petition individually.

Page 43: [3] Comment [JMC90]

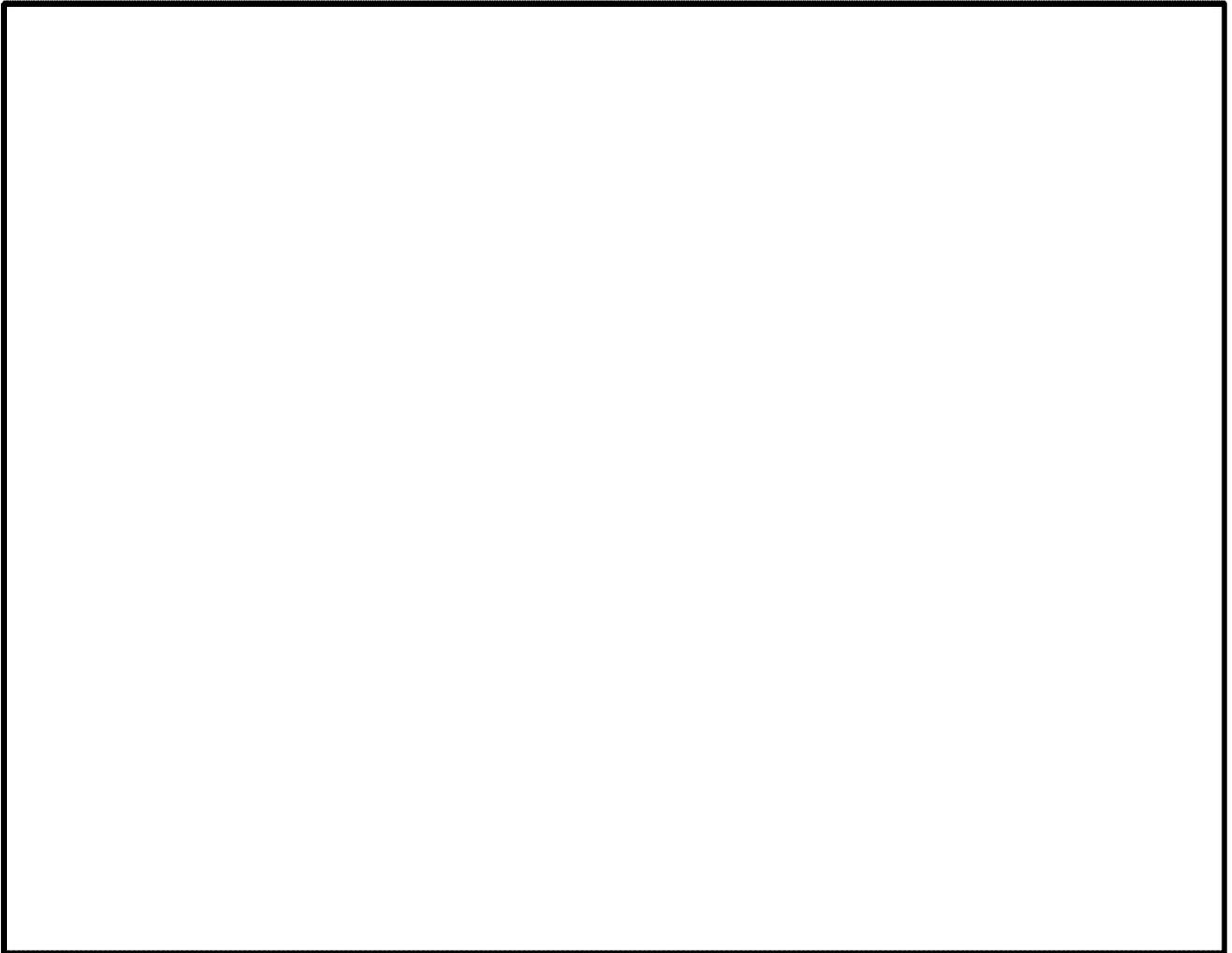
Jae M. Chung

7/31/2017 1:31:00 PM



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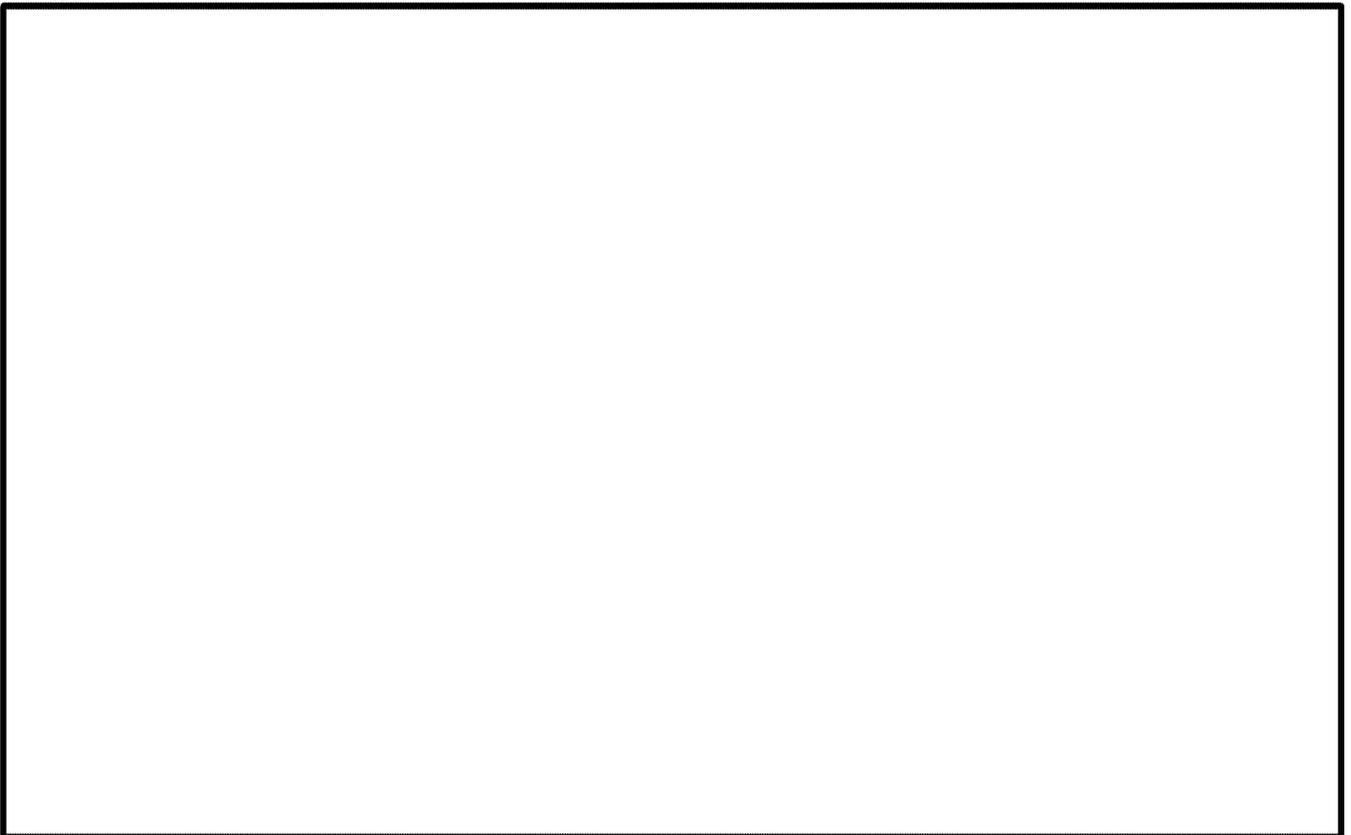


Page 52: [5] Comment [RJE133]

Roach, Joyce E

1/30/2017 11:04:00 AM

SNIPIT



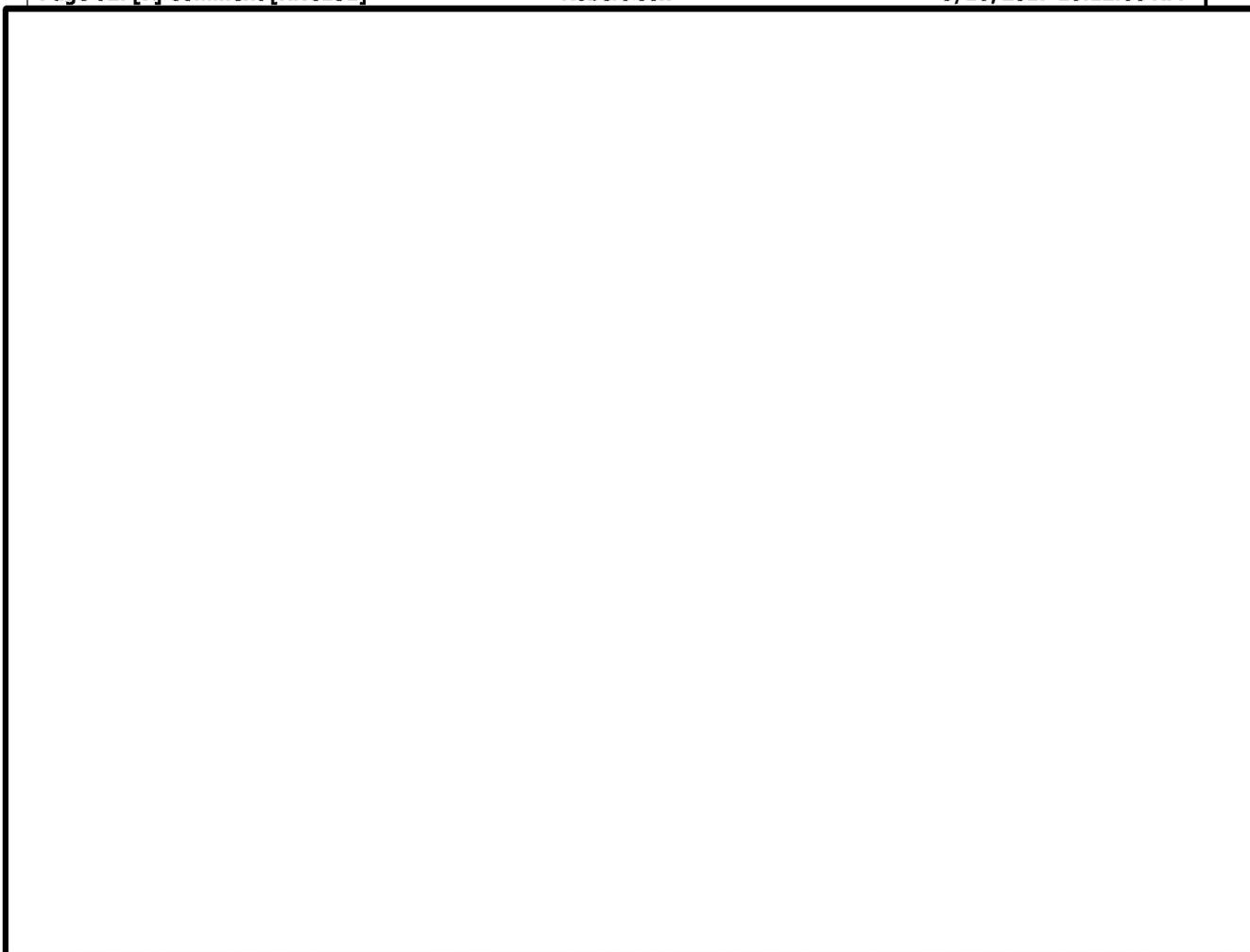
(b)(5)



Page 62: [7] Comment [RHC151]

Robert Cox

8/16/2017 10:12:00 AM



(b)(5)

IP 52 - L NONIMMIGRANT VISA PROGRAM

TALKING POINTS:

- In 1970, Congress created the L-1 nonimmigrant visa classification.
 - The legislative history makes it clear that Congress intended that the L-1 classification be limited to “key” personnel, in order to ensure that there would be no adverse impact on U.S. workers.
- The L-1 (“intracompany transferee”) nonimmigrant visa classification permits multinational companies to transfer certain categories of employees from their foreign operations to their operations in the United States.
 - The L-1A classification is available for intra-company transfers of corporate managers and executives.
 - The L-1B visa classification enables intracompany transfers of employees who possess “specialized knowledge.”
 - Congress has never defined the term “specialized knowledge” with specificity, rather defining it in general terms, to include ‘advanced knowledge’ or ‘special knowledge.’
 - As a result of the lack of a clear definition of what constitutes “specialized knowledge,” the L-1B classification has been subject to abuse by employers seeking to hire persons other than the types of employees contemplated by Congress. In particular, the L-1B classification was subject to abuse by job shops who used the L-1B classification to place workers at off-site locations, to the detriment of U.S. workers.
 - To address this problem, Congress enacted the L-1 Visa Reform Act of 2004 (VRA), which imposes specific restrictions on companies who seek to use the L-1B classification for the purpose of “job shopping,” even if the workers in question would otherwise have met the basic requirements for L-1B classification.
 - Under the VRA, if a person will be employed in the United States at locations other than that of the petitioner, such persons must be controlled and supervised principally by the petitioner and be placed in connection with the provision of a product or service for which specialized knowledge specific to the petitioner is necessary.
 - In 2015, USCIS issued a policy memorandum, PM 602-0111, “L-1B Adjudications Policy,” which provided guidance for interpreting what constitutes “specialized knowledge” for L-1B purposes. USCIS is currently reviewing that memorandum and considering ways to provide additional protections to the U.S. labor force.
 - To save time and administrative costs to both petitioners and the U.S. Government, certain organizations may file a “blanket L petition,” which enables an organization to establish the required qualifying relationship in advance of filing L-1 petitions on behalf of individual workers. Under this process, a petitioner may submit for USCIS approval a blanket petition listing multiple qualifying organizations/affiliates within its corporate family, thereby obviating the need to resubmit extensive paperwork each time an entity listed in the approved blanket petition files a petition on behalf of an individual worker.
- USCIS is committed to detecting and preventing immigration fraud and abuse in the L-1 program; it is working on a combination of rulemaking, policy memoranda, and operational changes to implement the Buy American and Hire American Executive Order.

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- USCIS is creating and carrying out these initiatives to protect the economic interests of U.S. workers and prevent fraud and abuse within the immigration system and are working on:
 - Further enhancing information sharing with the Department of State, Department of Labor, and Department of Justice, including the exchange of petition, fraud, and site visit information to help to combat and prevent immigration fraud.
 - Enhancing the current site visit program to further ensure the integrity of the immigration system.
 - Ensuring L-1 employers comply with appropriate laws.
 - In April 2017, USCIS issued a policy memorandum (PM-602-0143), designating *Matter of I-Corp* as an adopted decision. *Matter of I-Corp* clarifies that USCIS cannot approve a visa petition that is based on an illegal or otherwise invalid employment agreement. To prevent a potential conflict with the Fair Labor Standards Act, USCIS must ensure that a beneficiary will not be paid a wage that is less than the minimum required wage under state or Federal law, whichever is higher, before approving an employment-based visa petition.
- USCIS is committed to protecting U.S. workers in adjudications.
 - When adjudicating L-1 petitions, USCIS officers are careful to ensure that the classification is available only to those foreign workers for whom Congress intended.
 - In this regard, the L-1 nonimmigrant visa category is not intended for ‘open market’ hires, but was established solely to facilitate the *intracompany* transfer of certain select personnel within a family of companies. Significantly, L-1 nonimmigrant workers must have worked within a narrowly defined “family” of companies involved in the transfer either as a manager, executive, or someone having specialized knowledge.

BACKGROUND:

General Requirements

- There is no numerical cap or requirement that there be no U.S. workers available to fill L-1 positions.
- A Form I-129 petition requesting L-1 classification may be filed by either a qualifying foreign organization or a U.S. organization that intends to employ the beneficiary.
- The petition may not be filed or approved earlier than six months before the date of actual need for the beneficiary’s services.
- In general, L-1 petitions must be filed at the Service Center that has jurisdiction over the area where the beneficiary is to be employed.
- To qualify for L-1 classification, the employer must have a qualifying relationship with a foreign company (parent company, branch, subsidiary, or affiliate), and currently be or will be doing business as an employer in the U.S. and in at least one other country directly or through a qualifying organization for the duration of the beneficiary’s stay in the U.S. as an L-1.
- For L-1 petitions that do not involve a qualifying “new office” in the United States, qualified employees will be allowed a maximum initial stay of three years. Requests for extensions of stay may be granted in increments of up to two years, until the employee has reached the maximum limit of seven years for L-1A employees and five years for L-1B employees.

L-1A – Executives and Managers

- To qualify for an L-1A, the employee must generally have been working for a qualifying organization abroad for one continuous year within the three years immediately preceding his or her admission to the U.S.; and be seeking to enter the U.S. to provide service in an executive or managerial capacity for a branch of the same employer or one of its qualifying organizations.

L-1B – Specialized Knowledge Employees

- To qualify for an L-1B visa, the employee must generally have been working for a qualifying organization abroad for one continuous year within the three years immediately preceding his or her admission to the United States; and the employee must be seeking to enter the U.S. to provide services in a specialized knowledge capacity to a branch of the same employer or one of its qualifying organizations.
 - Specialized knowledge is defined under the statute as either: (1) special knowledge of the company's product and its application in international markets, or (2) an advanced level of knowledge of processes and procedures of the company in question. See section 214(c)(2)(B), 8 U.S.C. 1184(c)(2)(B).
 - Policy Memorandum PM 602-0111, "L-1B Adjudications Policy," became effective on August 31, 2015.
 - This policy memorandum rescinded certain prior L-1B memoranda and consolidated L-1B adjudications guidance into one source.
 - USCIS also updated the Request for Evidence (RFE) templates to reflect the consolidated guidance included in the memorandum.

L-1 Visa Reform Act of 2004

- The L-1 Visa Reform Act of 2004, which applies to all petitions filed on or after June 6, 2005, pertains to petitions filed on behalf of L-1B employees who will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent. In order for the employee to qualify for L-1B classification in this situation, the petitioning employer must show that the employee will not be principally controlled or supervised by an unaffiliated employer; and the work being provided by the employee is not considered to be labor for hire by an unaffiliated employer.

New Office Petitions

- For foreign employers seeking to send an employee to the United States as an *executive or manager* to establish a new office, the employer must also show that:
 - The employer has secured sufficient physical premises to house the new office;
 - The employee has been employed as an executive or manager for one continuous year in the three years preceding the filing of the petition; and
 - The intended U.S. office will support an executive or managerial position within one year of the approval of the petition.
- For foreign employers seeking to send an employee with specialized knowledge to the United States to be employed in a qualifying *new office*, the employer must show:
 - The employer has secured sufficient physical premises to house the new office; and
 - The employer has the financial ability to compensate the employee and begin doing business in the United States.
- Since a "new office" petition is inherently prospective in nature, in order to ensure that an employer will actually fulfill the commitments it makes in the new office petition, qualified

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employees entering the U.S. to establish a new office will be allowed a maximum initial stay of one year. At the end of the first year, the employer must file an extension petition demonstrating that the L-1 worker in fact is employed as a manager, executive, or specialized knowledge employee, as promised in the initial new office petition.

Blanket Petitions

- Certain organizations may establish the required intracompany relationship in advance of filing individual L-1 petitions by filing a blanket petition. A petitioner is eligible for blanket L certification if:
 - The petitioner and each of the qualifying organizations are engaged in commercial trade or services;
 - The petitioner has an office in the U.S. which has been doing business for one year or more;
 - The petitioner has three or more domestic and foreign branches, subsidiaries, and affiliates; and
 - The petitioner along with the other qualifying organizations, collectively, meet one of the following criteria:
 - Have obtained at least ten L-1 approvals during the previous 12-month period;
 - Have U.S. subsidiaries or affiliates with combined annual sales of at least \$25 million; or
 - Have a U.S. work force of at least 1,000 employees.
- A petitioner with an approved blanket L petition may file Form I-129S to petition for executive, managerial, or specialized knowledge employees.
- In order to qualify under the blanket petitioning process, employees having specialized knowledge must also be “professionals,” that is, hold a bachelor’s degree or higher.
- If the employee is a beneficiary under a blanket L petition and is seeking an extension of stay or change of status, a petitioner must concurrently file a new Form I-129S and the Form I-129 requesting an extension of stay/change of status along with a copy of the previously approved Form I-129S.

Additional Fee

- Under Public Law 114-113, certain L-1 petitioners are required to pay an additional \$4,500 fee if:
 - The petitioner employs 50 or more employees in the U.S.;
 - More than half of the petitioner’s employees in the U.S. are in H-1B, L-1A or L-1B nonimmigrant status;
 - The L-1 petition was filed with a postmark date or sent by courier of Dec. 18, 2015 or later; and
 - The petition was filed to (a) seek initial L-1A or L-1B nonimmigrant status for a foreign national, or (b) obtain authorization for an L-1A or L-1B worker to change employers.

Dependents

- Congress enacted legislation specifically allowing spouses of L-1 nonimmigrants to seek “open market employment,” that is, work without a restriction requiring the spouse to be tied to a specific employer.

H-2B NONIMMIGRANT VISA PROGRAM

TALKING POINTS:

The 2017 H-2B Cap

- USCIS received a sufficient number of petitions to reach the 66,000 congressionally-mandated H-2B numerical limitation (or “cap”) for Fiscal Year (FY) 2017.
- January 10, 2017, was the final receipt date for new cap subject H-2B worker petitions requesting an employment start date before April 1, 2017. March 13, 2017, was the final receipt date for new cap subject H-2B worker petitions requesting an employment start date between April 1 and September 30, 2017. USCIS has confirmed from periodic visa issuance reports received from Department of State (DOS) that the FY 2017 cap was fully subscribed (that is, the 66,000 limit was reached).
- USCIS continues to accept and adjudicate H-2B petitions for beneficiaries that are not subject to the FY 2017 cap (see the Background section below for a list of these cap exempt workers).

The Supplemental Cap for FY 2017

- On May 5, 2017, Congress enacted the FY 2017 Consolidated Appropriations Act. Section 543 of this law authorized the Secretary of Homeland Security to increase the FY 2017 H-2B cap. On July 19, 2017, the Departments of Homeland Security and Labor published a joint final rule increasing the numerical limit (“cap”) on H-2B nonimmigrant visas by up to 15,000 additional visas through the end of FY 2017. These visas are available only to American businesses which attest that they will likely suffer irreparable harm without the ability to employ all the H-2B workers requested in their petition.
- This is a **one-time** increase based on a time-limited statutory authority. It does not affect the H-2B program in future fiscal years. It will expire at the end of the day on September 30, 2017.
- The Secretary’s decision to increase the cap was determined in accordance with Section 543 of the FY 2017 Consolidated Appropriations Act. Congress delegated its authority to the DHS Secretary to set a numerical cap for the remainder of the fiscal year. The Secretary consulted with the Secretary of Labor and considered the needs of American businesses and other factors, including the impact on U.S. workers and the integrity of the H-2B program.
- Only American businesses that are likely to experience irreparable harm (permanent and severe financial loss) without the ability to employ all of the H-2B workers that they request on their Form I-129 petition for this fiscal year may file under this one-time increase in the H-2B cap.
- The joint final rule does not apply to petitions that are not subject to the H-2B cap, including those petitions filed in connection with an H-2B extension of stay request or

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on behalf of certain fish roe producers. Such petitions may continue to be filed under the normal rules of the H-2B program.

H-2B Returning Workers

- In FYs 2005, 2006, 2007, and 2016, Congress exempted H-2B workers identified as “returning workers” from the H-2B cap.
- A returning worker is defined as an H-2B worker who was previously counted against the annual H-2B cap. For example, returning workers for FY 2016 needed to be counted against the cap during FYs 2013, 2014, or 2015.

Anti-Fraud Efforts

- USCIS is committed to detecting and preventing immigration fraud and abuse in the H-2B program and created a dedicated email address for the public to report fraud (b)(7)(e) (ReportH2BAbuse@uscis.dhs.gov)



BACKGROUND:

General Information

- The H-2B visa program is for nonagricultural workers coming to the United States to perform services or labor that are temporary in nature (such as construction and landscaping). To be considered temporary, the employer’s need for the services or labor must be a one-time occurrence, a seasonal need, a peakload need, or an intermittent need.
- A petitioning employer must also establish that there are not enough U.S. workers who are able, willing, qualified, and available to do the temporary work and that employing H-2B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.
- Generally, a person who has held H-2B nonimmigrant status for a total of three years must depart and remain outside the United States for an uninterrupted period of three months before seeking readmission as an H-2B nonimmigrant.
- Unless determined to be in the interest of the United States, USCIS may only approve H-2B petitions for nationals of countries the Secretary of Homeland Security, in consultation with DOS, has designated as eligible to participate in the program.
- There is a congressionally-mandated cap of 66,000 foreign nationals who may be issued an H-2B visa or otherwise granted H-2B status during a fiscal year. This allocation is divided evenly between workers beginning employment in the 1st half (October 1 – March 31) and the second half (April 1 – September 30) of the fiscal year. Any unused visas from the first half are available in the second half. However, unused visas from one fiscal year do not carry over to the next fiscal year.

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- USCIS's role in managing the H-2B cap involves monitoring the number of beneficiaries requested on H-2B petitions and ensuring that the cap is not exceeded.
- The following H-2B petitions are not subject to the cap:
 - Current H-2B workers in the United States who are beneficiaries of petitions to extend their stay and, if applicable, change the terms of their employment or change their employers;
 - Fish roe processors, fish roe technicians or supervisors of fish roe processing; and
 - Workers performing labor or services from November 28, 2009, until December 31, 2019, in the Commonwealth of Northern Mariana Islands (CNMI) or Guam.
 - Note: The spouse and children of H-2B workers classified as H-4 nonimmigrants are also not counted against this cap.

The Overall Petition Process

- USCIS is the component of DHS that adjudicates H-2B petitions. Before filing Form I-129, Petition for a Nonimmigrant Worker, with USCIS for H-2B workers, petitioners must generally obtain a single, valid temporary labor certification (TLC) from the DOL or from the Governor of Guam.
- After receiving an approved TLC, petitioners file Form I-129 with USCIS. Once USCIS approves Form I-129, the prospective H-2B workers who are outside the United States must:
 - Apply for an H-2B visa with DOS at a U.S. embassy or consulate abroad and then seek admission to the United States with U.S. Customs and Border Protection (CBP) at a U.S. port of entry; or
 - Directly seek admission to the United States in H-2B classification with CBP at a U.S. port of entry in cases where an H-2B visa is not required.
- Note: If filing under the Supplemental Cap for FY 2017, petitioners must:
 - Meet all existing H-2B eligibility requirements (including obtaining an approved TLC from DOL that is valid for the entire employment period stated on the petition);
 - Conduct a fresh round of recruitment for U.S. workers if the TLC contains a start date of work before June 1, 2017; and
 - Submit an attestation on Form ETA 9142-B-CAA (PDF) in which the petitioner affirms, under penalty of perjury, its business will likely suffer irreparable harm if it cannot hire all the requested H-2B workers before the end of the fiscal year.

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H-2A VISA PROGRAM

TALKING POINTS:

- ***Program Improvements***
 - The Department is committed to strengthening the H-2A program for temporary agricultural workers, and is continually looking for ways to make the program more customer friendly, while at the same time protecting U.S. agricultural workers, including:
 - USCIS/DOS e-Approval
 - In 2016, USCIS and the Department of State (DOS) launched a new electronic process to allow USCIS to send approval information for H-2A petitions to DOS by the end of the next business day. DOS accepts this electronic information in place of a Form I-797 approval notice and allows its consular posts to proceed with processing an H-2A nonimmigrant visa application, including conducting any required interview.
 - e-Approval has reduced delays for U.S. employers, reduced the amount of required paperwork, made the visa process more efficient, and provided greater efficiency and consistency in transmitting information to DOS consular posts.
 - Expedited processing
 - Since 2007, the adjudication of H-2A petitions has been centralized at the USCIS California Service Center (CSC) and prioritized for expedited processing.
 - Although premium processing service is not available to H-2A employers, H-2A petitions are generally processed by USCIS within the 15-day premium processing guideline provided to other visa classifications. However, there is no requirement that USCIS process H-2A petitions within any specific period.
 - Also in 2016, to expedite the overall process, USCIS began using pre-paid mailers provided by petitioners to send out receipt notices for H-2A petitions.
- ***Growth in the H-2A Program***
 - USCIS has identified substantial growth in the number of approved H-2A petitions in FY 2017 over the same point in FY 2016. This continues an ongoing trend of growth over the last few years. Government and external stakeholders have also indicated that the H-2A program could continue to grow significantly in coming years. [See Appendix for H-2A receipts and approvals.]

BACKGROUND:

- The H-2A nonimmigrant visa program provides employers with temporary and seasonal workers to fill temporary agricultural jobs in the United States for which qualified U.S. workers are unavailable.
- There is no annual cap on the number of H-2A nonimmigrant visas issued.
- Generally, USCIS may grant the H-2A classification for up to the period of time authorized on the temporary labor certification (TLC), not to exceed ten months. H-2A classification may be

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extended for qualifying employment in increments of up to 1 year each. A new, valid TLC covering the requested time must accompany each extension request. The maximum period of stay in H-2A classification is 3 years.

- Generally, a person who has held H-2A nonimmigrant status for a total of 3 years must depart and remain outside the United States for an uninterrupted period of 3 months before seeking readmission as an H-2A nonimmigrant.
- USCIS generally may only approve H-2A petitions for nationals of countries the Secretary of Homeland Security, in consultation with DOS, has designated as eligible to participate in the program. However, USCIS may approve H-2A petitions for nationals of countries not on the list if it is determined to be in the interest of the United States. The notice listing eligible countries is published in the Federal Register on an annual or more frequent basis and remains valid for one year from the date of publication. Additionally, an alert listing the updated eligible countries list is posted on www.uscis.gov.
- Petition process:
 - Before filing Form I-129, Petition for a Nonimmigrant Worker, with USCIS for H-2A workers, petitioners must generally obtain a single, valid TLC from Department of Labor (DOL), even though the TLC may be filed on behalf of multiple prospective H-2A workers. The TLC constitutes a determination by DOL there are not sufficient able, willing, and qualified U.S. workers available to perform the temporary or seasonal agricultural employment; and the employment of the H-2A nonimmigrant workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. The TLC is not binding on USCIS, but does constitute expert advice upon which USCIS will rely in adjudicating the actual H-2A petition.
 - After receiving an approved TLC, petitioners file Form I-129 with USCIS.
 - Petitioners need not, in most cases, name workers who are outside of the United States in the H-2A petition. These workers will be identified at the time they apply for an H-2A visa at a U.S. consulate abroad or at a U.S. port of entry, in the case of prospective workers (generally, Canadian nationals) who are not required to obtain visas.
 - Prospective H-2A workers who are already in the United States, and certain others, on the other hand, must be named in the H-2A petition.
 - If USCIS approves Form I-129, prospective H-2A workers who are outside the United States must:
 - apply for an H-2A visa with DOS at a U.S. Embassy or Consulate abroad and then seek admission to the United States with U.S. Customs and Border Protection (CBP) at a U.S. port of entry, or
 - (where permissible) directly seek admission to the United States in H-2A classification with CBP at a U.S. port of entry in cases where an H-2A visa is not required.
 - Workers who are in the United States must seek either an extension of nonimmigrant stay as an H-2A, or a change of status to H-2A in order to work for the petitioner.

APPENDIX:

<p>United States Citizenship and Immigration Services (USCIS) I-129, Petition for a Nonimmigrant Worker Class Preference of H-2A Receipts and Approvals Fiscal Year 2012 - 2017 (As of May 3)</p>		
Fiscal	Petitions	Number of Beneficiaries

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Year	Receipts	Approvals	Receipts	Approvals
2012	6,791	6,667	90,298	89,045
2013	7,340	7,278	105,305	104,698
2014	8,240	8,168	124,034	122,360
2015	9,167	9,038	157,720	153,534
2016	10,264	10,120	178,528	174,540
2017*	7,566	7,436	129,017	125,211
Grand Total	49,368	48,707	784,902	769,388

O NONIMMIGRANT CLASSIFICATION

TALKING POINTS:

- Unlike some of the other employment-based classifications, the statute and regulations do not require petitioners for O nonimmigrant workers to establish that the foreign national will not displace or otherwise negatively impact the wages and working conditions of U.S. workers. The O-1 classification, however, requires the petitioner to demonstrate that the foreign worker has extraordinary ability in the sciences, arts, education, business or athletics, or extraordinary achievement in the motion picture or television industry. The O-2 classification for support workers requires the beneficiary to have, among other requirements, essential skills that are not of a general nature. As such, only individuals with the requisite extraordinary ability or achievement, or essential support skills, are eligible for these nonimmigrant classifications.
- The statute mandates a consultation process. Petitioners seeking O classification are generally required to submit an advisory opinion from an appropriate peer group, a labor organization, and/or a management organization (that represents the foreign worker's occupational peers) describing the nature of the work to be done and the foreign worker's qualifications. This advisory opinion, provided by an appropriate peer group, labor organization, and/or management organization, as applicable, is an important piece of evidence in the record on which the determination of eligibility is made. As such, the objections contained in a negative advisory opinion are considered carefully by USCIS officers and supervisors during the adjudicative process.
- In the case of O-2 essential support workers assisting O-1 artists or athletes, petitioners must submit evidence that establishes the O-2's current essentiality, critical skills, and experience with the O-1. USCIS reviews all of the evidence pertaining to the foreign worker's skills and experience, including the advisory opinions from the labor and/or management organization, if applicable, to determine if the evidence establishes, by a preponderance of the evidence, that the foreign worker qualifies for an O-2.

Fraud and Abuse Vulnerabilities

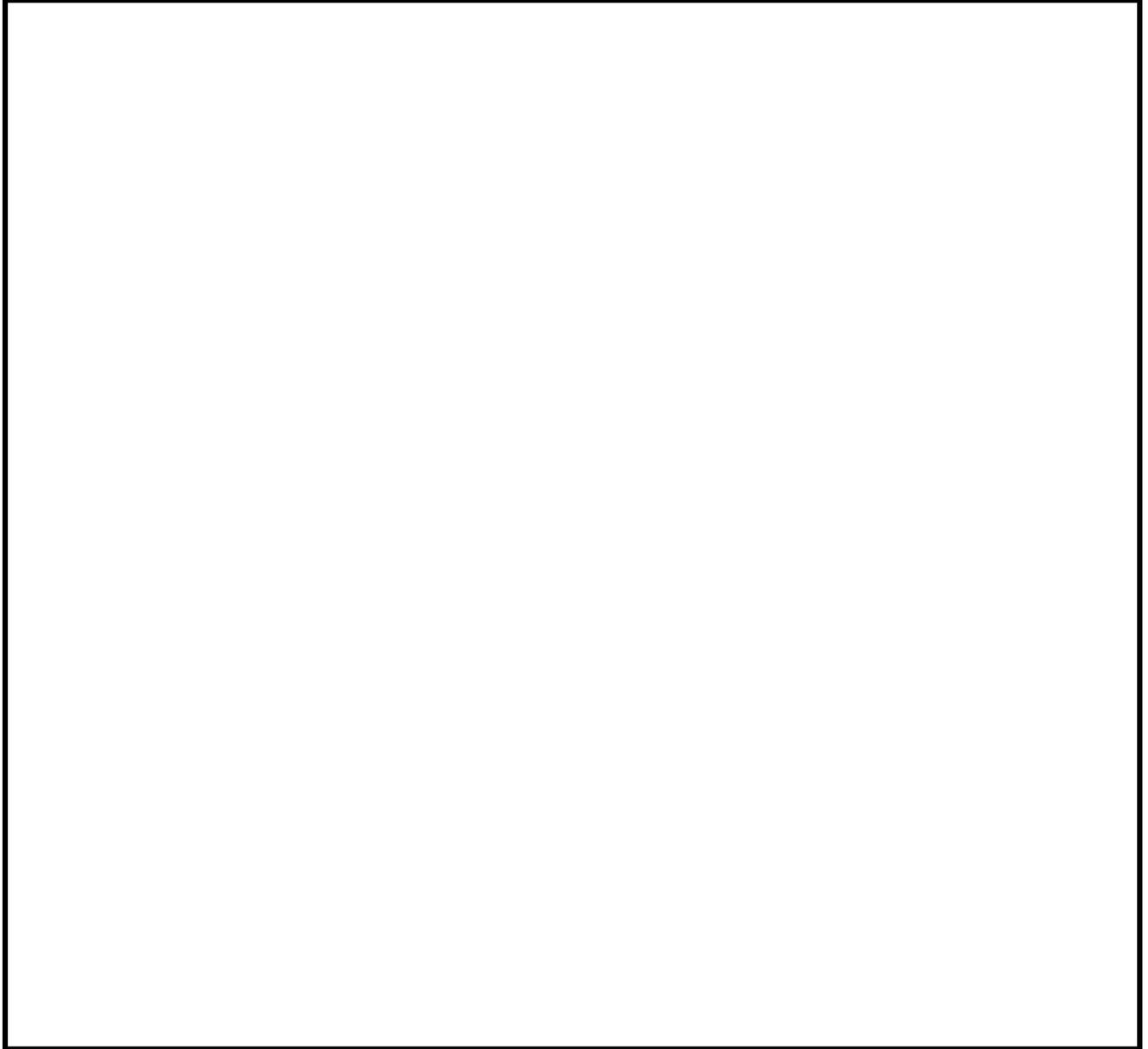
- For O-1 and O-2 nonimmigrant workers where an advisory opinion from a peer group, labor union, and/or management organization is required, the opinion can either state simply that the group has no objection or provide a detailed opinion of the work to be done and the alien's qualifications. To meet this requirement, the petitioner typically pays a non-refundable fee to a peer organization in the field of work to obtain the advisory opinion. If the organization believes that the individual qualifies for the classification, it may issue a "no-objection" letter to that effect. This letter accompanies the petition and can be considered supporting evidence. USCIS has encountered instances of fraudulent or falsified "no-objection" letters claiming to be from labor organizations that represent actors, musicians, and artists in support of some O-1 visa petitions. USCIS relies on these letters to determine whether the O-1 nonimmigrant worker possesses the extraordinary ability, or has demonstrated the requisite achievement necessary to obtain an O-1 visa.
- USCIS has also identified instances of material misrepresentation concerning the work locations or events where O-1 nonimmigrant workers will perform their duties. A petitioner

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may provide supporting documentation in the form of an itinerary or event schedule in order to establish that the worker will be performing work in his or her area of extraordinary ability or achievement. USCIS verification of some of these events has established that the event was not scheduled or it was fabricated.

(b)(7)(e)

Anti-Fraud Efforts



BACKGROUND:

- The O-1A nonimmigrant classification is for foreign workers coming temporarily to the United States who have extraordinary ability in the sciences, education, business, or athletics (not including the arts, motion picture, or television industry) which has been demonstrated by sustained national or international acclaim. The individual must be one of the small percentage who have arisen to the very top of their field as demonstrated by sustained national or international acclaim.

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- The O-1B nonimmigrant classification is for foreign workers coming temporarily to the United States who have extraordinary ability in the arts or extraordinary achievement in the motion picture or television industry. Extraordinary ability in the field of arts means distinction. Extraordinary achievement with respect to motion picture and television productions means a very high level of accomplishment.
- The O-2 nonimmigrant classification is for foreign workers coming temporarily to the United States solely to assist in the artistic or athletic performance by an O-1.
 - O-2 workers must be filed for on a separate petition from the O-1;
 - The O-2 may not work separate/apart from the O-1 to whom support is provided; and
 - The O-2 worker must be petitioned for in conjunction with the services of the O-1.
- To qualify as an O-2 worker supporting an O-1 artist or athlete, the person must be coming to the United States for a specific event or events, and:
 - Be an integral part of the actual performance, and
 - Have critical skills and experience with the O-1 which are not of a general nature and which are not possessed by a U.S. worker.

To qualify as an O-2 worker supporting an O-1 in the motion picture or television industry, the worker must have skills and experience with the O-1 that are not of a general nature based on:

- a pre-existing long-standing relationship, **or**
- in the case of a specific production, rather than a pre-existing long-standing relationship, significant pre-or post-production work that will take place in and outside the United States and the person's continued participation is essential for the successful completion of the production.

Consultations

- In addition to providing evidence of the eligibility of the beneficiary (the foreign worker), petitioners must, generally, provide a consultation letter before a Form I-129, *Petition for a Nonimmigrant Worker*, requesting O nonimmigrant classification can be approved.¹
- A consultation in the form of an advisory letter should address the nature of the proffered work and the beneficiary's qualifications.
 - For motion picture and television production ("MPTV"), consultations with a labor organization and a management organization in the area of the alien's ability are required (O-2 MPTV also require the two advisory letters).
 - An advisory opinion, either favorable or not favorable, is an important part of the petitioning process, but is not binding on USCIS.
 - Under the preponderance of the evidence standard, a petition with a negative consultation could still be approved if the totality of the evidence established that, more likely than not, the beneficiary is eligible for the benefit sought. Likewise, a positive consultation may not necessarily lead to an approval of the petition if the totality of the evidence established that, more likely than not, the beneficiary is not eligible for the benefit sought.

¹ O-1B Arts may have the consultation waived if the beneficiary seeks readmission to the United States to perform similar services within 2 years of the date of the previous consultation.

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- The consultation process provides USCIS with valuable information from expert sources concerning the beneficiary's ability, achievements and work situation.
 - Petitioners for an O-1A or O-1B Arts beneficiary may submit an advisory opinion from an appropriate U.S. peer group (which could include a person or persons with expertise in the field), a labor organization and/or a management organization.
 - Petitioners for an O-2 beneficiary accompanying an O-1A or O-1B Arts foreign worker must submit an advisory opinion from a labor organization.
 - Petitioners for an O-1B and O-2 Motion Picture and Television (MTV) beneficiary must submit an advisory opinion from a labor organization and a management organization.
 - In cases where it is established by the petitioner that an appropriate peer group, including a labor organization does not exist, USCIS will render a decision in the absence of an advisory opinion.

Validity Periods

- An O-1 may be initially granted a validity period for up to three years to accomplish the event or activity.
- The regulations state that a petitioner may file a request to extend the validity of the original petition in order to continue or complete the same activities or events specified in the original petition. As such, O visa holders may request an extension of stay for the alien to continue or complete the same event or activity by filing Form I-129, Petition for a Nonimmigrant Worker, with explanation for the extension. The extension of stay may be authorized in increments of up to 1 year. While supporting documents are not required unless requested by the Service Center Director, officers do review any contract or a summary of an oral agreement as well as evidence of the event or activity the beneficiary is continuing from the original petition.

H-1B NONIMMIGRANT VISA PROGRAM REVIEW

TALKING POINTS/OVERVIEW:

Numerical Limitations (“H-1B Cap”)

- There is a congressionally-mandated numerical limitation (cap) of 65,000 H-1B visas that can be granted per fiscal year for new employment with some exceptions, including:
 - 20,000 petitions approved by USCIS where the beneficiary has obtained a U.S. master’s degree or higher from a U.S. institution of higher education;
 - Petitions filed on behalf of beneficiaries who will work at nonprofit or public U.S. institutions of higher education or related or affiliated nonprofit entities, nonprofit research organizations or governmental research organizations; and
 - Petitions filed between now and December 31, 2019 on behalf of beneficiaries who will work only in Guam or the Commonwealth of the Northern Mariana Islands.
- Petitions filed on behalf of H-1B workers who have been counted previously against the numerical limitation and are applying for the time remaining on their 6-year maximum H-1B authorized period of admission also do not count towards the congressionally mandated annual H-1B cap.
- The H-1B numerical limitations are mandated by statute. Changes to the numerical limits would require a statutory amendment.
- On April 7, 2017, USCIS received a sufficient number of petitions to reach the statutory cap and advanced degree exemption for Fiscal Year (FY) 2018. On April 11, 2017, USCIS used a computer-generated random selection process (commonly known as a “lottery”) to select a sufficient number of petitions needed to meet the statutory caps of 65,000 for the general category and 20,000 under the advanced degree exemption limit, taking into account that some of these petitions may be denied, revoked, or withdrawn.

Combatting Fraud under the Buy American Hire American (BAHA) Executive Order

- On April 18, 2017, the President issued an Executive Order (EO) 13788, “Buy American and Hire American” which seeks to create higher wages and employment rates for U.S. workers and to protect their economic interests by rigorously enforcing and administering our immigration laws. It also directs DHS, in coordination with other agencies, to advance policies to help ensure H-1B visas are awarded to the most-skilled or highest-paid beneficiaries. (b)(7)(e)



- To provide the public with a direct method of reporting suspected issues, in Fiscal Year (FY) 2017, USCIS established email addresses for the public to report tips about potential H-1B fraud and abuse: ReportH1BAbuse@uscis.dhs.gov.
- Additionally, USCIS is committed to providing transparency for U.S. workers by posting datasets with information about the hiring practices of employers who petition for H-1B workers on its website: <https://www.uscis.gov/laws/buy-american-hire-american-putting-american-workers-first>.

- Please note the issue paper on USCIS anti-fraud efforts outlines in greater detail additional efforts USCIS has undertaken to detect and deter immigration benefit fraud.

AC21 Rule

- On January 17, 2017, the AC21 Final Rule became effective. The rule amended regulations to clarify various policies and procedures related to the adjudication of H-1B petitions, including extensions of status, determining cap exemptions and counting workers under the H-1B visa cap, H-1B portability, licensure requirements, and protections for whistleblowers. We are currently reviewing these policies to ensure that they are in line with the BAHA Executive Order.

Processing Times & Temporary Premium Processing Suspension

- Based on the overall increase in H-1B filings, processing times for H-1B petitions increased and created concerns for certain H-1B beneficiaries for whom employment authorization is automatically extended for up to 240 days after the expiration of the beneficiary's I-94 Arrival/Departure record, when the same petitioner files a timely extension of stay petition. After this 240 day period, if the petition is not adjudicated, the beneficiary will have to cease employment until the H-1B petition is adjudicated.
- USCIS previously set up a process for which employers and representatives can submit inquiries in the Service Request Management Tool (SRMT inquiry) with the National Customer Service Center for any extension of stay petition pending over 210 days. An SRMT inquiry is a tool that allows an employer or their authorized representative to submit an inquiry regarding a pending petition.
- In an effort to reduce overall processing times and pending workload, USCIS temporarily suspended premium processing (PP) for all H-1B petitions on April 3, 2017 for up to six months. USCIS instituted a rollout plan to resume premium processing in phases. The phased resumption plan provided premium processing services sooner for certain petitioners, while also addressing operational concerns and allowing the service centers to reduce overall processing times.
 - The first phase of the premium processing resumption plan began on June 26, 2017. USCIS resumed PP services for all H-1B petitions filed for medical doctors under the Conrad 30 Waiver program, as well as interested government agency waivers.
 - The second phase of the PP resumption plan began on July 24, 2017. USCIS resumed PP services for all cap-exempt petitions, where the H-1B petitioner is:
 - an institution of higher education,
 - a nonprofit related to or affiliated with an institution of higher education, or
 - a nonprofit research or governmental research organization.
 - During the second phase, PP services also resumed for petitions where the beneficiary will be employed at a qualifying cap-exempt institution (as described above).
 - USCIS plans to resume PP for other sub-groups of H-1B petitions, such as cap subject petitions and extension of stay (EOS) petitions, prior to October 3, 2017 (which is the targeted expiration of the PP suspension).
 - During the premium processing suspension, petitioners may submit a request to expedite an H-1B petition if they meet the criteria on the Expedite Criteria webpage.
- USCIS implemented a workload distribution plan to also help decrease processing times. Specifically, USCIS transferred some H-1B petitions to its Nebraska Service Center and the Nebraska Service Center is now directly accepting H-1B and H-1B1 (specialty occupation workers who are nationals of Chile or Singapore) petitions if the petitioner requests a

continuation of previously approved employment without change with the same employer. Prior to that transfer, H-1B petitions were adjudicated only by officers at the California and Vermont Service Centers.

Matter of Simeio Solution, LLC (USCIS Administrative Appeals Office Precedent Decision)

- On April 9, 2015, the USCIS Administrative Appeals Office (AAO) issued the precedent decision *Matter of Simeio Solution, LLC (Simeio)*. The decision, which is binding upon the agency, clarified existing regulations and previous agency policy pronouncements on when an amended H-1B petition must be filed. Specifically, the decision holds that a petitioner must file an amended or new H-1B petition if the H-1B employee is changing his or her place of employment to a geographical area requiring a new corresponding labor condition application (LCA) to be certified to USCIS, even if the new labor condition application is already certified by the U.S. Department of Labor and posted at the new work location. This precedent decision represents the USCIS position that H-1B petitioners are required to file an amended or new petition before placing an H-1B employee at a new place of employment not covered by an existing, approved H-1B petition. On July 21, 2015, USCIS issued a Policy Memorandum providing additional guidance based on the *Simeio* decision. The policy memorandum granted a safe harbor period for employers to come into compliance with *Simeio*.
- Some stakeholders have expressed concern regarding the *Simeio* precedent decision claiming the requirement to file an amended or new petition is very costly and time consuming for companies who have a mobile workforce. The *Simeio* precedent decision is not a new policy but a clarification of existing legal requirements under DHS regulations regarding when an H-1B petitioner must file an amended or new H-1B petition.

Rescission of the December 22, 2000 “Guidance memo on H1B computer related positions” (Policy Memo PM-602-0142)

- On March 31, 2017, USCIS issued a Policy Memorandum titled “Rescission of the December 22, 2000 ‘Guidance memo on H1B computer related positions’” and on May 1, 2017, USCIS also issued internal clarifying guidance.
- The Policy Memorandum reiterates that the petitioner bears the burden of proof to establish that the particular position in which the beneficiary will be employed qualifies as a specialty occupation and that, for some occupations, the general discussion in DOL’s Occupational Outlook Handbook (OOH) may be insufficient, in the absence of additional evidence, to establish that the particular position is a specialty occupation. In addition, the memorandum also reiterates that the specialty occupation determination is not driven by a beneficiary’s qualifications.
- The Policy Memorandum is specific to computer programmers, however the analysis should be conducted for any occupation where the OOH does not specify that the minimum requirement for a particular position is at least a bachelor’s degree in a specific specialty.
- The Policy Memorandum clarifies existing policy and legal requirements when evaluating an H-1B petitioner’s claim that a position qualifies as a specialty occupation and should also be applied to same employer extension petitions.
- The Policy Memorandum also reminds officers that USCIS must also review the Department of Labor certified Labor Condition Application submitted in support of the H-1B petition to ensure that the wage level designated by the petitioner corresponds to the proffered position.

BACKGROUND:

FOR OFFICIAL USE ONLY

- The H-1B nonimmigrant classification is for aliens coming to the United States temporarily to perform services: in a specialty occupation; of an exceptional nature relating to certain types of projects administered by the U.S. Department of Defense; or as a fashion model of distinguished merit and ability.
- The initial and extension periods of validity for H-1B specialty occupation petitions are issued in increments of up to three years. An H-1B nonimmigrant worker's total period of authorized admission generally cannot exceed six years, with certain exceptions authorized under the American Competitiveness in the Twenty-first Century Act of 2000 (AC21).
- Fees associated with the filing of an H-1B petition include a base petition fee of \$460 and an American Competitiveness and Workforce Improvement Act (ACWIA) fee for certain initial petitions, including change of employer petitions, and the first extension filed by the petitioner for certain beneficiaries, of \$1,500 for petitioners with more than 25 employees or \$750 for petitioners with 25 or fewer employees. Initial H-1B petitions or change of employer petitions also require a \$500 Fraud Prevention and Detection fee. Additionally, a \$4,000 fee mandated by Public Law 114-113 Consolidated Appropriations Act, 2016 is required for initial H-1B petitions or change of employer petitions if the petitioner employs 50 or more employees in the United States and if more than 50 percent of those employees are in H-1B, L-1A, or L-1B status.

Worley, Jordan P

From: Schmalz, Peter N
Sent: Friday, September 08, 2017 1:17 PM
To: Mahmoudi, Sheila C; Kenny, Allen (Allen)
Cc: Plastrik, Steven T; Hanehan, Brendan J; Young, Blanton R (Roy)
Subject: FW: AILA/VSC LIAISON INQUIRY; Student Requests for Evidence for Cap Subject H-1Bs
Attachments: VSC H-1B Level 1 RFE Examples.xlsx; CSC H-1B Level 1 RFE Examples.xlsx

FYI for you and the NSC/CSC teams to be aware of – AILA inquiries to SCOPS on the H-1B wage level issue.

PETE

From: Boudreau, Lynn A
Sent: Friday, September 08, 2017 12:49 PM
To: Doumani, Stephanie M; Nicklaw, Nicole C; Stern, Kimberly M (Kim); Fierro, Joseph
Cc: Schmalz, Peter N; Plastrik, Steven T; Hanehan, Brendan J; Martin, Evelyn M; Selby, Cara M (Carrie)
Subject: FW: AILA/VSC LIAISON INQUIRY; Student Requests for Evidence for Cap Subject H-1Bs

Sharing for visibility. We will review some of the ones on our list to ensure the officer appropriately requested additional information.

Thanks,

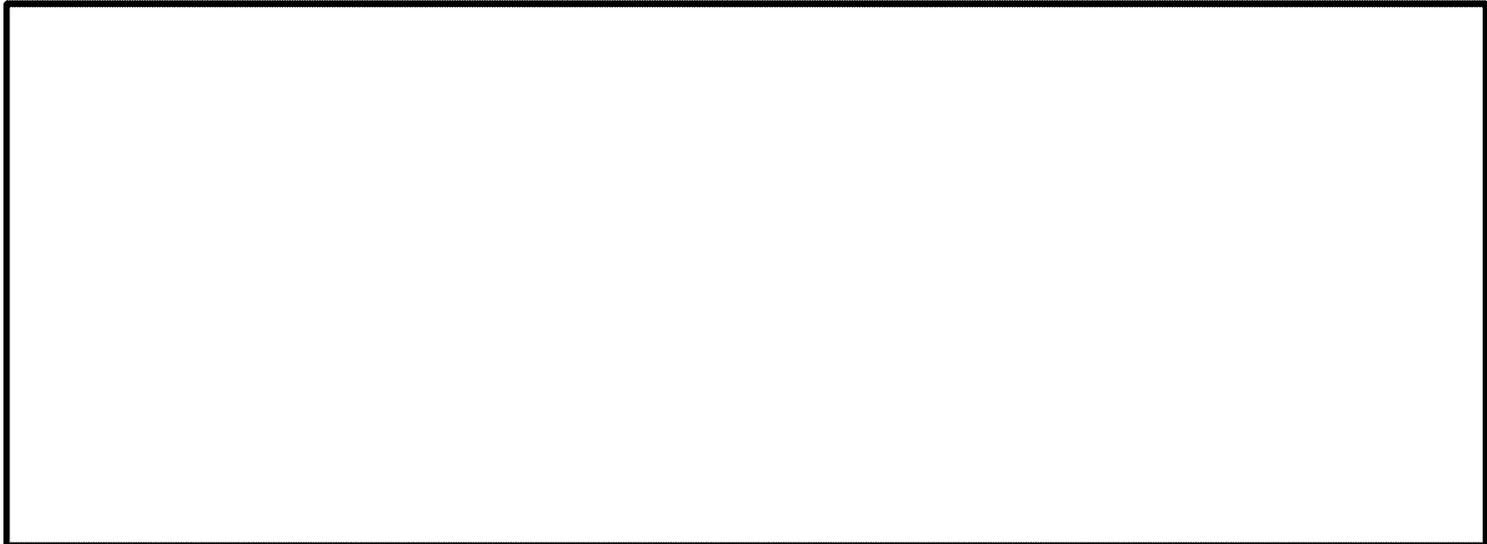
Lynn

From: Nicole Simon [<mailto:nsimon@lhscimmigration.com>]
Sent: Friday, September 08, 2017 11:36 AM
To: Boudreau, Lynn A; Klinefelter, Carrie L
Cc: djw@millermayer.com; vscliaison
Subject: RE: AILA/VSC LIAISON INQUIRY; Student Requests for Evidence for Cap Subject H-1Bs

Hi Lynn and Carrie –

(b)(5)

My apologies for the delay in getting these VSC cap case examples to you. August was a very hectic month and then I was out of the office all of last week.



Thank you again for your offer to review these case examples and please let me know if there is any further information we can provide.

Best,
Nicole

(b)(5)

From: Nicole Simon
Sent: Friday, August 18, 2017 2:25 PM
To: 'Boudreau, Lynn A' <Lynn.A.Boudreau@uscis.dhs.gov>; Klinefelter, Carrie L <Carrie.L.Klinefelter@uscis.dhs.gov>
Cc: djw@millermayer.com; vscliaison@aila.com
Subject: RE: AILA/VSC LIAISON INQUIRY; Student Requests for Evidence for Cap Subject H-1Bs

Absolutely! Thank you again.

From: Boudreau, Lynn A [<mailto:Lynn.A.Boudreau@uscis.dhs.gov>]
Sent: Friday, August 18, 2017 2:23 PM
To: Nicole Simon <nsimon@lhscimmigration.com>; Klinefelter, Carrie L <Carrie.L.Klinefelter@uscis.dhs.gov>
Cc: djw@millermayer.com; vscliaison@aila.com
Subject: RE: AILA/VSC LIAISON INQUIRY; Student Requests for Evidence for Cap Subject H-1Bs

Hi Nicole,

I agree following up with SCOPS is appropriate. It would be helpful if you could also send the VSC examples to us so that we can review the cases locally.

Thanks
Lynn

From: Nicole Simon
Sent: Friday, August 18, 2017 12:54:47 PM
To: Klinefelter, Carrie L

Cc: djw@millermayer.com; vscliaison@aila.com; Boudreau, Lynn A
Subject: RE: AILA/VSC LIAISON INQUIRY; Student Requests for Evidence for Cap Subject H-1Bs

Hi Carrie –

Thank you very much for getting back to me and apologies for the delayed response as I was out of the office until today. We greatly appreciate the feedback and we are compiling various examples from members. As the RFEs are coming not only from the VSC but also from the other Service Centers, we thought it best to send those examples to SCOPS.

Thank you again and I hope to meet you in person in a few weeks at the VSC Stakeholder Event.

Best,
Nicole

From: Klinefelter, Carrie L [<mailto:Carrie.L.Klinefelter@uscis.dhs.gov>]
Sent: Tuesday, August 15, 2017 5:30 PM
To: Nicole Simon <nsimon@lhscimmigration.com>
Cc: djw@millermayer.com; vscliaison@aila.com; Boudreau, Lynn A <Lynn.A.Boudreau@uscis.dhs.gov>
Subject: RE: AILA/VSC LIAISON INQUIRY; Student Requests for Evidence for Cap Subject H-1Bs

Hi Nicole,

(b)(5)

I am responding to your follow-up question on behalf of Lynn because she is out of the office.



Thanks,

Carrie L. Klinefelter | Section Chief, Business Division | Vermont Service Center | USCIS | (802)871-3615 |
Carrie.l.klinefelter@uscis.dhs.gov

From: Nicole Simon [<mailto:nsimon@lhscimmigration.com>]
Sent: Thursday, August 03, 2017 11:00 AM
To: Boudreau, Lynn A
Cc: David Wilks (djw@millermayer.com); vscliaison (vscliaison@aila.org)
Subject: RE: AILA/VSC LIAISON INQUIRY; Student Requests for Evidence for Cap Subject H-1Bs

Hi Lynn –

(b)(5)

Thank you for the helpful and quick response!



Thank you again for any feedback -

Nicole

From: Boudreau, Lynn A [<mailto:Lynn.A.Boudreau@uscis.dhs.gov>]

Sent: Wednesday, August 02, 2017 4:56 PM

To: Nicole Simon <nsimon@lhscimmigration.com>

Cc: David Wilks (djw@millermayer.com) <djw@millermayer.com>; vscliaison (vscliaison@aila.org) <vscliaison@aila.org>

Subject: RE: AILA/VSC LIAISON INQUIRY; Student Requests for Evidence for Cap Subject H-1Bs

Hi Nicole,

I have verified with the team that this is simply an identifier so that responses can be routed appropriately when they arrive back in our mailroom. Please let me know if there are any additional concerns with the actual verbiage in the request and we can look into it further.

Thanks,

Lynn

From: Nicole Simon [<mailto:nsimon@lhscimmigration.com>]

Sent: Wednesday, August 02, 2017 10:48 AM

To: Boudreau, Lynn A

Cc: David Wilks (djw@millermayer.com); vscliaison (vscliaison@aila.org)

Subject: AILA/VSC LIAISON INQUIRY; Student Requests for Evidence for Cap Subject H-1Bs

Hi Lynn –

Members have been inquiring as to a new type of RFE they are receiving for cap subject H-1Bs, with the subject heading “*Student* Request for Evidence.” We do not recall seeing this before and we are hopeful you might be able to clarify what this means and if this is something we should expect to see moving forward, presumably for cap subject petitions where the beneficiary is moving from F-1 to H-1B status.

Many thanks as always!

Nicole



LANDAU-HESS-SIMON-CHOI

Nicole Simon | Attorney at Law*

IMMIGRATION & NATIONALITY LAW

Phone: 215-925-0705 Ext. 1238

Fax: 267-507-1246

Email: nsimon@LHSCimmigration.com

Website: www.LHSCimmigration.com

190 N. Independence Mall West, Suite 602 | Philadelphia, PA 19106

*Admitted in California. Practicing exclusively Immigration and Nationality Law.



Worley, Jordan P

From: Doumani, Stephanie M
Sent: Thursday, September 07, 2017 11:36 AM
To: Nicklaw, Nicole C
Subject: FW: Rescission call

From: Mahmoudi, Sheila C
Sent: Thursday, September 07, 2017 12:34 PM (b)(5)
To: Doumani, Stephanie M
Subject: RE: Rescission call



(b)(5)

From: Doumani, Stephanie M
Sent: Thursday, September 07, 2017 9:32 AM
To: Mahmoudi, Sheila C
Subject: RE: Rescission call

(b)(5)

Hi Sheila,

Thanks,
Stephanie

From: Mahmoudi, Sheila C
Sent: Thursday, September 07, 2017 11:06 AM
To: Doumani, Stephanie M
Subject: Rescission call

Hi Stephanie-
I have a couple other calls scheduled for 10am (1pm your time) but I hope to be able to join in today.



(b)(5)

Sheila Mahmoudi

Special Counsel for Field Management

Office of Chief Counsel, USCIS

(949) 389-3685 desk



(b)(6)

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From: [Dalal-Dheini, Sharvari P \(Shev\)](#)
To: [Busch, Philip B](#); [Groom, Molly M](#); [OCC-Clearance](#)
Cc: [Salem, Claudia S](#); [Hinds, Ian G](#); [OCC Regulations](#); [ALD](#); [Zimonjic, Milica](#); [Cox, Robert H](#); [Nakajima, Simon T](#); [Bump, Micah N](#)
Subject: RE: ***HOT HOT HOT *** [CLEARANCE REQUEST]: DHS H-1B Initiatives
Date: Thursday, March 30, 2017 1:23:45 PM

Done, thanks.

From: Busch, Philip B
Sent: Thursday, March 30, 2017 1:18 PM
To: Dalal-Dheini, Sharvari P (Shev); Groom, Molly M; OCC-Clearance
Cc: Salem, Claudia S; Hinds, Ian G; OCC Regulations; ALD; Zimonjic, Milica; Cox, Robert H; Nakajima, Simon T; Bump, Micah N
Subject: RE: ***HOT HOT HOT *** [CLEARANCE REQUEST]: DHS H-1B Initiatives

Yes, thanks.

Philip B. Busch
Acting Deputy Chief Counsel
Senior Legal Advisor
Office of the Chief Counsel
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
(202) 272-1445
(202) 272-1407 (fax)
Philip.B.Busch@uscis.dhs.gov

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From: Dalal-Dheini, Sharvari P (Shev)
Sent: Thursday, March 30, 2017 1:08 PM
To: Groom, Molly M; OCC-Clearance; Busch, Philip B
Cc: Salem, Claudia S; Hinds, Ian G; OCC Regulations; ALD; Zimonjic, Milica; Cox, Robert H; Nakajima, Simon T; Bump, Micah N
Subject: RE: ***HOT HOT HOT *** [CLEARANCE REQUEST]: DHS H-1B Initiatives

Just grabbing lunch at the food truck, but can upload shortly and note our concurrence with edits?

From: Groom, Molly M
Sent: Thursday, March 30, 2017 12:26:37 PM
To: OCC-Clearance; Dalal-Dheini, Sharvari P (Shev); Busch, Philip B
Cc: Salem, Claudia S; Hinds, Ian G; OCC Regulations; ALD; Zimonjic, Milica; Cox, Robert H; Nakajima, Simon T; Bump, Micah N

Subject: RE: ***HOT HOT HOT *** [CLEARANCE REQUEST]: DHS H-1B Initiatives

This is ready to go back. Thanks very much to all!

From: OCC-Clearance

Sent: Thursday, March 30, 2017 8:19 AM

To: Dalal-Dheini, Sharvari P (Shev); Busch, Philip B; Groom, Molly M

Cc: Salem, Claudia S; Hinds, Ian G; OCC Regulations; ALD; Zimonjic, Milica; Cox, Robert H; Nakajima, Simon T; Bump, Micah N

Subject: RE: ***HOT HOT HOT *** [CLEARANCE REQUEST]: DHS H-1B Initiatives

Good Morning:

FYI - Exec Sec just sent a reminder that the OCC response is due by noon today.

Thanks, Cathy

Catherine Muhletaler for OCC-Clearance
Special Counsel to the Deputy Chief Counsel
DHS | USCIS | Office of the Chief Counsel

From: Dalal-Dheini, Sharvari P (Shev)

Sent: Wednesday, March 29, 2017 5:36 PM

To: Busch, Philip B; Groom, Molly M

Cc: Salem, Claudia S; Hinds, Ian G; OCC Regulations; OCC-Clearance; ALD; Zimonjic, Milica; Cox, Robert H; Nakajima, Simon T; Bump, Micah N

Subject: RE: ***HOT HOT HOT *** [CLEARANCE REQUEST]: DHS H-1B Initiatives

Hi Phil and Molly,

(b)(5)

We are happy to meet and discuss any concerns with you once you have had an opportunity to review our comments.

Thanks,

Shev

From: Carpenter, Dea D **On Behalf Of** OCC-Clearance

Sent: Wednesday, March 29, 2017 12:25 PM

To: ALD

Cc: Salem, Claudia S; Dalal-Dheini, Sharvari P (Shev); Busch, Philip B; Groom, Molly M; Hinds, Ian G; OCC Regulations

Subject: FW: ***HOT HOT HOT *** [CLEARANCE REQUEST]: DHS H-1B Initiatives

Importance: High

ALD: Per the OCC clearance process, please review the attached documents.

Since this is an Exec Sec ECN tracked review, once you've completed your review, please upload your response to ECN and send a message to the Box indicating your response, with copy of any uploaded document containing OCC edits/comments.

Copying others for visibility and input as needed.

Thank you!

From: Drake, Johnetta **On Behalf Of** USCIS Exec Sec

Sent: Wednesday, March 29, 2017 12:06 PM

To: Rosenberg, Ronald M (Ron); Nimick, Charles L (Locky); Dumas, Jessica L; Federwisch Webb, Victoria N; Titus, Deanne A; AAO-Clearance; OCC-Clearance; Patching, Laura D; Stiefel, Nathaniel I; Eccleston, Hermene N; Badovinac, Daisy A (CTR); OCOMM Clearance Taskers; Hatchett, Doline L; Wheeler, Shannon L; Gramiccioni, Jennifer L; Hirsch, Angela H; Snaidman, Anne M; Thomas, Paula; Kett, David R; #USCIS OLA Clearance; Hawkins, Donald K; Baker, Tamara L; Sawyer, Kristina S (Kristy); USCIS Privacy Inquiries; CSPE Tasking; Herrmann, Mary K; #USCIS - IRIS Tasking List; FDNExecSec; Beason, Daniel J; Kerns, Kevin J; RAIO Clearance; Grammer, Alexandra C (Alex); SCOPS-Clearance; Arroyo, Susan K; Cox, Sophia; Padilla, April Y; Moran, Karla; Weller, Angela V; Policy-Clearance; Graziadio, Josie; Carter, Constance L; Button, Maria G (Gemma); USCIS MGT Tasks; Borgen, Michael R

Cc: Valverde, Michael; Compton, Dana C; Neufeld, Donald W; USCIS Exec Sec

Subject: ***HOT HOT HOT *** [CLEARANCE REQUEST]: DHS H-1B Initiatives

Good afternoon,

Please review the *Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions"*. DHS would like USCIS to rescind a 12/22/2000 memorandum involving the H-1B program. Attached is a draft rescission memorandum and the old memorandum.

To review the materials, click [here](#).

Please provide your responses by **12pm Thursday, March 30, 2017**.

We request responses from the following program offices and directorates: **SCOPS; OCC; OCOMM; OLA; AAO; CSPED; MGT; FDNS; OP&S.**

To register your response and view all responses, click [here](#). **Please note that explanations must accompany concurrences with edits and non-concurrences.**

Thank you.

Johnetta Drake

USCIS Office of the Executive Secretariat



(b)(6)

From: [Bump, Micah N](#)
To: [ALD](#); [Nakajima, Simon T](#); [Cox, Robert H](#); [Choi, Heesun S \(Sunny\)](#); [Flippen, Jeanette P](#); [Hollowell, Julie S](#); [Dalal-Dheini, Sharvari P \(Shev\)](#)
Cc: [ALD](#)
Subject: RE: CIS Ombudsman Meeting with USCIS Director
Date: Monday, April 17, 2017 2:21:02 PM

Sure. We will review now.

From: Raymond, Robert R on behalf of ALD
Sent: Monday, April 17, 2017 6:54:33 PM
To: Nakajima, Simon T; Cox, Robert H; Bump, Micah N; Choi, Heesun S (Sunny); Flippen, Jeanette P; Hollowell, Julie S; Dalal-Dheini, Sharvari P (Shev)
Cc: ALD
Subject: FW: CIS Ombudsman Meeting with USCIS Director

Simon, Robert, Micah, will one of you please take the lead? Thanks

*Robert Raymond
Deputy Chief
Adjudications Law Division
Office of the Chief Counsel
United States Citizenship and Immigration Services
20 Massachusetts Avenue NW Room 4210
Washington DC 20529
Telephone +1 202 272 1434
Fax +1 202 272 1478
robert.r.raymond@uscis.dhs.gov*

From: Gentry, Anthony E **On Behalf Of** OCC-Clearance
Sent: Monday, April 17, 2017 1:23 PM
To: ALD
Subject: FW: CIS Ombudsman Meeting with USCIS Director

ALD Box,

Per the OCC clearance process, please take the lead on review and clearance of this item on behalf of OCC. Please have the assigned ALD attorney provide their contact information to the client. Please copy the BOX on your response to the client.

Thanks.

Tony

From: Rather, Michael B
Sent: Monday, April 17, 2017 12:11 PM
To: Reyes, Arthur E
Cc: Levine, Laurence D; OCC-Clearance
Subject: RE: CIS Ombudsman Meeting with USCIS Director

Adding OCC-Clearance.

Michael B. Rather | Chief of Staff
Office of Policy and Strategy (OP&S)
U.S. Citizenship & Immigration Services (USCIS) | Department of Homeland Security (DHS)
20 Massachusetts Avenue NW - Suite 1200 | Washington, DC 20529
Office: 202-272-1489 | Mobile: 202-815-5920 | Email: michael.b.rather@uscis.dhs.gov

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From: Rather, Michael B
Sent: Monday, April 17, 2017 12:06 PM
To: Reyes, Arthur E
Cc: Levine, Laurence D
Subject: RE: CIS Ombudsman Meeting with USCIS Director

From: Bump, Micah N
To: Cox, Rachel M; Hollowell, Julie S; Morse, Miriam A; ALD; Nakajima, Simon T; Cox, Robert H; Choi, Heesun S (Sunny); Flippen, Jeanette P; Dalal-Dheini, Sharvari P (Shev)
Subject: RE: CIS Ombudsman Meeting with USCIS Director
Date: Tuesday, April 18, 2017 9:57:46 AM

Thank you Rachel.

From: Cox, Rachel M
Sent: Tuesday, April 18, 2017 2:41:25 PM
To: Hollowell, Julie S; Morse, Miriam A; Bump, Micah N; ALD; Nakajima, Simon T; Cox, Robert H; Choi, Heesun S (Sunny); Flippen, Jeanette P; Dalal-Dheini, Sharvari P (Shev)
Subject: RE: CIS Ombudsman Meeting with USCIS Director

Looks good to me, too.

From: Hollowell, Julie S
Sent: Tuesday, April 18, 2017 9:19 AM
To: Morse, Miriam A; Bump, Micah N; ALD; Nakajima, Simon T; Cox, Robert H; Choi, Heesun S (Sunny); Flippen, Jeanette P; Dalal-Dheini, Sharvari P (Shev)
Cc: Cox, Rachel M
Subject: RE: CIS Ombudsman Meeting with USCIS Director

I think the EAD information looks good.

From: Morse, Miriam A
Sent: Tuesday, April 18, 2017 8:03 AM
To: Bump, Micah N; ALD; Nakajima, Simon T; Cox, Robert H; Choi, Heesun S (Sunny); Flippen, Jeanette P; Hollowell, Julie S; Dalal-Dheini, Sharvari P (Shev)
Cc: Cox, Rachel M
Subject: RE: CIS Ombudsman Meeting with USCIS Director

Thanks, Micah, looks good to me. ~Miriam

From: Bump, Micah N
Sent: Monday, April 17, 2017 3:43 PM
To: ALD; Nakajima, Simon T; Cox, Robert H; Choi, Heesun S (Sunny); Flippen, Jeanette P; Hollowell, Julie S; Dalal-Dheini, Sharvari P (Shev)
Cc: Morse, Miriam A; Cox, Rachel M
Subject: RE: CIS Ombudsman Meeting with USCIS Director

I made some edits and uploaded to the ECN [here](#). Including I-140 team as well for their review. Please complete by COB tomorrow.

Thank you,

Micah

Micah N. Bump
Associate Counsel
Department of Homeland Security
Citizenship and Immigration Services
20 Massachusetts Avenue, NW
Washington, D.C. 20529
Tel: (202)272-1405
Mobile: (202) 704-5095

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From: Raymond, Robert R **On Behalf Of** ALD
Sent: Monday, April 17, 2017 1:55 PM
To: Nakajima, Simon T; Cox, Robert H; Bump, Micah N; Choi, Heesun S (Sunny); Flippen, Jeanette P; Hollowell, Julie S; Dalal-Dheini, Sharvari P (Shev)
Cc: ALD
Subject: FW: CIS Ombudsman Meeting with USCIS Director

Simon, Robert, Micah, will one of you please take the lead? Thanks

From: Bump, Micah N
To: [Cox, Robert H](#); [Nakajima, Simon T](#)
Subject: RE: CIS Ombudsman Meeting with USCIS Director
Date: Tuesday, April 18, 2017 11:33:00 AM

Let me know if you prefer to send to Craig. If not, I can.

From: Cox, Robert H
Sent: Tuesday, April 18, 2017 11:32 AM
To: Bump, Micah N; Nakajima, Simon T
Subject: RE: CIS Ombudsman Meeting with USCIS Director

I am still pretending. Shev is out until tomorrow.

From: Bump, Micah N
Sent: Tuesday, April 18, 2017 11:30 AM
To: Cox, Robert H; Nakajima, Simon T
Subject: RE: CIS Ombudsman Meeting with USCIS Director

Are you still acting? Or should I send to Shev?

From: Cox, Robert H
Sent: Tuesday, April 18, 2017 11:23 AM
To: Nakajima, Simon T; Bump, Micah N
Subject: RE: CIS Ombudsman Meeting with USCIS Director

I made a bunch of edits. Agree that we should run this past Craig in case he wants to review or include any specific points not already covered.

From: Nakajima, Simon T
Sent: Tuesday, April 18, 2017 10:12 AM
To: Bump, Micah N; Cox, Robert H
Subject: RE: CIS Ombudsman Meeting with USCIS Director

I don't have any comments or edits but we may want to run this by Craig

From: Bump, Micah N
Sent: Tuesday, April 18, 2017 9:58 AM
To: Cox, Rachel M; Hollowell, Julie S; Morse, Miriam A; ALD; Nakajima, Simon T; Cox, Robert H; Choi, Heesun S (Sunny); Flippen, Jeanette P; Dalal-Dheini, Sharvari P (Shev)
Subject: RE: CIS Ombudsman Meeting with USCIS Director

Thank you Rachel.

From: Cox, Rachel M
Sent: Tuesday, April 18, 2017 2:41:25 PM
To: Hollowell, Julie S; Morse, Miriam A; Bump, Micah N; ALD; Nakajima, Simon T; Cox, Robert H; Choi, Heesun S (Sunny); Flippen, Jeanette P; Dalal-Dheini, Sharvari P (Shev)
Subject: RE: CIS Ombudsman Meeting with USCIS Director

Looks good to me, too.

From: Hollowell, Julie S
Sent: Tuesday, April 18, 2017 9:19 AM
To: Morse, Miriam A; Bump, Micah N; ALD; Nakajima, Simon T; Cox, Robert H; Choi, Heesun S (Sunny); Flippen, Jeanette P; Dalal-Dheini, Sharvari P (Shev)
Cc: Cox, Rachel M
Subject: RE: CIS Ombudsman Meeting with USCIS Director

I think the EAD information looks good.

From: Morse, Miriam A
Sent: Tuesday, April 18, 2017 8:03 AM
To: Bump, Micah N; ALD; Nakajima, Simon T; Cox, Robert H; Choi, Heesun S (Sunny); Flippen, Jeanette P; Hollowell, Julie S; Dalal-Dheini, Sharvari P (Shev)
Cc: Cox, Rachel M
Subject: RE: CIS Ombudsman Meeting with USCIS Director

Thanks, Micah, looks good to me. ~Miriam

From: Bump, Micah N
Sent: Monday, April 17, 2017 3:43 PM
To: ALD; Nakajima, Simon T; Cox, Robert H; Choi, Heesun S (Sunny); Flippen, Jeanette P; Hollowell, Julie S; Dalal-Dheini, Sharvari P (Shev)
Cc: Morse, Miriam A; Cox, Rachel M
Subject: RE: CIS Ombudsman Meeting with USCIS Director

From: Bump, Micah N
To: Dalal-Dheini, Sharvari P (Shev); Cox, Robert H
Cc: Nakajima, Simon T
Subject: RE: CIS Ombudsman Meeting with USCIS Director
Date: Wednesday, April 19, 2017 11:32:00 AM

Good point. I'll clean it up. Should I send to Molly/Craig or would want to do that?

From: Dalal-Dheini, Sharvari P (Shev)
Sent: Wednesday, April 19, 2017 11:30 AM
To: Bump, Micah N; Cox, Robert H
Cc: Nakajima, Simon T
Subject: RE: CIS Ombudsman Meeting with USCIS Director

(b)(5)

If you are all good with that, then we can clean up that comment bubble and forward on to Molly/Craig ...

From: Bump, Micah N
Sent: Wednesday, April 19, 2017 11:27 AM
To: Cox, Robert H; Dalal-Dheini, Sharvari P (Shev)
Cc: Nakajima, Simon T
Subject: RE: CIS Ombudsman Meeting with USCIS Director

(b)(5)

From: Cox, Robert H
Sent: Wednesday, April 19, 2017 11:23 AM
To: Dalal-Dheini, Sharvari P (Shev); Bump, Micah N
Cc: Nakajima, Simon T
Subject: RE: CIS Ombudsman Meeting with USCIS Director

I am fine with your edit. Thanks!

From: Dalal-Dheini, Sharvari P (Shev)
Sent: Wednesday, April 19, 2017 11:15 AM
To: Bump, Micah N; Cox, Robert H
Cc: Nakajima, Simon T
Subject: RE: CIS Ombudsman Meeting with USCIS Director

I had one edit/comment in response to RHC2, please take a look. Other than that, this is good.

From: Bump, Micah N
Sent: Wednesday, April 19, 2017 11:12 AM
To: Cox, Robert H; Dalal-Dheini, Sharvari P (Shev)
Cc: Nakajima, Simon T
Subject: RE: CIS Ombudsman Meeting with USCIS Director

I have not yet forwarded them to Craig.

From: Cox, Robert H
Sent: Wednesday, April 19, 2017 10:59 AM
To: Dalal-Dheini, Sharvari P (Shev)
Cc: Bump, Micah N; Nakajima, Simon T
Subject: FW: CIS Ombudsman Meeting with USCIS Director

Shev, can you take a look at these TPs? Link several emails below. I think we need to get these back asap since the meeting is tomorrow (based on the chain below). We were thinking about sending them to Craig to review (Micah, did you send to him? I didn't see anything further on that), but not sure that is needed at this point.

From: Bump, Micah N
Sent: Tuesday, April 18, 2017 9:58 AM
To: Cox, Rachel M; Hollowell, Julie S; Morse, Miriam A; ALD; Nakajima, Simon T; Cox, Robert H; Choi, Heesun S (Sunny); Flippen, Jeanette P; Dalal-Dheini, Sharvari P (Shev)
Subject: RE: CIS Ombudsman Meeting with USCIS Director

Thank you Rachel.

From: [Bump, Micah N](#)
To: [Flippen, Jeanette P](#)
Subject: RE: CIS Ombudsman Meeting with USCIS Director
Date: Monday, April 17, 2017 4:10:12 PM

I'll add that comment. Thanks, Jeanette.

From: Flippen, Jeanette P
Sent: Monday, April 17, 2017 9:06:46 PM
To: Bump, Micah N
Subject: RE: CIS Ombudsman Meeting with USCIS Director

(b)(5)

Hi,



From: Bump, Micah N
Sent: Monday, April 17, 2017 2:43 PM
To: ALD; Nakajima, Simon T; Cox, Robert H; Choi, Heesun S (Sunny); Flippen, Jeanette P; Hollowell, Julie S; Dalal-Dheini, Sharvari P (Shev)
Cc: Morse, Miriam A; Cox, Rachel M
Subject: RE: CIS Ombudsman Meeting with USCIS Director

I made some edits and uploaded to the ECN [here](#). Including I-140 team as well for their review. Please complete by COB tomorrow.

Thank you,

Micah

Micah N. Bump
Associate Counsel
Department of Homeland Security
Citizenship and Immigration Services
20 Massachusetts Avenue, NW
Washington, D.C. 20529
Tel: (202)272-1405
Mobile: (202) 704-5095

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From: Raymond, Robert R **On Behalf Of** ALD
Sent: Monday, April 17, 2017 1:55 PM
To: Nakajima, Simon T; Cox, Robert H; Bump, Micah N; Choi, Heesun S (Sunny); Flippen, Jeanette P; Hollowell, Julie S; Dalal-Dheini, Sharvari P (Shev)
Cc: ALD
Subject: FW: CIS Ombudsman Meeting with USCIS Director

Simon, Robert, Micah, will one of you please take the lead? Thanks

Robert Raymond
Deputy Chief
Adjudications Law Division
Office of the Chief Counsel
United States Citizenship and Immigration Services
20 Massachusetts Avenue NW Room 4210
Washington DC 20529
Telephone +1 202 272 1434
Fax +1 202 272 1478
robert.r.raymond@uscis.dhs.gov

From: Cox, Robert H
To: Choi, Heesun S (Sunny)
Cc: Bump, Micah N; Nakajima, Simon T
Subject: RE: Computer Programmer Memo Service Center Consistency
Date: Friday, August 11, 2017 2:33:00 PM

Thanks. Sending back now. Happy Friday!!

From: Choi, Heesun S (Sunny)
Sent: Friday, August 11, 2017 1:45 PM
To: Cox, Robert H
Cc: Bump, Micah N; Nakajima, Simon T
Subject: RE: Computer Programmer Memo Service Center Consistency

Other than a minor edit, I don't have any additional comments. This is ready to go back to SCOPS.

Thank you all! Happy Friday!

From: Cox, Robert H
Sent: Friday, August 11, 2017 1:02 PM
To: Choi, Heesun S (Sunny)
Cc: Bump, Micah N; Nakajima, Simon T
Subject: FW: Computer Programmer Memo Service Center Consistency

Hi Sunny,

We have completed our review of the wage level denial template referenced in Nicole's email below. Did you want to review before we send this back? It is due COB today.

Thanks,
Robert

From: Nicklaw, Nicole C
Sent: Monday, July 31, 2017 8:32 PM
To: Cox, Robert H; Nakajima, Simon T; Bump, Micah N
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: RE: Computer Programmer Memo Service Center Consistency

(b)(5)

Hi OCC,

[Redacted]

Thank you,

Nicole

From: Cox, Robert H
Sent: Monday, July 10, 2017 12:03 PM
To: Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: RE: Computer Programmer Memo Service Center Consistency

(b)(5)

Hi Nicole,

[Redacted]

Thanks,
Robert

From: Nicklaw, Nicole C
Sent: Monday, June 26, 2017 10:22 PM
To: Cox, Robert H; Nakajima, Simon T; Bump, Micah N
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: RE: Computer Programmer Memo Service Center Consistency

(b)(5)

Thanks so much, everyone. We really appreciate it!

[Redacted]

Thank you,

Nicole

From: Cox, Robert H
Sent: Monday, June 26, 2017 4:27 PM
To: Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: RE: Computer Programmer Memo Service Center Consistency

(b)(5)

[Redacted]

From: Nicklaw, Nicole C
Sent: Monday, June 26, 2017 9:15:48 PM
To: Cox, Robert H; Nakajima, Simon T; Bump, Micah N
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: RE: Computer Programmer Memo Service Center Consistency

(b)(5)

Legally, do you view that as a material change?

[Redacted]

Thank you,

Nicole

From: Cox, Robert H
Sent: Monday, June 26, 2017 2:49 PM
To: Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N

Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: RE: Computer Programmer Memo Service Center Consistency

I see. Thanks.

From: Nicklaw, Nicole C
Sent: Monday, June 26, 2017 2:40 PM
To: Cox, Robert H; Nakajima, Simon T; Bump, Micah N
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: RE: Computer Programmer Memo Service Center Consistency

(b)(5)

Hi Robert,



Nicole

From: Cox, Robert H
Sent: Thursday, June 22, 2017 1:24 PM
To: Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: RE: Computer Programmer Memo Service Center Consistency

(b)(5)

Hi Nicole,



Thanks,
Robert

From: Nicklaw, Nicole C
Sent: Thursday, June 22, 2017 9:43 AM
To: Nakajima, Simon T; Cox, Robert H; Bump, Micah N
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: RE: Computer Programmer Memo Service Center Consistency

Hi OCC,

Thanks so much for the comments and edits. We've incorporated your suggested edits, responded to the outstanding comments and attached a red-lined and clean version to this email.

Please let us know as soon as possible if you're good to go with the templates and we can let the centers know they're cleared and that they can begin using them.

Thank you!

Nicole

From: Nakajima, Simon T
Sent: Wednesday, June 21, 2017 5:32 PM
To: Cox, Robert H; Nicklaw, Nicole C; Bump, Micah N
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

Please find some comments and edits in the attached.

Thanks,
Simon

From: Cox, Robert H
Sent: Wednesday, June 21, 2017 3:39 PM
To: Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: RE: Computer Programmer Memo Service Center Consistency

LOL. Definitely don't have a better plan. ☺

Thanks for confirming.

From: Nicklaw, Nicole C
Sent: Wednesday, June 21, 2017 3:25 PM
To: Cox, Robert H; Nakajima, Simon T; Bump, Micah N
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: RE: Computer Programmer Memo Service Center Consistency

Hi Robert,

That's the current plan, pending OCC suggestions for a better plan of attack. ☺

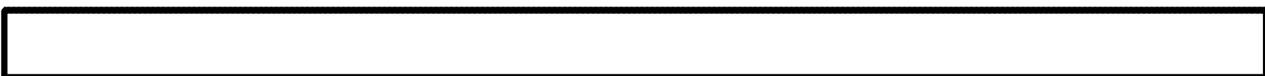
Thanks!

Nicole

From: Cox, Robert H
Sent: Wednesday, June 21, 2017 2:48 PM
To: Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: RE: Computer Programmer Memo Service Center Consistency

(b)(5)

Hi Nicole,



Thanks,
Robert

From: Nicklaw, Nicole C
Sent: Tuesday, June 20, 2017 8:31 PM
To: Cox, Robert H; Nakajima, Simon T; Bump, Micah N
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); ALD; OCC-Clearance

(b)(5)

Subject: RE: Computer Programmer Memo Service Center Consistency

Hi Robert and OCC,



Thank you,

Nicole Nicklaw
Adjudications Officer
DHS\USCIS\SCOPS\Business Employment Services Team (BEST)
Desk: (202) 272-8174
Mobile: (202) 557-0347

From: Cox, Robert H
Sent: Wednesday, May 24, 2017 12:30 PM
To: Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); ALD; OCC-Clearance
Subject: RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

Our comments/edits are attached.

Thanks,
Robert

From: Nicklaw, Nicole C
Sent: Monday, May 22, 2017 2:48 PM
To: Cox, Robert H; Nakajima, Simon T; Bump, Micah N
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: RE: Computer Programmer Memo Service Center Consistency

(b)(5)

COB Wednesday will work – thank you!



Thanks,

Nicole

From: Cox, Robert H
Sent: Monday, May 22, 2017 12:59 PM
To: Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: RE: Computer Programmer Memo Service Center Consistency

Thanks. We will likely need a couple more days to complete our review. COB Wednesday okay?

From: Nicklaw, Nicole C
Sent: Monday, May 22, 2017 12:56 PM
To: Cox, Robert H; Nakajima, Simon T; Bump, Micah N
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: RE: Computer Programmer Memo Service Center Consistency

Hi OCC,

Attached are the other 2 documents for review.

Thank you,

Nicole Nicklaw
Adjudications Officer
DHS\USCIS\SCOPS\Business Employment Services Team (BEST)
Desk: (202) 272-8174
Mobile: (202) 557-0347

From: Cox, Robert H
Sent: Monday, May 22, 2017 11:41 AM
To: Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: RE: Computer Programmer Memo Service Center Consistency

Cool. Thanks.

From: Nicklaw, Nicole C
Sent: Monday, May 22, 2017 4:40:20 PM
To: Cox, Robert H; Nakajima, Simon T; Bump, Micah N
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: RE: Computer Programmer Memo Service Center Consistency

Hi OCC,

I've reached out to VSC to get the correct documents. Their original email prior to the issuance of our guidance contained different document however this recent one, as Simon mentioned last week, appears to have the same docs attached. As soon as I hear back, I will pass along the updated docs/text.

Thank you!

-Nicole

From: Cox, Robert H
Sent: Monday, May 22, 2017 11:38 AM

To: Nakajima, Simon T; Nicklaw, Nicole C; Bump, Micah N
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: RE: Computer Programmer Memo Service Center Consistency

(b)(5)

Hi Nicole,

[Redacted]

Thanks,
Robert

From: Nakajima, Simon T
Sent: Friday, May 19, 2017 3:04 PM
To: Nicklaw, Nicole C; Cox, Robert H; Bump, Micah N
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

Is it me or are the three RFEs completely identical, even though they are labeled differently?

Thanks,
Simon

From: Nicklaw, Nicole C
Sent: Monday, May 15, 2017 11:23 PM
To: Cox, Robert H; Bump, Micah N; Nakajima, Simon T
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim)
Subject: FW: Computer Programmer Memo Service Center Consistency

(b)(5)

Hi OCC,

[Redacted]

Is it possible to get your comments/edits by COB Monday, May 22? If you need more time, please let us know.

Thank you,
Nicole

From: Boudreau, Lynn A
Sent: Wednesday, May 10, 2017 12:04 PM
To: Nicklaw, Nicole C
Cc: Doumani, Stephanie M; Martin, Evelyn M; Fierro, Joseph; Whittier, Michelle J; Plastrik, Steven T; Schmalz, Peter N; Selby, Cara M (Carrie)
Subject: FW: Computer Programmer Memo Service Center Consistency

(b)(5)

Hi Nicole,

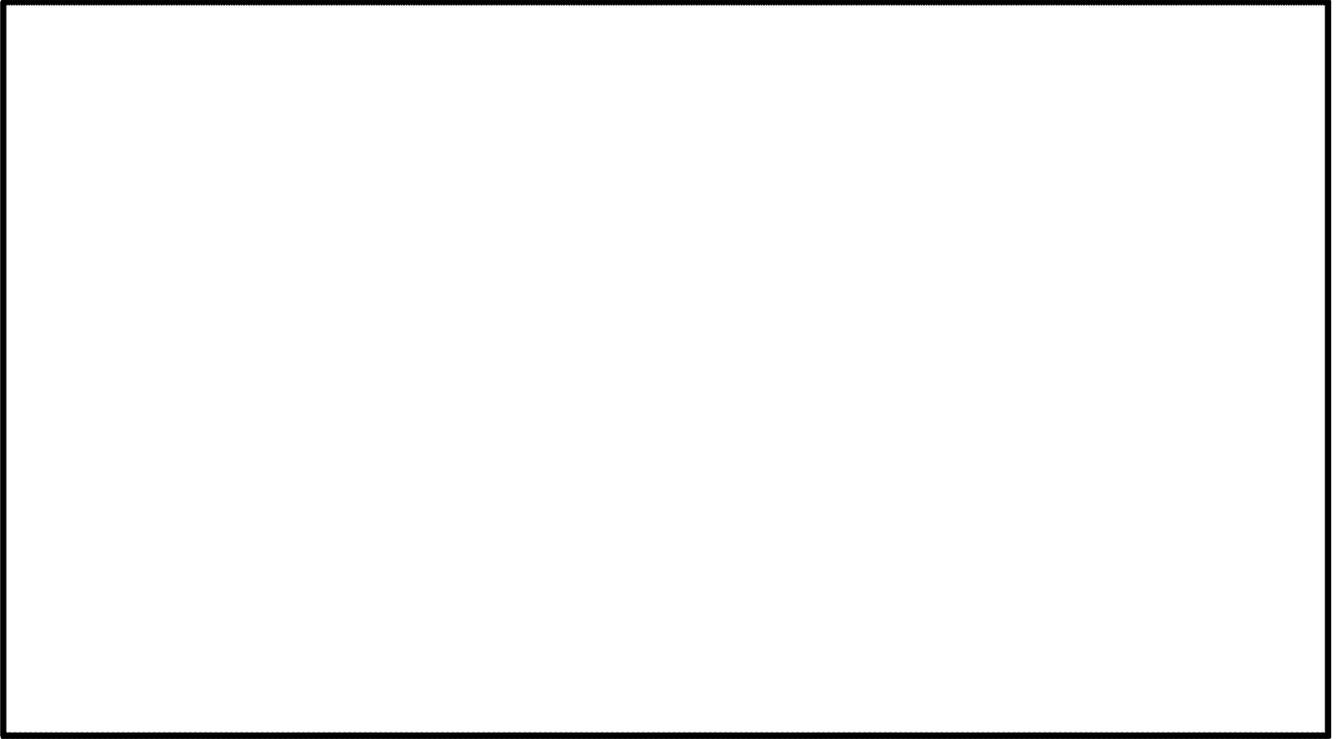
[Redacted]

Please let me know if you have any additional question or concerns.

Thanks,
Lynn

(b)(5)

[Redacted]



From: Stern, Kimberly M (Kim)
To: Cox, Robert H
Cc: Doumani, Stephanie M; Nicklaw, Nicole C; Bump, Micah N; Nakajima, Simon T; Choi, Heesun S (Sunny); Dalal-Dheini, Sharvari P (Shev); ALD; OCC-Clearance
Subject: RE: Computer Programmer Memo Service Center Consistency - wage leveling denial template
Date: Wednesday, August 30, 2017 1:55:04 PM

Hi Robert,

We have no additional concerns or edits. Thank you so much for the quick turnaround.

Kim

From: Cox, Robert H
Sent: Monday, August 28, 2017 5:47 PM
To: Stern, Kimberly M (Kim)
Cc: Doumani, Stephanie M; Nicklaw, Nicole C; Bump, Micah N; Nakajima, Simon T; Choi, Heesun S (Sunny); Dalal-Dheini, Sharvari P (Shev); ALD; OCC-Clearance
Subject: RE: Computer Programmer Memo Service Center Consistency - wage leveling denial template

Hi Kim,

We had a few additional edits. Let us know if you have any concerns with the latest edits, otherwise this is good to go.

Thanks,
Robert

From: Stern, Kimberly M (Kim)
Sent: Friday, August 25, 2017 3:33 PM
To: Cox, Robert H
Cc: Doumani, Stephanie M; Nicklaw, Nicole C; Bump, Micah N; Nakajima, Simon T; Choi, Heesun S (Sunny); Dalal-Dheini, Sharvari P (Shev)
Subject: FW: Computer Programmer Memo Service Center Consistency - wage leveling denial template

Good afternoon,

BEST has reviewed and revised based on your comments. Please have a look to complete final clearance: [WAGE LEVELING DENIAL SHELL](#)

Your review by COB Wed. 8/30/17 or sooner would be greatly appreciated (the SCs are holding some cases pending receipt of this template).

Thanks,
Kim

From: Cox, Robert H
Sent: Friday, August 11, 2017 2:47 PM
To: Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); ALD; OCC-Clearance
Subject: RE: Computer Programmer Memo Service Center Consistency - wage leveling denial template

Hi Nicole,

We have completed our review of the wage leveling denial template. Our comments and edits are saved to the ECN and attached hereto for ease of reference.

Have a great weekend!

Robert

From: Nicklaw, Nicole C
Sent: Monday, July 31, 2017 8:32 PM
To: Cox, Robert H; Nakajima, Simon T; Bump, Micah N
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: RE: Computer Programmer Memo Service Center Consistency

(b)(5)

Hi OCC,



Thank you,

Nicole

From: Cox, Robert H
Sent: Monday, July 10, 2017 12:03 PM
To: Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: RE: Computer Programmer Memo Service Center Consistency

(b)(5)

Hi Nicole,

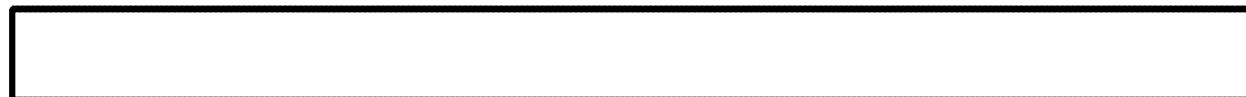


Thanks,
Robert

From: Nicklaw, Nicole C
Sent: Monday, June 26, 2017 10:22 PM
To: Cox, Robert H; Nakajima, Simon T; Bump, Micah N
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: RE: Computer Programmer Memo Service Center Consistency

(b)(5)

Thanks so much, everyone. We really appreciate it!



Thank you,

Nicole

From: Cox, Robert H
Sent: Monday, June 26, 2017 4:27 PM
To: Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N

From: Bump, Micah N
To: [Dalal-Dheini, Sharvari P \(Shev\)](#); [Choi, Heesun S \(Sunny\)](#); [Cox, Robert H](#); [Nakajima, Simon T](#)
Cc: [Salem, Claudia S](#)
Subject: RE: Computer Programmer Memo Service Center Consistency
Date: Wednesday, June 07, 2017 2:03:00 PM

Fine with this. Thanks for drafting, Robert.

From: Dalal-Dheini, Sharvari P (Shev)
Sent: Wednesday, June 07, 2017 2:00 PM
To: Choi, Heesun S (Sunny); Cox, Robert H; Bump, Micah N; Nakajima, Simon T
Cc: Salem, Claudia S
Subject: RE: Computer Programmer Memo Service Center Consistency

Looks good to me too. Just make sure the font colors are consistent when you send. Thanks!

From: Choi, Heesun S (Sunny)
Sent: Wednesday, June 07, 2017 12:56 PM
To: Cox, Robert H; Bump, Micah N; Nakajima, Simon T
Cc: Salem, Claudia S; Dalal-Dheini, Sharvari P (Shev)
Subject: RE: Computer Programmer Memo Service Center Consistency

Hi Robert - I'm good with this draft email to Craig. No additional edits from me.

Thanks!
Sunny

From: Cox, Robert H
Sent: Wednesday, June 07, 2017 11:39 AM
To: Choi, Heesun S (Sunny); Bump, Micah N; Nakajima, Simon T
Cc: Salem, Claudia S; Dalal-Dheini, Sharvari P (Shev)
Subject: FW: Computer Programmer Memo Service Center Consistency

Draft email to Craig to confirm that our understanding is consistent with his.

Hi Craig,

(b)(5)





Thanks,

From: Nicklaw, Nicole C
Sent: Thursday, June 01, 2017 4:05 PM
To: Cox, Robert H
Cc: Bump, Micah N; Nakajima, Simon T; Doumani, Stephanie M
Subject: RE: Computer Programmer Memo Service Center Consistency

Hi Robert,

Stephanie were just discussing this a little while ago. The centers have sent in some feedback and examples. I'm going to put everything together and we would like to set up a call just with you guys and OP&S so we can move forward with this, especially considering VSC is holding so many cases. I should have all of the info together and out to you tomorrow so we can get a call scheduled.

Thanks,

Nicole

From: Cox, Robert H
Sent: Thursday, June 01, 2017 12:56 PM
To: Nicklaw, Nicole C
Cc: Bump, Micah N; Nakajima, Simon T
Subject: RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

Just trying to figure out next steps – are you going to take the feedback from the centers and consolidate it into one summary that you will then send to us?

Thanks,

Robert

From: Nicklaw, Nicole C

Sent: Tuesday, May 30, 2017 4:13 PM

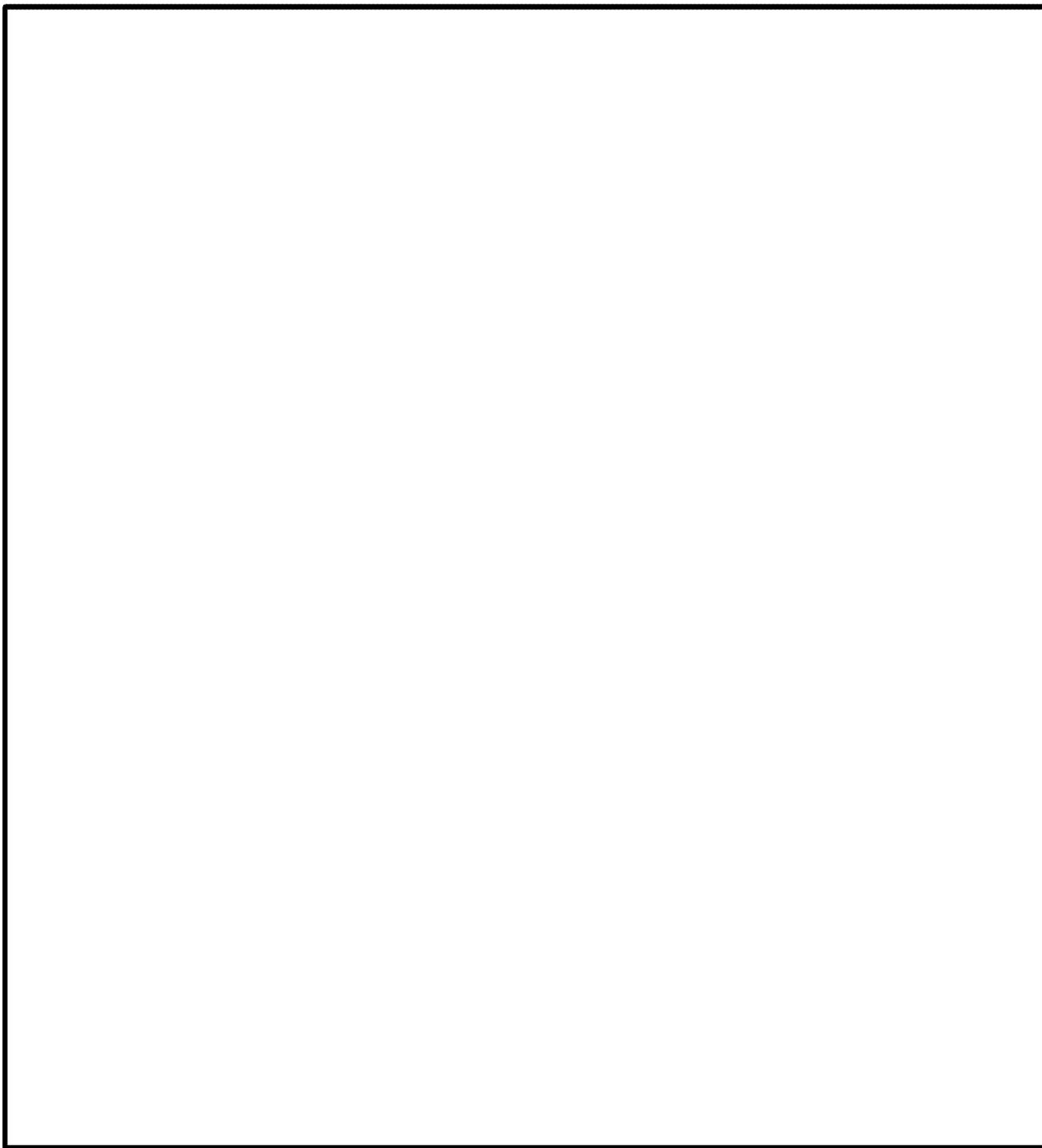
To: Cox, Robert H; Nakajima, Simon T; Bump, Micah N; Doumani, Stephanie M; Boudreau, Lynn A; Martin, Evelyn M; Fierro, Joseph; Whittier, Michelle J; Plastrik, Steven T; Schmalz, Peter N

Cc: Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Simon, Ronna J; Grabast, Dennis R; Peryea, Jaime L; Collins, Richard A; Parent, Amy B; Roach, Joyce E; Ahlm, Barbara M; Ptacek, David J; Crawford, Jolene P; Elkins, Michael J (Mike); Esser, Christopher J; Bolte, Matthew M (Matt); Langtry, Linda J; Mello, Amy E; Chau, Stephanie; Herring, Monte R; Hanehan, Brendan J; Young, Blanton R (Roy)

Subject: Computer Programmer Memo Service Center Consistency

Hi everyone,

(b)(5)





Please let me know as soon as possible if there are additional questions or issues that should also be included in the summary.

Thank you,

Nicole Nicklaw

Adjudications Officer

DHS|USCIS|SCOPS|Business Employment Services Team (BEST)

Desk: (202) 272-8174

Mobile: (202) 557-0347

From: Cox, Robert H
To: Bump, Micah N; Dalal-Dheini, Sharvari P (Shev); Nakajima, Simon T
Cc: Choi, Heesun S (Sunny)
Subject: RE: Deference and PM-602-0142 (Rescission Memo)
Date: Tuesday, August 08, 2017 5:58:24 PM

On second thought, was about to send a reply, but now I am wondering if the question was more general, and whether SCOPS could issue interim email guidance that deference doesn't apply generally. The rescission memo seems to be the impetus for the question, but their actual question seems much broader, right?

From: Bump, Micah N
Sent: Tuesday, August 08, 2017 2:00 PM
To: Dalal-Dheini, Sharvari P (Shev); Nakajima, Simon T; Cox, Robert H
Cc: Choi, Heesun S (Sunny)
Subject: RE: Deference and PM-602-0142 (Rescission Memo)

Agree

From: Dalal-Dheini, Sharvari P (Shev)
Sent: Tuesday, August 08, 2017 1:58 PM
To: Nakajima, Simon T; Cox, Robert H; Bump, Micah N
Cc: Choi, Heesun S (Sunny)
Subject: RE: Deference and PM-602-0142 (Rescission Memo)

Me too.

From: Nakajima, Simon T
Sent: Tuesday, August 08, 2017 1:24 PM
To: Cox, Robert H; Bump, Micah N
Cc: Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: RE: Deference and PM-602-0142 (Rescission Memo)

Agree

From: Cox, Robert H
Sent: Monday, August 07, 2017 5:30 PM
To: Nakajima, Simon T; Bump, Micah N
Cc: Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: FW: Deference and PM-602-0142 (Rescission Memo)

(b)(5)

From: Nicklaw, Nicole C
Sent: Wednesday, August 02, 2017 10:58 AM
To: Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Nakajima, Simon T; Fortes, Michael J; Bailey, Morgan; Cox, Robert H; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; Renwick, William K; Zimonjic, Milica; Bump, Micah N; Hale, Paola R
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim)
Subject: Deference and PM-602-0142 (Rescission Memo)

Hello Working Group,

Please let us know by COB on Tuesday, August 8 if providing interim email guidance related to deference is something we can move forward with.

Thank you,

(b)(5)

Nicole Nicklaw
Adjudications Officer
DHS|USCIS|SCOPS|Business Employment Services Team (BEST)
Desk: (202) 272-8174
Mobile: (202) 557-0347

From: Nicklaw, Nicole C
Sent: Monday, May 01, 2017 11:21 AM
To: Fierro, Joseph; Boudreau, Lynn A; Martin, Evelyn M
Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim)
Subject: Final Guidance on PM-602-0142

(b)(5)

Hello all,

Nicole Nicklaw
Adjudications Officer
DHS|USCIS|SCOPS|Business Employment Services Team (BEST)
Desk: (202) 272-8174
Mobile: (202) 557-0347

(b)(5)

(b)(5)



From: Parascandola, Ciro A
To: Viger, Steven W; Cummings, Kevin J; Dalal-Dheini, Sharvari P (Shev)
Cc: Buten, Elizabeth C; Nakajima, Simon T; Bump, Micah N; Cox, Robert H
Subject: RE: DHS H-1B Initiatives
Date: Wednesday, March 29, 2017 12:17:30 PM (b)(5)

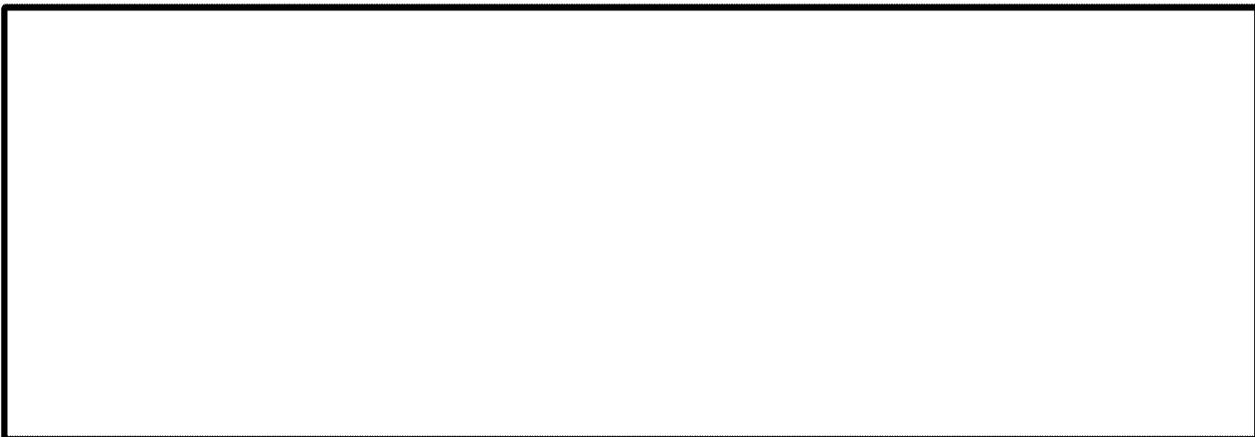


Ciro Parascandola

Deputy Chief, Business and Foreign Workers Division
USCIS Office of Policy and Strategy, DHS
Office: 202-272-1366; Cell:  (b)(6)

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From: Viger, Steven W
Sent: Wednesday, March 29, 2017 12:03 PM
To: Cummings, Kevin J; Dalal-Dheini, Sharvari P (Shev); Parascandola, Ciro A
Cc: Buten, Elizabeth C; Nakajima, Simon T; Bump, Micah N; Cox, Robert H
Subject: RE: DHS H-1B Initiatives (b)(5)



Steven Viger
Adjudications Officer (Policy)
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Ave., NW
Washington, DC 20529

P: (202) 272-8211
F: (202) 272-8518
Telework: Mon and Fri
steven.w.viger@uscis.dhs.gov

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From: Cummings, Kevin J
Sent: Wednesday, March 29, 2017 11:52 AM
To: Dalal-Dheini, Sharvari P (Shev); Parascandola, Ciro A
Cc: Buten, Elizabeth C; Viger, Steven W; Nakajima, Simon T; Bump, Micah N; Cox, Robert H
Subject: RE: DHS H-1B Initiatives

Of course it does. It is clear who wrote it.

--Kevin

Kevin J. Cummings
Chief, Business & Foreign Workers Division
USCIS Office of Policy and Strategy
Department of Homeland Security

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From: Dalal-Dheini, Sharvari P (Shev)
Sent: Wednesday, March 29, 2017 11:40 AM
To: Cummings, Kevin J; Parascandola, Ciro A
Cc: Buten, Elizabeth C; Viger, Steven W; Nakajima, Simon T; Bump, Micah N; Cox, Robert H
Subject: RE: DHS H-1B Initiatives

[Redacted]

(b)(5)

From: Cummings, Kevin J
Sent: Wednesday, March 29, 2017 11:39 AM
To: Dalal-Dheini, Sharvari P (Shev); Parascandola, Ciro A
Cc: Buten, Elizabeth C; Viger, Steven W
Subject: RE: DHS H-1B Initiatives
Importance: High

(b)(5)

[Redacted]

--Kevin

Kevin J. Cummings
Chief, Business & Foreign Workers Division

USCIS Office of Policy and Strategy
Department of Homeland Security

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From: Dalal-Dheini, Sharvari P (Shev)
Sent: Wednesday, March 29, 2017 11:38 AM
To: Cummings, Kevin J; Parascandola, Ciro A
Subject: FW: DHS H-1B Initiatives

Hey all,

Are you all familiar with the background and impetus to this memo?

Thanks,

Shev

From: Groom, Molly M
Sent: Wednesday, March 29, 2017 7:44 AM
To: Busch, Philip B; Dalal-Dheini, Sharvari P (Shev); Salem, Claudia S
Subject: FW: DHS H-1B Initiatives

Hopefully you all have seen this before.
Please raise any legal showstoppers ASAP. If there are other comments let's discuss.

From: Risch, Carl C
Sent: Tuesday, March 28, 2017 11:48:10 PM
To: Groom, Molly M
Cc: Symons, Craig M; Nuebel Kovarik, Kathy
Subject: FW: DHS H-1B Initiatives

Molly

See below and attached. Lori just approved this moving forward, and we're requesting expedited OCC review. DHS has great interest in this matter.

Carl

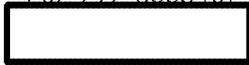
From: Risch, Carl C
Sent: Wednesday, March 29, 2017 2:32:53 AM
To: Scialabba, Lori L; Renaud, Tracy L
Cc: Symons, Craig M; Nuebel Kovarik, Kathy; Neufeld, Donald W
Subject: DHS H-1B Initiatives

(b)(5)

Lori and Tracy:



Carl C. Risch
Acting Chief of Staff
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, N.W.
Washington, DC 20529
202-272-8008 (o)



(b)(6)

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Date: [REDACTED]
Subject: [REDACTED]

[REDACTED]

(b)(5)

On: [REDACTED]
From: [REDACTED]
Subject: [REDACTED]

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-----Original Message-----
From: [REDACTED]
Sent: Monday, August 12, 2013 1:26 PM
To: [REDACTED]
Subject: [REDACTED]

Hi [REDACTED]

Can you please continue to take the lead and coordinate the OCC's responses to the comments of the public on the rule and clarify if you can?

Thanks again and in advance!

Mike

Mike Sullivan
Office of Legislative Affairs
OCC
Tel: (202) 271-3152
Email: [REDACTED]
Fax: (202) 271-3191
mjsullivan@occ.gov

Please see also "The Business Guide for Congress" on our web page visible at <http://www.occ.gov/congress>

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-----Original Message-----
From: [REDACTED]
Sent: Monday, August 12, 2013 12:54 PM
To: [REDACTED]
Subject: [REDACTED]

Hi [REDACTED]

(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

From: Bump, Micah N
To: Cox, Robert H; Nakajima, Simon T; Choi, Heesun S (Sunny); Dalal-Dheini, Sharvari P (Shev)
Cc: Salem, Claudia S
Subject: RE: Dividing and Conquering H-1B madness
Date: Tuesday, May 30, 2017 9:40:00 AM

In full agreement as well. Thanks.

From: Cox, Robert H
Sent: Friday, May 26, 2017 9:23 AM
To: Nakajima, Simon T; Choi, Heesun S (Sunny); Dalal-Dheini, Sharvari P (Shev); Bump, Micah N
Cc: Salem, Claudia S
Subject: RE: Dividing and Conquering H-1B madness

Agreed.

From: Nakajima, Simon T
Sent: Friday, May 26, 2017 1:49:52 PM
To: Choi, Heesun S (Sunny); Dalal-Dheini, Sharvari P (Shev); Cox, Robert H; Bump, Micah N
Cc: Salem, Claudia S
Subject: RE: Dividing and Conquering H-1B madness

Sounds good to me.

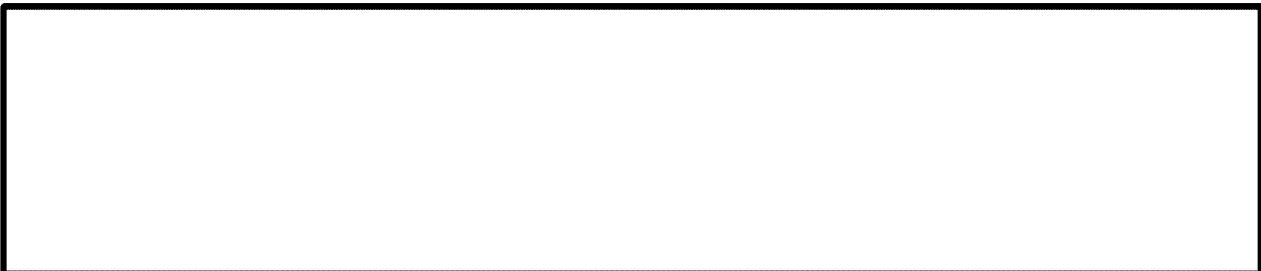
From: Choi, Heesun S (Sunny)
Sent: Friday, May 26, 2017 1:32:13 PM
To: Dalal-Dheini, Sharvari P (Shev); Cox, Robert H; Nakajima, Simon T; Bump, Micah N
Cc: Salem, Claudia S
Subject: RE: Dividing and Conquering H-1B madness

I think that's a wonderful suggestion - one which I may want to employ for the H-2 portfolio as well. The H programs are getting pounded these days.

From: Dalal-Dheini, Sharvari P (Shev)
Sent: Friday, May 26, 2017 8:27 AM
To: Cox, Robert H; Nakajima, Simon T; Bump, Micah N
Cc: Choi, Heesun S (Sunny); Salem, Claudia S
Subject: Dividing and Conquering H-1B madness

Hi all,

(b)(5)





Thoughts?

Shev

Ms. Sharvari (Shev) Dalal-Dheini | DHS | USCIS | OCC | Special Counsel, Adjudications Law

Division | 📞 202.272.1414 | 📱 202.427.8499 | 📠 202.272.1478 | ✉️ Sharvari.Dalal-Dheini@uscis.dhs.gov

📍 20 Massachusetts Avenue, N.W., Suite 4210, Washington DC 20529-2120

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Thank you.

From: [Dalal-Dheini, Sharvari P \(Shev\)](#)
To: [Groom, Molly M](#); [OCC-Clearance](#); [ALD](#)
Cc: [Busch, Philip B](#); [Hinds, Ian G](#); [Salem, Claudia S](#); [Cox, Robert H](#); [Nakajima, Simon T](#); [Bump, Micah N](#)
Subject: RE: FINAL PM FOR DISTRIBUTION AND PUBLICATION: Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions"
Date: Monday, April 03, 2017 8:31:59 AM

I've let Angela know that we clear. Thanks.

From: Groom, Molly M
Sent: Sunday, April 02, 2017 11:25 PM
To: Dalal-Dheini, Sharvari P (Shev); [OCC-Clearance](#); [ALD](#)
Cc: [Busch, Philip B](#); [Hinds, Ian G](#); [Salem, Claudia S](#); [Cox, Robert H](#); [Nakajima, Simon T](#); [Bump, Micah](#)
Subject: RE: FINAL PM FOR DISTRIBUTION AND PUBLICATION: Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions"

Thanks Shev and others!

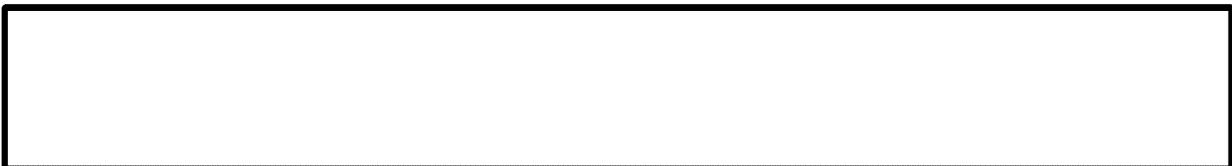
From: Dalal-Dheini, Sharvari P (Shev)
Sent: Sunday, April 02, 2017 8:56:07 PM
To: [OCC-Clearance](#); [ALD](#)
Cc: [Busch, Philip B](#); [Groom, Molly M](#); [Hinds, Ian G](#); [Salem, Claudia S](#); [Cox, Robert H](#); [Nakajima, Simon T](#); [Bump, Micah](#)
Subject: RE: FINAL PM FOR DISTRIBUTION AND PUBLICATION: Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions"

I will let her know in the morning, just in case anyone else wants to chime in!

From: Carpenter, Dea D on behalf of [OCC-Clearance](#)
Sent: Sunday, April 02, 2017 8:46:26 PM
To: Dalal-Dheini, Sharvari P (Shev); [ALD](#)
Cc: [Busch, Philip B](#); [Groom, Molly M](#); [Hinds, Ian G](#); [Salem, Claudia S](#); [Cox, Robert H](#); [Nakajima, Simon T](#); [Bump, Micah](#)
Subject: RE: FINAL PM FOR DISTRIBUTION AND PUBLICATION: Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions"

Thanks Shev! Can you let Angela know on behalf of OCC? Thank you!

From: Dalal-Dheini, Sharvari P (Shev)
Sent: Sunday, April 02, 2017 8:42 PM
To: [OCC-Clearance](#); [ALD](#)
Cc: [Busch, Philip B](#); [Groom, Molly M](#); [Hinds, Ian G](#); [Salem, Claudia S](#); [Cox, Robert H](#); [Nakajima, Simon T](#); [Bump, Micah](#)
Subject: RE: FINAL PM FOR DISTRIBUTION AND PUBLICATION: Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions" (b)(5)



From: Carpenter, Dea D on behalf of OCC-Clearance
Sent: Sunday, April 02, 2017 8:23:59 PM
To: ALD
Cc: Busch, Philip B; Groom, Molly M; Hinds, Ian G; Dalal-Dheini, Sharvari P (Shev); Salem, Claudia S
Subject: FW: FINAL PM FOR DISTRIBUTION AND PUBLICATION: Rescission of the December 22, 2000
"Guidance memo on H1B computer related positions"

ALD - Please take the lead on review and response of this item for OCC, and copy the Box on your reply to the client. Copying others for visibility and input as needed. Thank you!

From: Hirsch, Angela H
Sent: Saturday, April 01, 2017 3:28 PM
To: Alfonso, Angelica M; Hatchett, Doline L; Atkinson, Ronald A; Wooden, Janeen R; Ellis, Rachel H; Herrmann, Mary K; Munoz-Acevedo, Carlos; Pastrana-Lujan, Maria P; Melero, Mariela; Rodriguez, Miguel E; Brown, Katherine H; #USCIS OLA Clearance; OCC-Clearance
Cc: Carter, Jeffrey T (Jeff); McKinney, James R (Jim); Wheeler Roberts, Shannon L.; Consaul, Arwen E; Echevarria, Alexandra N
Subject: RE: FINAL PM FOR DISTRIBUTION AND PUBLICATION: Rescission of the December 22, 2000 (b)(5)
"Guidance memo on H1B computer related positions"



Response to Media Queries

USCIS Rescinds Policy Memorandum

Introduction

This policy memorandum (PM), PM-602-0142, supersedes and rescinds the December 22, 2000 memorandum titled "Guidance memo on H1B computer related positions" issued to Nebraska Service Center (NSC) employees by Terry Way.

Talking Points

- This is not a change in policy on H-1B and H-1B1 eligibility in computer-related fields. The 2000 memo relied on obsolete information and had not been used as a standard for adjudicating H-1B petitions for many years. It is being rescinded to ensure all service centers use current and consistent standards when reviewing H-1B petitions.
- As the guidance provided in this NSC memorandum is not an accurate articulation of current agency policy, USCIS is rescinding it to prevent inconsistencies in H-1B and H-

1B1 adjudications between the three service centers that currently adjudicate H-1B petitions.

- The Nebraska Service Center resumed processing H-1B and H-1B1 petitions in 2016 after a ten year hiatus.
- For more information about classifications of computer-related fields, please contact the Department of Labor [public affairs office](#).

The rescission memo outlines the requirements companies petitioning for an H-1B visa in a computer-related field must meet: a petitioner must provide evidence to establish that the particular position requires both (1) the theoretical and practical application of a body of highly specialized knowledge and (2) a bachelor's or higher degree in a specific specialty directly related to the occupation, or its equivalent, as a minimum for entry into the occupation in the United States. Please visit the [rescinded policy memo guidance](#) for further information.

Angela Hussein Hirsch
Office: (202) 272-2977 | Mobile: (202) 841-9651
angela.h.hirsch@uscis.dhs.gov

From: McCament, James W
Sent: Saturday, April 01, 2017 3:07 PM
To: Hirsch, Angela H; Levy, Jeffrey M; Drake, Raymond A; Symons, Craig M; Alfonso, Angelica M; Risch, Carl C; Hatchett, Dolline L; Atkinson, Ronald A; Wooden, Janeen R
Cc: Renaud, Tracy L; Nuebel Kovarik, Kathy
Subject: RE: FINAL PM FOR DISTRIBUTION AND PUBLICATION: Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions"

Great, thank you Angela.

James W. McCament
Acting Director
Deputy Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Washington, DC 20529-2150
james.w.mccament@uscis.dhs.gov

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From: Hirsch, Angela H
Sent: Saturday, April 01, 2017 3:06:04 PM
To: McCament, James W; Levy, Jeffrey M; Drake, Raymond A; Symons, Craig M; Alfonso, Angelica M; Risch, Carl C; Hatchett, Dolline L; Atkinson, Ronald A; Wooden, Janeen R
Cc: Renaud, Tracy L; Nuebel Kovarik, Kathy
Subject: RE: FINAL PM FOR DISTRIBUTION AND PUBLICATION: Rescission of the December 22, 2000
"Guidance memo on H1B computer related positions"

Not yet – I'll share the TPs with them now.

Angela Hussein Hirsch
Office: (202) 272-2977 | Mobile: (202) 841-9651
angela.h.hirsch@uscis.dhs.gov

From: McCament, James W
Sent: Saturday, April 01, 2017 3:04 PM
To: Hirsch, Angela H; Levy, Jeffrey M; Drake, Raymond A; Symons, Craig M; Alfonso, Angelica M; Risch, Carl C; Hatchett, Dolline L; Atkinson, Ronald A; Wooden, Janeen R
Cc: Renaud, Tracy L; Nuebel Kovarik, Kathy
Subject: RE: FINAL PM FOR DISTRIBUTION AND PUBLICATION: Rescission of the December 22, 2000
"Guidance memo on H1B computer related positions"

Thank you Angela. Adding OLA also. Have DHS OPA and DHS OLA also been notified?
Along with CSPED?

Thanks again all,

James

James W. McCament
Acting Director
Deputy Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Washington, DC 20529-2150
james.w.mccament@uscis.dhs.gov

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Thank You.

From: Hirsch, Angela H
Sent: Saturday, April 01, 2017 1:20:52 PM
To: Levy, Jeffrey M; Drake, Raymond A; Symons, Craig M; Alfonso, Angelica M; Risch, Carl C; Hatchett, Dolline L
Cc: McCament, James W; Renaud, Tracy L; Nuebel Kovarik, Kathy
Subject: RE: FINAL PM FOR DISTRIBUTION AND PUBLICATION: Rescission of the December 22, 2000
"Guidance memo on H1B computer related positions"

Hi all, I'm working on an RTQ in case we get media questions about this. Stay tuned...

From: Levy, Jeffrey M
Sent: Saturday, April 01, 2017 5:54:01 PM
To: Drake, Raymond A; Symons, Craig M; Alfonso, Angelica M; Risch, Carl C; Hatchett, Doline L
Cc: McCament, James W; Renaud, Tracy L; Nuebel Kovarik, Kathy; Hirsch, Angela H
Subject: RE: FINAL PM FOR DISTRIBUTION AND PUBLICATION: Rescission of the December 22, 2000
"Guidance memo on H1B computer related positions"

Thanks so much, Ray!

I'm caught up and it looks like everything went smoothly.

Jeffrey Levy
Chief of E-Communications
Office of Communications | U.S. Citizenship and Immigration Services
20 Mass. Ave., NW, Suite 3100 | Washington, DC 20529
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jeffrey.m.levy@uscis.dhs.gov
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<http://twitter.com/uscis> | Instagram: <https://www.instagram.com/uscis> | YouTube:
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Twitter: http://twitter.com/uscis_es | Instagram: https://www.instagram.com/uscis_es

From: Drake, Raymond A
Sent: Saturday, April 01, 2017 3:30:40 PM
To: Levy, Jeffrey M; Symons, Craig M; Alfonso, Angelica M; Risch, Carl C; Hatchett, Doline L
Cc: McCament, James W; Renaud, Tracy L; Nuebel Kovarik, Kathy; Hirsch, Angela H
Subject: RE: FINAL PM FOR DISTRIBUTION AND PUBLICATION: Rescission of the December 22, 2000
"Guidance memo on H1B computer related positions"

Good Morning,

The Memorandum is now live on our Policy Memoranda page: <https://www.uscis.gov/laws/policy-memoranda>

Here is the direct link to the PDF of the memo itself on our site:
<https://www.uscis.gov/sites/default/files/files/nativedocuments/PM-6002-0142-H-1BComputerRelatedPositionsRecission.pdf>

Please let me know if I can be of any further assistance.

Best,

Raymond A. Drake

Social Media and Web Content Editor, DHS Senior Fellow
Office of Communications | **U.S. Citizenship and Immigration Services**

Mobile: (202) 344-5366

Website: [USCIS.gov](http://uscis.gov) | Facebook: [/USCIS](https://www.facebook.com/uscis) | Twitter: [@USCIS](https://twitter.com/uscis) | Instagram: [@USCIS](https://www.instagram.com/uscis)

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From: Levy, Jeffrey M

Sent: Saturday, April 01, 2017 10:09 AM

To: Symons, Craig M; Alfonso, Angelica M; Risch, Carl C; Hatchett, Dolline L; Drake, Raymond A

Cc: McCament, James W; Renaud, Tracy L; Nuebel Kovarik, Kathy; Hirsch, Angela H

Subject: RE: FINAL PM FOR DISTRIBUTION AND PUBLICATION: Rescission of the December 22, 2000
"Guidance memo on H1B computer related positions"

Hi everyone.

I have a religious commitment this morning, so Ray Drake, one of my senior staff, will work with you on it. He can do everything that needs to be done. You can work with him essentially as acting Chief of E-Communications. I'll be offline until about 1:00.

Ray, please see attached.

I'm also adding Angela Hirsch for her awareness.

Jeffrey Levy

Chief of E-Communications

Office of Communications | U.S. Citizenship and Immigration Services

20 Mass. Ave., NW, Suite 3100 | Washington, DC 20529

Office: (202) 272-2997 | Mobile: (202) 412-5047

jeffrey.m.levy@uscis.dhs.gov

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Twitter: [http://twitter.com/uscis_es](https://twitter.com/uscis_es) | Instagram: https://www.instagram.com/uscis_es

From: Symons, Craig M

Sent: Saturday, April 01, 2017 2:55:11 PM

To: Alfonso, Angelica M; Risch, Carl C; Hatchett, Dolline L

Cc: McCament, James W; Renaud, Tracy L; Nuebel Kovarik, Kathy; Levy, Jeffrey M

Subject: RE: FINAL PM FOR DISTRIBUTION AND PUBLICATION: Rescission of the December 22, 2000
"Guidance memo on H1B computer related positions"

Angie,

In case it helps speed up the process, here is the basics of what we need asap:

1. Post the memorandum to our website with the link to the PDF document on the following webpage: <https://www.uscis.gov/laws/policy-memoranda>
2. Here is a draft description that should work:

Date:

March 31, 2017

Hyperlinked text (in blue) which links to the PDF document:

Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions"

Description just below the hyperlinked text (in black):

This policy memorandum (PM) supersedes and rescinds the December 22, 2000 memorandum titled "Guidance memo on H1B computer related positions" issued to Nebraska Service Center (NSC) employees by Terry Way.

This language is straight from the cleared memo and matches the format of what we did for all of the other memos on that page. So, it should not need any additional clearance. And I think that's all we need for now. I think anything else we need to do on this can wait until Monday.

Thanks everyone!

Craig

From: Alfonso, Angelica M
Sent: Saturday, April 01, 2017 9:53 AM
To: Risch, Carl C; Hatchett, Doline L
Cc: McCament, James W; Renaud, Tracy L; Nuebel Kovarik, Kathy; Symons, Craig M; Levy, Jeffrey M
Subject: RE: FINAL PM FOR DISTRIBUTION AND PUBLICATION: Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions"

Adding Jeffrey. He is reaching out to his team now and will provide us an update asap.

Thank you Jeffrey!!!!

From: Risch, Carl C
Sent: Saturday, April 01, 2017 2:48:09 PM
To: Hatchett, Doline L
Cc: McCament, James W; Renaud, Tracy L; Alfonso, Angelica M; Nuebel Kovarik, Kathy; Symons, Craig M
Subject: FW: FINAL PM FOR DISTRIBUTION AND PUBLICATION: Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions"

I sent this to Dolline at OCOMM a few hours ago. S1's office is asking about this being put up on our website ASAP. The PDF of the PM just needs to be added to our Policy Memorandum page. It doesn't even need a description. The title will suffice for now. Who could help get this posted?

From: Risch, Carl C
Sent: Saturday, April 01, 2017 8:05:02 PM
To: Hatchett, Dolline L
Subject: FW: FINAL PM FOR DISTRIBUTION AND PUBLICATION: Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions"

Dollie

This PM went out late yesterday afternoon. DHS and WH really, really want this on our public website ASAP. Can you have someone load this up under the Policy Memos?

Carl

From: Chestnut, Monica L
Sent: Saturday, April 01, 2017 5:49:23 AM
To: OCOMM Clearance Taskers; INTERNAL COMMUNICATIONS, USCIS; USCIS Web Publishing; CSPE Tasking; #USCIS OLA Clearance
Cc: Scialabba, Lori L; Swanson, Toni; Walters, Jessica S; Policy-Clearance; Vanison, Denise; Levine, Laurence D; Ezeldin, Amany S; Dunn, Maureen A; McCament, James W; Graziadio, Josie; OCC-Clearance; Jaddou, Ur M; Carpenter, Dea D; Busch, Philip B; Melero, Mariela; Rogers, Debra A; Salas, Bryan F; Alfonso, Angelica M; Wheeler, Shannon L; Carter, Jeffrey T (Jeff); Tintary, Ruth E; Irazabal, Luz F; Dalal, Ankur P (Andy); Young, Todd P; Krebs, Kristie L; Bacon, William H; Button, Maria G (Gemma); Carter, Constance L; Rix, Donna L; Rosenberg, Ronald M (Ron); Nimick, Charles L (Locky); Recio, Irene M; Blacksten, Deborah A; Echevarria, Alexandra N; USCIS Exec Sec; Anderson, Kathryn E; Risch, Carl C; Symons, Craig M; Nuebel Kovarik, Kathy; Davis, Marla J; Drake, Johnetta
Subject: FINAL PM FOR DISTRIBUTION AND PUBLICATION: Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions"

All: Acting Director Scialabba approved the attached PM, "*Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions,"*" as a final PM. The Director's Office determined that this PM will be posted to Connect and USCIS.gov.

OCOMM: Please post the PM to USCIS.gov and Connect, distribute it via Leadership Guidance, and publish it in *USCIS Today*.

CSPED and OLA: Please communicate externally, as appropriate.

CSPED, OCOMM, and OLA: Please work with the Originating Office POC to coordinate the roll out.

Attachments

- (1) MSWord version of the approved final PM
- (2) PDF version of the approved final PM

POCs

OCOMM: OCOMM Clearance Tasker, Internal Communications, USCIS and USCIS

Web Publishing

CSPED: CSPE Tasking

OLA: USCIS OLA Clearance

Originating Office: Office of Policy and Strategy (cc: Kathryn Anderson)

OCC: OCC Clearance

EXSO: USCIS Exec Sec (PM) (AFM)

Monica Chestnut

Office of the Executive Secretariat

U.S. Citizenship and Immigration Services

Department of Homeland Security

202-272-0987 (desk)

From: Salem, Claudia S
To: Nakajima, Simon T; Dalal-Dheini, Sharvari P (Shev); Cox, Robert H; Bump, Micah N; Zimonjic, Milica
Subject: RE: google H-1B computer programmer
Date: Tuesday, April 04, 2017 11:22:52 AM

Wow.

Claudia Salem

w. 202 272 1436

ce [REDACTED] (b)(6)

From: Nakajima, Simon T
Sent: Tuesday, April 04, 2017 10:30 AM
To: Salem, Claudia S; Dalal-Dheini, Sharvari P (Shev); Cox, Robert H; Bump, Micah N; Zimonjic, Milica
Subject: google H-1B computer programmer

Note the headlines for the first two stories

Simon Nakajima
Associate Counsel
Office of the Chief Counsel
Adjudications Law Division
USCIS - DHS
Work: (202) 272-1481

[REDACTED] (b)(6)

From: Bump, Micah N
To: Nakajima, Simon T; Dalal-Dheini, Sharvari P (Shev); Cox, Robert H
Subject: RE: H-1B
Date: Wednesday, March 29, 2017 5:00:00 PM

That's what I was thinking.

From: Nakajima, Simon T
Sent: Wednesday, March 29, 2017 4:58 PM
To: Dalal-Dheini, Sharvari P (Shev); Cox, Robert H; Bump, Micah N
Subject: RE: H-1B

[Redacted] (b)(5)

From: Dalal-Dheini, Sharvari P (Shev)
Sent: Wednesday, March 29, 2017 4:56 PM
To: Nakajima, Simon T; Cox, Robert H; Bump, Micah N
Subject: RE: H-1B

(b)(5)

[Redacted]

From: Nakajima, Simon T
Sent: Wednesday, March 29, 2017 4:55 PM
To: Dalal-Dheini, Sharvari P (Shev); Cox, Robert H; Bump, Micah N
Subject: RE: H-1B

Shev – I don't see Millie's comment in the doc.

From: Dalal-Dheini, Sharvari P (Shev)
Sent: Wednesday, March 29, 2017 4:45 PM
To: Cox, Robert H; Bump, Micah N; Nakajima, Simon T
Subject: H-1B

(b)(5)

[Redacted]

Ms. Sharvari (Shev) Dalal-Dheini | DHS | USCIS | OCC | Deputy Chief, Adjudications Law Division

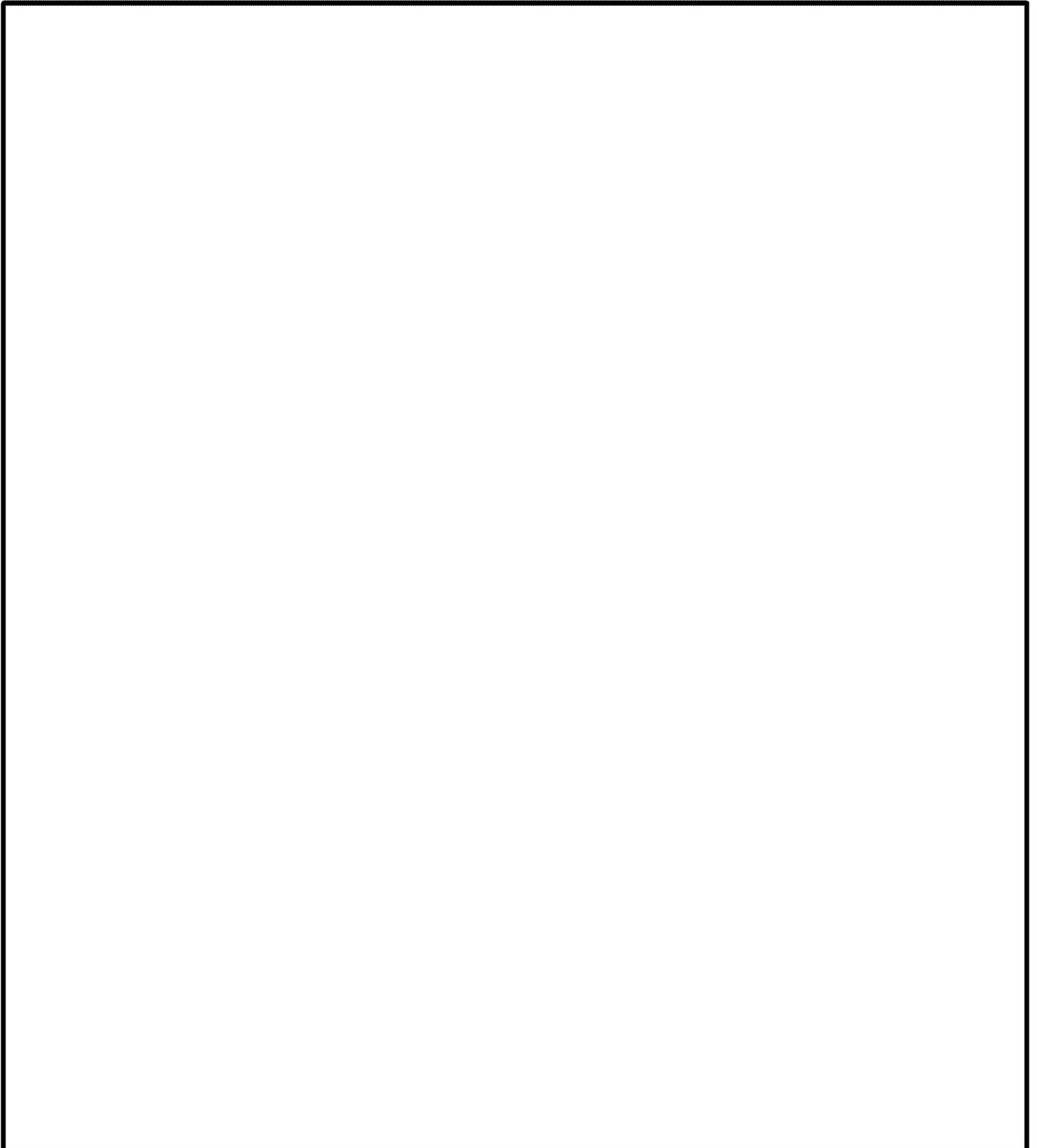
(Employment-Based) | 📞 202.272.1414 | 📱 202.427.8499 | 📠 202.272.1478 | ✉️ [Sharvari.Dalal-](mailto:Sharvari.Dalal-Dheini@uscis.dhs.gov)

[Dheini@uscis.dhs.gov](mailto:Sharvari.Dalal-Dheini@uscis.dhs.gov) | 📍 20 Massachusetts Avenue, N.W., Suite 4210, Washington DC 20529-2120

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Thank you.

(b)(5)





(b)(5)

From: Dalal-Dheini, Sharvari P (Shev)
To: Cox, Robert H; Bump, Micah N; Nakajima, Simon T
Subject: RE: H-1B
Date: Wednesday, March 29, 2017 5:04:00 PM

I see the distinction ...

From: Cox, Robert H
Sent: Wednesday, March 29, 2017 5:01 PM
To: Dalal-Dheini, Sharvari P (Shev); Bump, Micah N; Nakajima, Simon T
Subject: RE: H-1B

(b)(5)



From: Dalal-Dheini, Sharvari P (Shev)
Sent: Wednesday, March 29, 2017 4:58 PM
To: Cox, Robert H; Bump, Micah N; Nakajima, Simon T
Subject: RE: H-1B

(b)(5)



From: Cox, Robert H
Sent: Wednesday, March 29, 2017 4:56 PM
To: Dalal-Dheini, Sharvari P (Shev); Bump, Micah N; Nakajima, Simon T
Subject: RE: H-1B

(b)(5)



From: Dalal-Dheini, Sharvari P (Shev)
Sent: Wednesday, March 29, 2017 4:45 PM
To: Cox, Robert H; Bump, Micah N; Nakajima, Simon T
Subject: H-1B

(b)(5)





(b)(5)

Ms. Sharvari (Shev) Dalal-Dheini | DHS | USCIS | OCC | Deputy Chief, Adjudications Law Division

(Employment-Based) | 📞 202.272.1414 | 📱 202.427.8499 | 📠 202.272.1478 | ✉️ [Sharvari.Dalal-](mailto:Sharvari.Dalal-Dheini@uscis.dhs.gov)

[Dheini@uscis.dhs.gov](mailto:Sharvari.Dalal-Dheini@uscis.dhs.gov) | 📍 20 Massachusetts Avenue, N.W., Suite 4210, Washington DC 20529-2120

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Thank you.

Sent: Wednesday, June 14, 2017 1:51 PM
To: Choi, Heesun S (Sunny); Bump, Micah N; Nakajima, Simon T
Cc: Salem, Claudia S; Dalal-Dheini, Sharvari P (Shev)
Subject: RE: H-1B wage leveling - applicable to all occupations

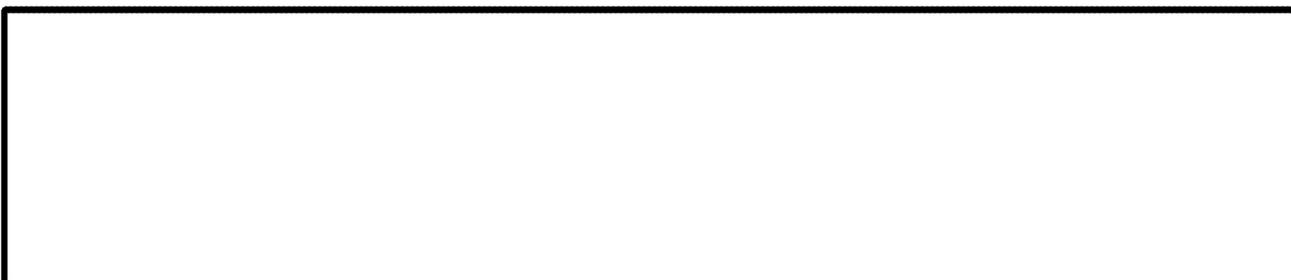
So, how about the following response to the client? Not sure we actually need to get into the whole RFE/denial issue. May be best to avoid that and just speak to the application of the analysis more generally.

(b)(5)

Hi,



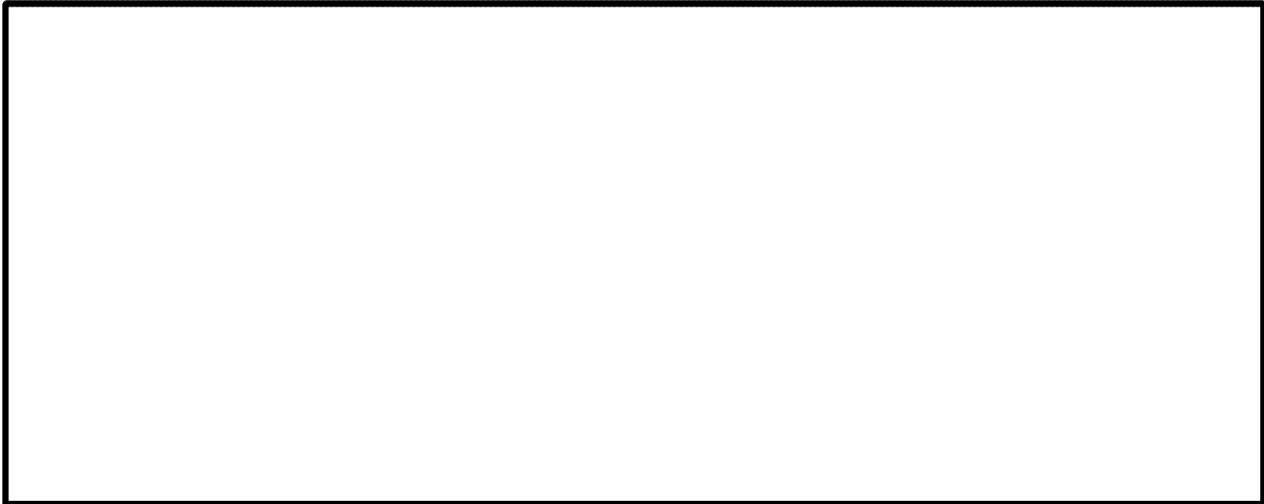
From: Nakajima, Simon T
Sent: Wednesday, June 14, 2017 11:43 AM
To: Cox, Robert H
Cc: Salem, Claudia S; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Bump, Micah N (b)(5)
Subject: RE: H-1B wage leveling - applicable to all occupations



From: Symons, Craig M
Sent: Wednesday, June 14, 2017 11:33 AM
To: Cox, Robert H
Cc: Salem, Claudia S; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Bump, Micah N; Nakajima, Simon T
Subject: RE: H-1B wage leveling - applicable to all occupations

(b)(5)

Hi Robert,



Thanks,
Craig

Craig M. Symons
Chief Counsel | Office of the Chief Counsel
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security (b)(6)
Tel. (202) 272-1440 | Cell 

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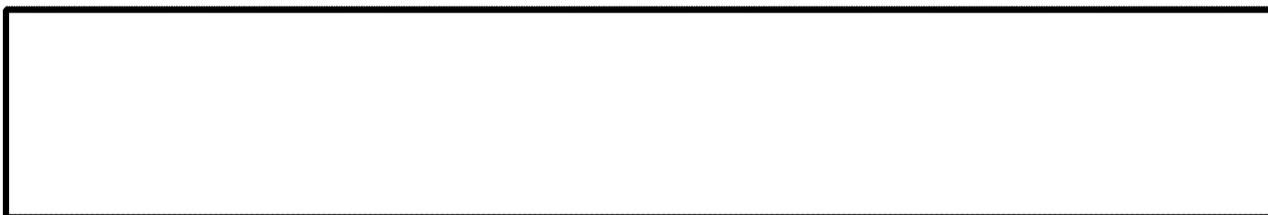
From: Cox, Robert H
Sent: Wednesday, June 14, 2017 11:15:51 AM
To: Symons, Craig M
Cc: Salem, Claudia S; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Bump, Micah N; Nakajima, Simon T
Subject: RE: H-1B wage leveling - applicable to all occupations

Hi Craig,

Just wanted to follow-up and confirm you agree with the thoughts expressed below. Last week we discussed the issue with the client and relayed our thoughts. At this point the client is looking for

(b)(5)



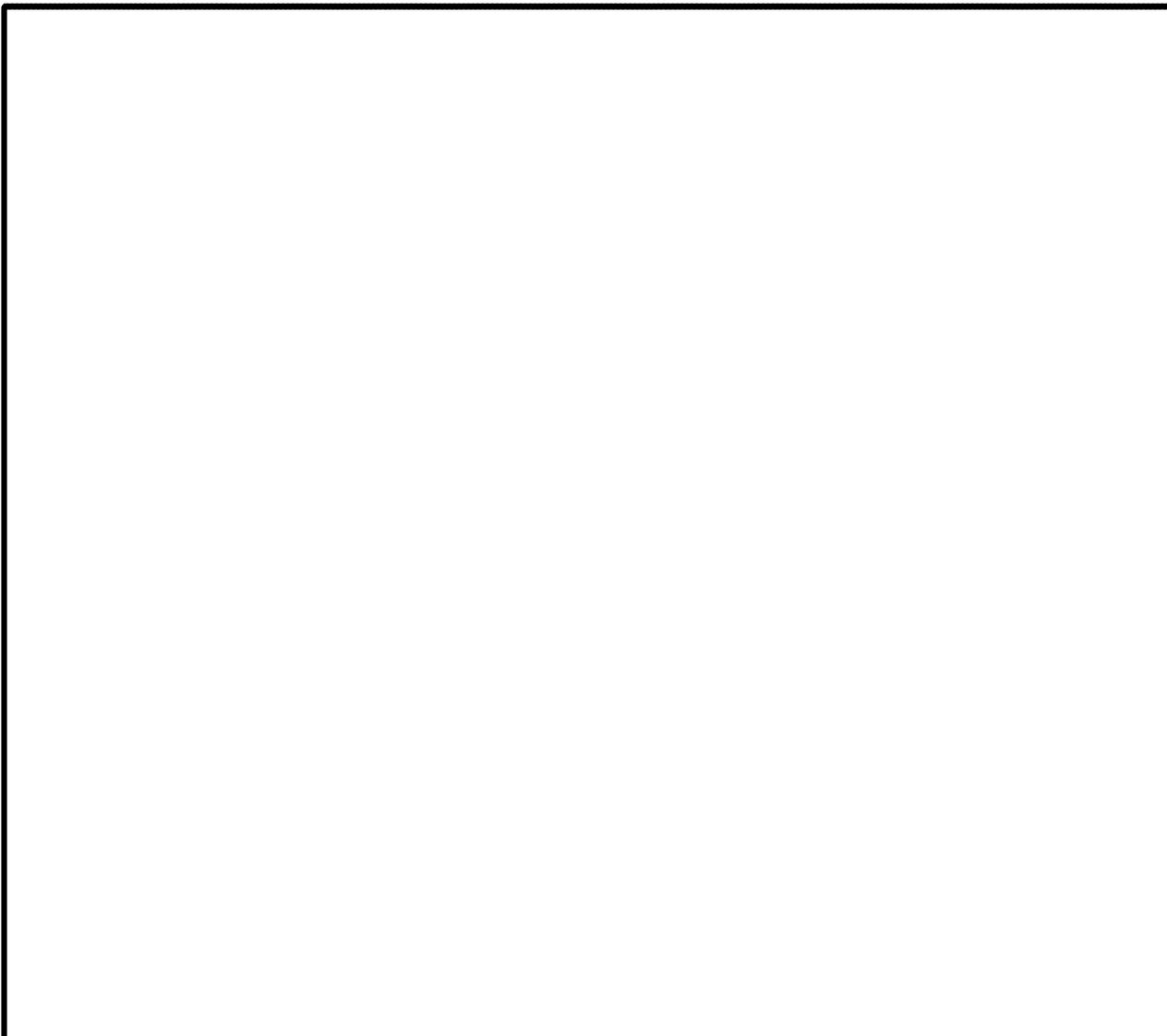


Thanks,
Robert

From: Cox, Robert H
Sent: Wednesday, June 07, 2017 2:13 PM
To: Symons, Craig M
Cc: Salem, Claudia S; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Bump, Micah N; Nakajima, Simon T
Subject: H-1B wage leveling - applicable to all occupations

Hi Craig,

(b)(5)



Please let us know if you disagree, or if there are any particular points you would like us to reiterate or clarify.

Thanks,
Robert

From: [Cox, Robert H](#)
To: [Stern, Kimberly M \(Kim\)](#); [Nakajima, Simon T](#); [Bump, Micah N](#)
Cc: [Choi, Heesun S \(Sunny\)](#); [Doumani, Stephanie M](#); [Nicklaw, Nicole C](#); [ALD](#)
Subject: RE: I-129 H1B ECHO RFE & Denial drafts
Date: Wednesday, August 16, 2017 11:58:07 AM
Attachments: [I-129 H1B ECHO AC21 Denial Standards 8 16 17 OCC.docx](#)
[I-129 H1B ECHO RFE Standards draft 8 16 17 OCC.docx](#)

Hi Kim,

We have completed our review of the RFE and denial templates. Comments and edits saved to the ECN and attached hereto for ease of future reference.

Thanks,
Robert

From: Stern, Kimberly M (Kim)
Sent: Tuesday, August 01, 2017 8:40 AM
To: Nakajima, Simon T; Bump, Micah N
Cc: Choi, Heesun S (Sunny); Doumani, Stephanie M; Cox, Robert H; Nicklaw, Nicole C
Subject: RE: I-129 H1B ECHO RFE & Denial drafts

Hi Simon,

Yeah, that makes sense to me.

We can push the review out another week for each, which would be:

[I-129 H1B ECHO RFE Standards draft](#) – due Monday August 21st

[I-129 H1B ECHO AC21 Denial Standards](#) - due Friday August 18th

In the alternative, if you'd like to provide tentative dates that would work better for your team, just send them my way ☺ (I'm sure Robert will be swamped when he returns from leave).

Thanks,
Kim

From: Nakajima, Simon T
Sent: Monday, July 31, 2017 4:57 PM
To: Stern, Kimberly M (Kim); Bump, Micah N
Cc: Choi, Heesun S (Sunny); Doumani, Stephanie M; Cox, Robert H; Nicklaw, Nicole C
Subject: RE: I-129 H1B ECHO RFE Standards draft

Hi Kim,

I took a quick look at the doc and I remember working on this earlier this year. I think Robert and I worked on this before Micah came back from the hill so Micah probably has not seen it yet. Can we have some additional time to review this? Robert is out this entire week and although Micah is in, I think it would be good if Robert has a chance to review edits and responses made to his comments.

Thanks,
Simon

From: Nakajima, Simon T
Sent: Monday, July 31, 2017 3:23 PM
To: Stern, Kimberly M (Kim); Bump, Micah N
Cc: Choi, Heesun S (Sunny); Doumani, Stephanie M; Cox, Robert H; Nicklaw, Nicole C
Subject: RE: I-129 H1B ECHO RFE Standards draft

Ok, thanks for clarifying!

From: Stern, Kimberly M (Kim)
Sent: Monday, July 31, 2017 3:22 PM
To: Nakajima, Simon T; Bump, Micah N
Cc: Choi, Heesun S (Sunny); Doumani, Stephanie M; Cox, Robert H; Nicklaw, Nicole C
Subject: RE: I-129 H1B ECHO RFE Standards draft

Hi Simon,

The set I sent a few minutes ago is the [I-129 H1B ECHO RFE Standards draft](#).

The (different but) related [I-129 H1B ECHO AC21 Denial Standards](#) were sent last Friday in the email chain subject, RE: NIV AC21 Documents.

Based on my reading of the comments, it seems both sets have been reviewed pretty extensively in the past and are close to being finalized.

Thanks,
Kim

From: Nakajima, Simon T
Sent: Monday, July 31, 2017 3:14 PM
To: Stern, Kimberly M (Kim); Bump, Micah N
Cc: Choi, Heesun S (Sunny); Doumani, Stephanie M; Cox, Robert H; Nicklaw, Nicole C
Subject: RE: I-129 H1B ECHO RFE Standards draft

Hi Kim,

Is this the same of a different set than the one in the attached?

Thanks,
Simon

From: Stern, Kimberly M (Kim)
Sent: Monday, July 31, 2017 3:11 PM
To: Bump, Micah N
Cc: Choi, Heesun S (Sunny); Nakajima, Simon T; Doumani, Stephanie M; Cox, Robert H; Nicklaw, Nicole C

Subject: I-129 H1B ECHO RFE Standards draft

Hi Micah,

BEST has completed reviewing OCC's comments and edits to the [I-129 H1B ECHO RFE Standards draft](#). (From my understanding - after OCC commented/returned the draft to BEST, Michael reviewed the document in Jan. 2017.)

The revised doc can be found on the BEST ECN: [I-129 H1B ECHO RFE Standards draft](#). Please take a look, and make any additional comments and edits in the ECN document.

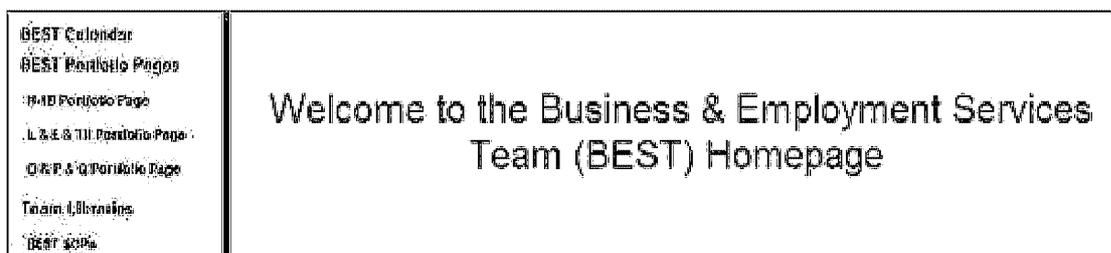
If you could complete review by Monday August 14th that would be great. If you need additional time, just let us know.

Thanks,
Kim

ECN Info:

Please note: The document is designed to support multiple editors at once. You just open the document to edit as usual, and others do the same. If there are multiple editors in the document at one time, it's a good practice for each person to save frequently, this will refresh the document and allow all editors to see the changes that have been made.

The doc can also be found by going to the [BEST Homepage](#) → H1B Portfolio Page → H1B – Templates Library



<input type="checkbox"/>	Type	Name	Clearance Status
Template Type: Denial (2)			
<input type="checkbox"/>		I-129 H1B ECHO ACCI Denial Standards	Draft
<input type="checkbox"/>		WAGE LEVELING DENIAL SPELL	Published
Template Type: RFE (1)			
Add documents			

Kim M. Stern

Adjudications Officer (Policy) | Business Employment Services Team (BEST)
DHS | USCIS | SCOPS
Office: 202-272-8500 (b)(6)
Cell: [REDACTED]
Kimberly.M.Stern@USCIS.DHS.GOV

A mind, once expanded by a new idea, never returns to its original dimensions – Oliver Wendell Holmes, Jr.

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From: [Cox, Robert H](#)
To: [Nakajima, Simon T](#); [Bump, Micah N](#)
Cc: [Choi, Heesun S \(Sunny\)](#)
Subject: RE: Media query/Law360 inquiry on H-1B requests for evidence
Date: Monday, August 28, 2017 2:23:36 PM

Ok. Micah, are you fine with the responses?

From: Nakajima, Simon T
Sent: Monday, August 28, 2017 11:32 AM
To: Cox, Robert H; Bump, Micah N
Cc: Choi, Heesun S (Sunny)
Subject: RE: Media query/Law360 inquiry on H-1B requests for evidence

Ok. The proposed responses seem legally sufficient.

From: Cox, Robert H
Sent: Monday, August 28, 2017 11:31 AM
To: Nakajima, Simon T; Bump, Micah N
Cc: Choi, Heesun S (Sunny)
Subject: RE: Media query/Law360 inquiry on H-1B requests for evidence

[Redacted]

(b)(5)

From: Nakajima, Simon T
Sent: Monday, August 28, 2017 11:26 AM
To: Cox, Robert H; Bump, Micah N
Cc: Choi, Heesun S (Sunny)
Subject: RE: Media query/Law360 inquiry on H-1B requests for evidence

[Redacted]

(b)(5)

From: Cox, Robert H
Sent: Monday, August 28, 2017 10:32 AM
To: Nakajima, Simon T; Bump, Micah N
Cc: Choi, Heesun S (Sunny)
Subject: RE: Media query/Law360 inquiry on H-1B requests for evidence

For both responses, I think we could simply state:

[Redacted]

(b)(5)

From: Cox, Robert H
Sent: Monday, August 28, 2017 10:15 AM
To: Nakajima, Simon T; Bump, Micah N

Cc: Choi, Heesun S (Sunny)

Subject: RE: Media query/Law360 inquiry on H-1B requests for evidence

[Redacted]

(b)(5)

From: Nicklaw, Nicole C

Sent: Monday, August 28, 2017 10:06 AM

To: Cox, Robert H; Nakajima, Simon T; Bump, Micah N; Buten, Elizabeth C; Viger, Steven W

Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim)

Subject: FW: Media query/Law360 inquiry on H-1B requests for evidence

Importance: High

Hi OCC and OP&S,

[Redacted]

(b)(5)

Thanks so much!

Nicole

- (Law 360) Has there been a specific policy change about adjudication standards for H-1B petitions with Level 1 wages, or what counts as a specialty occupation? (Perhaps due to the Buy American, Hire American executive order?)
USCIS utilizing currently existing policy to evaluate petitions and make a determination regarding whether the wage level is consistent with the position description in the petition.
- (SF Chron) There is a clear trend of lawyers across the country receiving RFE's for their clients who will be getting a Level 1 salary level. Several lawyers, as well as the former director of the USCIS, are telling me this is the first time they have seen these kinds of requests. How do you explain the sudden uptick in these RFEs regarding Level 1 salary levels? Did USCIS receive any directive to adjudicate petitions specific to Level 1 wage levels?

Historically during cap season, USCIS sees an increase in RFE rates based on the increased number of petitions processed. As done in the past, officers evaluate each petition on a case-by-case basis to determine if a petition qualifies for the benefit being requested. USCIS officers utilize currently existing policy to evaluate a petition and request further evidence when the preponderance standard has not been met. An RFE may be issued when the petition does not provide sufficient evidence to show the selected wage level is appropriate for the position.

From: USCIS.Media

Sent: Friday, August 25, 2017 3:01 PM

To: Moran, Karla V; Weller, Angela V

Cc: Arroyo, Susan K

Subject: Media query/Law360 inquiry on H-1B requests for evidence

Karla and Angela,

We provided the below response to Law 360 on a query regarding H-1B RFEs and level-1 petitions. (The response was approved by OP&S and DHS OPA just this afternoon for a San Francisco Chronicle query).

However, both SF Chronicle and Law 360 have follow-up questions, can you please assist?

- (Law 360) Has there been a specific policy change about adjudication standards for H-1B petitions with Level 1 wages, or what counts as a specialty occupation? (Perhaps due to the Buy American, Hire American executive order?)
- (SF Chron) There is a clear trend of lawyers across the country receiving RFE's for their clients who will be getting a Level 1 salary level. Several lawyers, as well as the former director of the USCIS, are telling me this is the first time they have seen these kinds of requests. How do you explain the sudden uptick in these RFEs regarding Level 1 salary levels? Did USCIS receive any directive to adjudicate petitions specific to Level 1 wage levels?

Thanks,

CeCe

From: Allissa Wickham [mailto:allissa.wickham@law360.com]

Sent: Friday, August 25, 2017 2:35 PM

To: USCIS.Media

Subject: Re: Law360 inquiry on H-1B requests for evidence

Thanks, CeCe! Just to clarify though, has there been a specific policy change about adjudication standards for H-1B petitions with Level 1 wages, or what counts as a specialty occupation? (Perhaps due to the Buy American, Hire American executive order?)

On Fri, Aug 25, 2017 at 2:29 PM, USCIS.Media <uscis.media@uscis.dhs.gov> wrote:

Allissa,

Historically during cap season USCIS sees an increase in RFE rates based on the increased number of petitions processed. As done in the past, officers evaluate each petition on a case-by-case basis to determine if a petition qualifies for the benefit being requested. USCIS officers request further evidence when the preponderance standard has not been met. USCIS is committed to protecting the interests of U.S. workers (as directed under the Buy American and Hire American Executive Order) and has received numerous valuable fraud tips since rolling out our new tip line. For more information, visit the USCIS page on the President's [Buy American and Hire American Executive Order](#).

Thanks,

CeCe

Carolyn Gwathmey

USCIS PAO

From: Allissa Wickham [mailto:allissa.wickham@law360.com]

Sent: Friday, August 25, 2017 2:03 PM

To: USCIS.Media

Subject: Law360 inquiry on H-1B requests for evidence

Hi all,

I'm writing a story today about how immigration attorneys are receiving more requests for evidence (RFEs) for H-1B visa petitions that list a Level 1 wage, as well as more RFEs challenging whether the job at issue is actually a specialty occupation.

Would you be able to confirm that USCIS has increased the amount of RFEs it's issuing for H-1B petitions, and that the agency is specifically taking a closer look at Level 1 wage and specialty occupation issues?

If so, has there been any policy change regarding H-1B wage standards, specialty occupation standards or RFE issuances?

My deadline on this story is 5pm ET today. Please feel free to email me a statement or give me a call at [646-783-7216](tel:646-783-7216).

Best,
Allissa

From: Bump, Micah N
To: [Cox, Robert H](#); [Nakajima, Simon T](#); [Zimonjic, Milica](#)
Cc: [Dalal-Dheini, Sharvari P \(Shev\)](#); [Zill, Katherine F](#)
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am
Date: Tuesday, April 11, 2017 4:54:00 PM

Should I reach out to Stephanie?

From: Cox, Robert H
Sent: Tuesday, April 11, 2017 4:54 PM
To: Bump, Micah N; Nakajima, Simon T; Zimonjic, Milica
Cc: Dalal-Dheini, Sharvari P (Shev); Zill, Katherine F
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

I have not. I thought someone on the earlier call said OLA may be waiting to confirm the meeting time with David, but they would send out the invite at some point.

From: Bump, Micah N
Sent: Tuesday, April 11, 2017 9:35:48 PM
To: Cox, Robert H; Nakajima, Simon T; Zimonjic, Milica
Cc: Dalal-Dheini, Sharvari P (Shev); Zill, Katherine F
Subject: FW: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

Did anyone get call-in details for the pre-call for tomorrow? If not, I can reach out to Stephanie.

From: Bump, Micah N
Sent: Tuesday, April 11, 2017 1:45 PM
To: Hinds, Ian G
Cc: Nakajima, Simon T; Cox, Robert H
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

There will be a 9:30 pre-brief. Haven't gotten the call-in details yet.

From: Hinds, Ian G
Sent: Tuesday, April 11, 2017 1:44 PM
To: Bump, Micah N
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

If they schedule the pre-brief during the 1 pm call, please let me know. Thanks.

From: Bump, Micah N
Sent: Tuesday, April 11, 2017 10:38 AM
To: Cox, Robert H; Hinds, Ian G; Nakajima, Simon T
Cc: Zengotibengoa, Colleen R; Groom, Molly M; Salem, Claudia S; Choi, Heesun S (Sunny)
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

I'll be on both calls. Thanks.

From: Cox, Robert H

From: Bump, Micah N
To: [Zimonjic, Milica](#); [Cox, Robert H](#); [Nakajima, Simon T](#)
Cc: [Dalal-Dheini, Sharvari P \(Shev\)](#); [Zill, Katherine F](#); [Hinds, Ian G](#)
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am
Date: Tuesday, April 11, 2017 5:19:00 PM

Just forwarded.

From: Zimonjic, Milica
Sent: Tuesday, April 11, 2017 5:19 PM
To: Cox, Robert H; Bump, Micah N; Nakajima, Simon T
Cc: Dalal-Dheini, Sharvari P (Shev); Zill, Katherine F; Hinds, Ian G
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

Let me know if you need me. I'm not on them.

Millie Zimonjic
Associate Counsel
Regulatory and Verification Law Division
Office of Chief Counsel
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue, NW, 4th Floor
Washington, DC 20529-2120
milica.zimonjic@uscis.dhs.gov (E-mail)
202-272-2981 (Desk)

From: Cox, Robert H
Sent: Tuesday, April 11, 2017 5:12 PM
To: Bump, Micah N; Nakajima, Simon T; Zimonjic, Milica
Cc: Dalal-Dheini, Sharvari P (Shev); Zill, Katherine F; Hinds, Ian G
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

Thanks for following up with her.

From: Bump, Micah N
Sent: Tuesday, April 11, 2017 5:10 PM
To: Cox, Robert H; Nakajima, Simon T; Zimonjic, Milica
Cc: Dalal-Dheini, Sharvari P (Shev); Zill, Katherine F; Hinds, Ian G
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

Stephanie just shared both invites.

From: Cox, Robert H
Sent: Tuesday, April 11, 2017 4:55 PM
To: Bump, Micah N; Nakajima, Simon T; Zimonjic, Milica
Cc: Dalal-Dheini, Sharvari P (Shev); Zill, Katherine F
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

Sure. Thanks.

From: Bump, Micah N

From: Bump, Micah N
To: [Cox, Robert H](#); [Nakajima, Simon T](#); [Zimonjic, Milica](#)
Cc: [Dalal-Dheini, Sharvari P \(Shev\)](#); [Zill, Katherine F](#); [Hinds, Ian G](#)
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am
Date: Tuesday, April 11, 2017 5:10:00 PM

Stephanie just shared both invites.

From: Cox, Robert H
Sent: Tuesday, April 11, 2017 4:55 PM
To: Bump, Micah N; Nakajima, Simon T; Zimonjic, Milica
Cc: Dalal-Dheini, Sharvari P (Shev); Zill, Katherine F
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

Sure. Thanks.

From: Bump, Micah N
Sent: Tuesday, April 11, 2017 9:54:21 PM
To: Cox, Robert H; Nakajima, Simon T; Zimonjic, Milica
Cc: Dalal-Dheini, Sharvari P (Shev); Zill, Katherine F
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

Should I reach out to Stephanie?

From: Cox, Robert H
Sent: Tuesday, April 11, 2017 4:54 PM
To: Bump, Micah N; Nakajima, Simon T; Zimonjic, Milica
Cc: Dalal-Dheini, Sharvari P (Shev); Zill, Katherine F
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

I have not. I thought someone on the earlier call said OLA may be waiting to confirm the meeting time with David, but they would send out the invite at some point.

From: Bump, Micah N
Sent: Tuesday, April 11, 2017 9:35:48 PM
To: Cox, Robert H; Nakajima, Simon T; Zimonjic, Milica
Cc: Dalal-Dheini, Sharvari P (Shev); Zill, Katherine F
Subject: FW: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse - Call with Lofgren staff on Weds 4/12 at 10:00am

Did anyone get call-in details for the pre-call for tomorrow? If not, I can reach out to Stephanie.

From: Bump, Micah N
Sent: Tuesday, April 11, 2017 1:45 PM
To: Hinds, Ian G
Cc: Nakajima, Simon T; Cox, Robert H
Subject: RE: Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and

From: Bump, Micah N
To: [Symons, Craig M](#); [Nakajima, Simon T](#)
Cc: [Cox, Robert H](#); [Dalal-Dheini, Sharvari P \(Shev\)](#)
Subject: RE: Rescission Memo Guidance
Date: Friday, April 28, 2017 10:40:00 AM

Thank you, Craig. We'll take a look and get back to you if we have any questions.

-Micah

From: Symons, Craig M
Sent: Friday, April 28, 2017 10:36 AM
To: Nakajima, Simon T
Cc: Cox, Robert H; Bump, Micah N; Dalal-Dheini, Sharvari P (Shev)
Subject: RE: Rescission Memo Guidance

This is excellent. Very well done. I only had two slight edits (please see attached).

Thanks!

Craig

<< File: Guidance on PM-602-0142 (Cleaned).cmsredline.docx >>

Craig M. Symons

Chief Counsel | Office of the Chief Counsel

U.S. Citizenship and Immigration Services

U.S. Department of Homeland Security

Tel. (202) 272-1440 | Cell (b)(6)

<< OLE Object: Picture (Device Independent Bitmap) >>

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From: Nakajima, Simon T
Sent: Thursday, April 27, 2017 3:23 PM
To: Symons, Craig M
Cc: Cox, Robert H; Bump, Micah N; Dalal-Dheini, Sharvari P (Shev)
Subject: FW: Rescission Memo Guidance

Hi Craig,



(b)(5)

Thanks,

Simon

From: Violett, Michael D
Sent: Thursday, April 27, 2017 11:16 AM
To: Nakajima, Simon T; Nicklaw, Nicole C; Cox, Robert H; Aucoin, Lauren J; Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Fortes, Michael J; Bailey, Morgan; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; McCloskey, Ahran K
Cc: Zimonjic, Milica; Bump, Micah N
Subject: RE: Rescission Memo Guidance

Thanks Simon and everyone for reviewing. We went through and responded to all the comments and accepted the edits. Please see the drafted final version of the guidance. I have also attached the redlined version for comparison. Can each component review the final draft and please let us know if you have any additional edits/comments by noon tomorrow 4/28? We would like to send the final version to the service centers by COB tomorrow.

Thanks,

Michael

<< File: Guidance on PM-602-0142 (Cleaned).docx >> << File: Guidance on PM-602-0142 (Redlined).docx >>

From: Nakajima, Simon T
Sent: Wednesday, April 26, 2017 3:53 PM
To: Violett, Michael D; Nicklaw, Nicole C; Cox, Robert H; Aucoin, Lauren J; Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Fortes, Michael J; Bailey, Morgan; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; McCloskey, Ahran K
Cc: Zimonjic, Milica; Bump, Micah N
Subject: RE: Rescission Memo Guidance

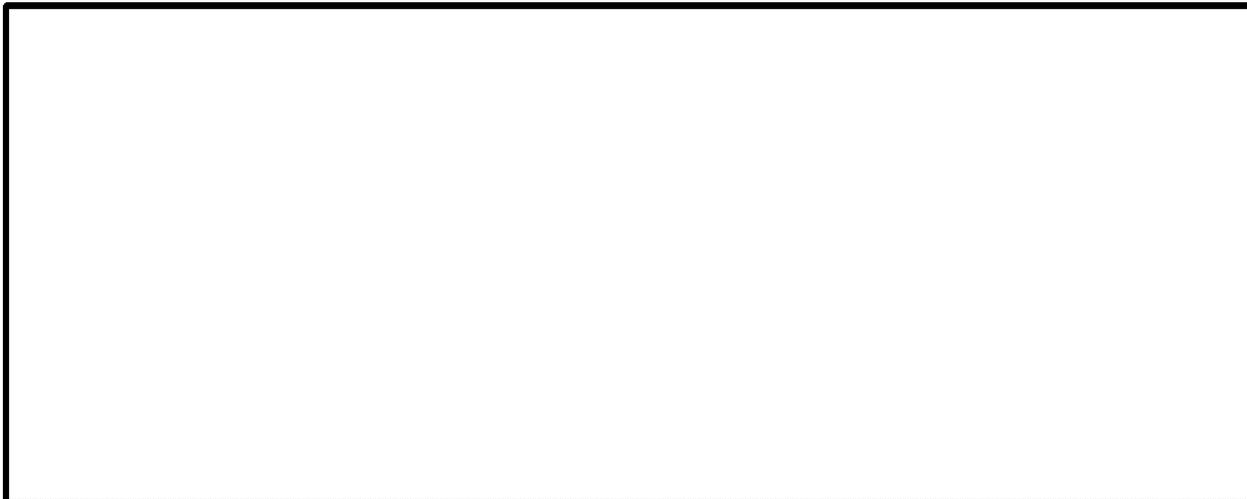
Thanks Michael. I'm think that answer my question.

From: Violett, Michael D
Sent: Wednesday, April 26, 2017 3:36 PM
To: Nakajima, Simon T; Nicklaw, Nicole C; Cox, Robert H; Aucoin, Lauren J; Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Fortes, Michael J; Bailey, Morgan; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; McCloskey, Ahran K
Cc: Zimonjic, Milica; Bump, Micah N

Subject: RE: Rescission Memo Guidance

(b)(5)

Hi Simon,



Hope that clears everything up.

Michael

From: Nakajima, Simon T

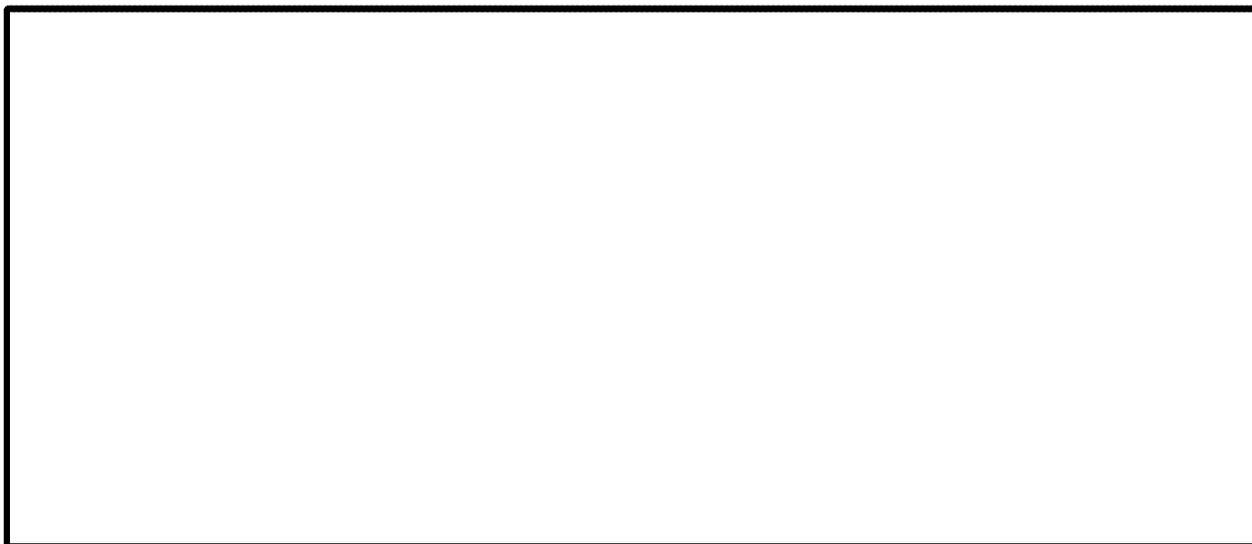
Sent: Wednesday, April 26, 2017 2:15 PM

To: Violet, Michael D; Nicklaw, Nicole C; Cox, Robert H; Aucoin, Lauren J; Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Fortes, Michael J; Bailey, Morgan; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; McCloskey, Ahran K

Cc: Zimonjic, Milica; Bump, Micah N

Subject: RE: Rescission Memo Guidance

(b)(5)



From: Violet, Michael D

Sent: Wednesday, April 26, 2017 2:04 PM

To: Nakajima, Simon T; Nicklaw, Nicole C; Cox, Robert H; Aucoin, Lauren J; Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Fortes, Michael J; Bailey, Morgan; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; McCloskey, Ahran K

Cc: Zimonjic, Milica; Bump, Micah N

Subject: RE: Rescission Memo Guidance

Hi Simon,



(b)(5)

Thanks,

Michael Violet

Adjudications Officer

Business Employment Services Team

Service Center Operations

U.S. Citizenship and Immigration Services

202.272.2968 Desk

202.306.8021 Mobile

From: Nakajima, Simon T

Sent: Tuesday, April 25, 2017 9:28 AM

To: Nicklaw, Nicole C; Cox, Robert H; Aucoin, Lauren J; Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Violet, Michael D; Fortes, Michael J; Bailey, Morgan; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; McCloskey, Ahran K

Cc: Zimonjic, Milica; Bump, Micah N

Subject: RE: Rescission Memo Guidance



(b)(5)

From: Nicklaw, Nicole C

Sent: Tuesday, April 25, 2017 9:12 AM

To: Cox, Robert H; Aucoin, Lauren J; Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Nakajima, Simon T; Violet, Michael D; Fortes, Michael J; Bailey, Morgan; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; McCloskey, Ahran K

Cc: Zimonjic, Milica; Bump, Micah N

Subject: RE: Rescission Memo Guidance

Good morning!

Has everyone had a chance to review the comments or is additional time needed?

Thank you,

Nicole

From: Nicklaw, Nicole C
Sent: Friday, April 21, 2017 2:26 PM
To: Cox, Robert H; Aucoin, Lauren J; Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Nakajima, Simon T; Violett, Michael D; Fortes, Michael J; Bailey, Morgan; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; McCloskey, Ahran K
Cc: Zimonjic, Milica; Bump, Micah N
Subject: RE: Rescission Memo Guidance

Hi everyone,



(b)(5)

Thank you,

Nicole

From: Cox, Robert H
Sent: Tuesday, April 18, 2017 4:53 PM
To: Nicklaw, Nicole C; Aucoin, Lauren J; Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Nakajima, Simon T; Violett, Michael D; Fortes, Michael J; Bailey, Morgan; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; McCloskey, Ahran K
Cc: Zimonjic, Milica; Bump, Micah N
Subject: RE: Rescission Memo Guidance

Hi Nicole,



(b)(5)

Thanks,

Robert << File: Guidance on PM-602-0142.Clean 4 18 17 OCC ALD.docx >>

From: Nicklaw, Nicole C
Sent: Tuesday, April 18, 2017 2:33 PM
To: Cox, Robert H; Aucoin, Lauren J; Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Nakajima, Simon T; Violett, Michael D; Fortes, Michael J; Bailey, Morgan; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; McCloskey, Ahran K
Cc: Zimonjic, Milica; Bump, Micah N
Subject: RE: Rescission Memo Guidance

Hi everyone,

[Redacted]

(b)(5)

Thank you so much for your time and review on such short notice.

-Nicole

From: Nicklaw, Nicole C
Sent: Thursday, April 13, 2017 2:16 PM
To: Cox, Robert H; Aucoin, Lauren J; Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Nakajima, Simon T; Violett, Michael D; Fortes, Michael J; Bailey, Morgan; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; McCloskey, Ahran K
Cc: Zimonjic, Milica; Bump, Micah N
Subject: Rescission Memo Guidance

Good afternoon everyone,

In response to service center questions and concerns

[Redacted]

[Redacted]

(b)(5)

Thank you,

Nicole Nicklaw

Adjudications Officer

DHS|USCIS|SCOPS|Business Employment Services Team (BEST)

Desk: (202) 272-8174

Mobile: (202) 557-0347

From: Bump, Micah N
To: [Violett, Michael D](#); [Nakajima, Simon T](#); [Nicklaw, Nicole C](#); [Cox, Robert H](#); [Aucoin, Lauren J](#); [Buten, Elizabeth C](#); [Choi, Hae-Jin](#); [Parascandola, Ciro A](#); [Cummings, Kevin J](#); [Viger, Steven W](#); [Fortes, Michael J](#); [Bailey, Morgan](#); [Dalal-Dheini, Sharvari P \(Shev\)](#); [Doumani, Stephanie M](#); [McCloskey, Ahran K](#); [Symons, Craig M](#)
Cc: [Zimonjic, Milica](#)
Subject: RE: Rescission Memo Guidance
Date: Friday, April 28, 2017 10:57:00 AM
Attachments: [Guidance on PM-602-0142 \(Cleaned\) OCC.docx](#)

Hi Michael,

OCC clears with just two slight edits which are redlined in the attachment.

Thank you,

Micah

Micah N. Bump

Associate Counsel

Department of Homeland Security

Citizenship and Immigration Services

20 Massachusetts Avenue, NW

Washington, D.C. 20529

Tel: (202)272-1405

Mobile: (202) 704-5095

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From: Violett, Michael D
Sent: Thursday, April 27, 2017 11:16 AM
To: [Nakajima, Simon T](#); [Nicklaw, Nicole C](#); [Cox, Robert H](#); [Aucoin, Lauren J](#); [Buten, Elizabeth C](#); [Choi, Hae-Jin](#); [Parascandola, Ciro A](#); [Cummings, Kevin J](#); [Viger, Steven W](#); [Fortes, Michael J](#); [Bailey, Morgan](#); [Dalal-Dheini, Sharvari P \(Shev\)](#); [Doumani, Stephanie M](#); [McCloskey, Ahran K](#)

From: [Cox, Robert H](#)
To: [Bump, Micah N](#)
Subject: RE: Rescission Memo RFE Templates
Date: Friday, August 25, 2017 5:44:31 PM

Not a problem. Have a great weekend.

From: Bump, Micah N
Sent: Friday, August 25, 2017 10:40:18 PM
To: Cox, Robert H
Subject: RE: Rescission Memo RFE Templates

Thanks for sending back.

From: Cox, Robert H
Sent: Friday, August 25, 2017 5:31 PM
To: Stern, Kimberly M (Kim); Nakajima, Simon T; Bump, Micah N
Cc: Doumani, Stephanie M; Nicklaw, Nicole C; Choi, Heesun S (Sunny); ALD
Subject: RE: Rescission Memo RFE Templates

Hi Kim,

We have completed our initial review of the new RFE templates. Our comments and edits have been saved to the ECN and attached hereto for ease of reference.

Thanks,
Robert

From: Stern, Kimberly M (Kim)
Sent: Thursday, August 17, 2017 1:56 PM
To: Cox, Robert H; Nakajima, Simon T; Bump, Micah N
Cc: Doumani, Stephanie M; Nicklaw, Nicole C; Choi, Heesun S (Sunny)
Subject: RE: Rescission Memo RFE Templates

Hi Robert,

(b)(5)





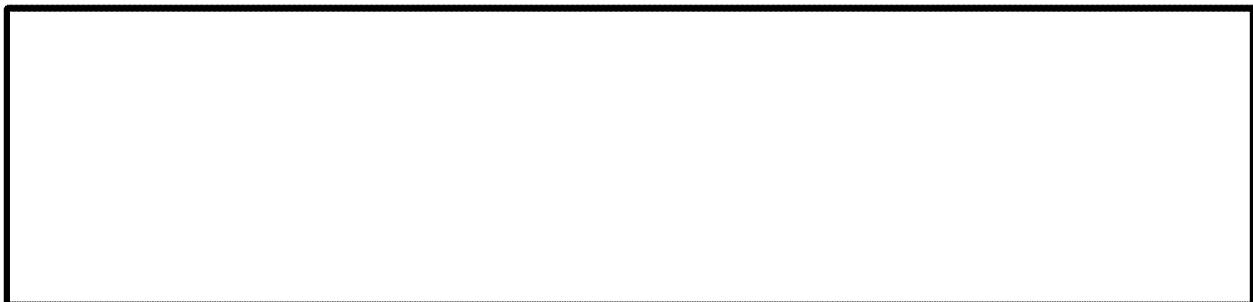
Please let me know if this helps clarify.

Thanks,
Kim
☺

From: Cox, Robert H
Sent: Thursday, August 17, 2017 11:03 AM
To: Stern, Kimberly M (Kim); Nakajima, Simon T; Bump, Micah N
Cc: Doumani, Stephanie M; Nicklaw, Nicole C; Choi, Heesun S (Sunny)
Subject: RE: Rescission Memo RFE Templates

Hi Kim,

(b)(5)

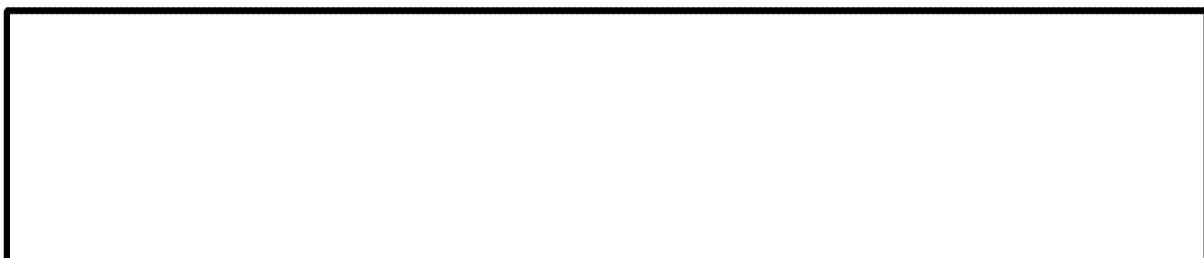


Thanks,
Robert

From: Stern, Kimberly M (Kim)
Sent: Tuesday, August 15, 2017 2:38 PM
To: Nakajima, Simon T; Cox, Robert H; Bump, Micah N
Cc: Doumani, Stephanie M; Nicklaw, Nicole C; Choi, Heesun S (Sunny)
Subject: Rescission Memo RFE Templates

Good afternoon OCC,

(b)(5)





(b)(5)

Thank you,
Kim

From: Boudreau, Lynn A
Sent: Monday, August 07, 2017 2:52 PM
To: Doumani, Stephanie M; Nicklaw, Nicole C; Stern, Kimberly M (Kim)
Cc: Martin, Evelyn M; Fierro, Joseph; Whittier, Michelle J
Subject: FW: Follow up - Rescission Memo Discussion

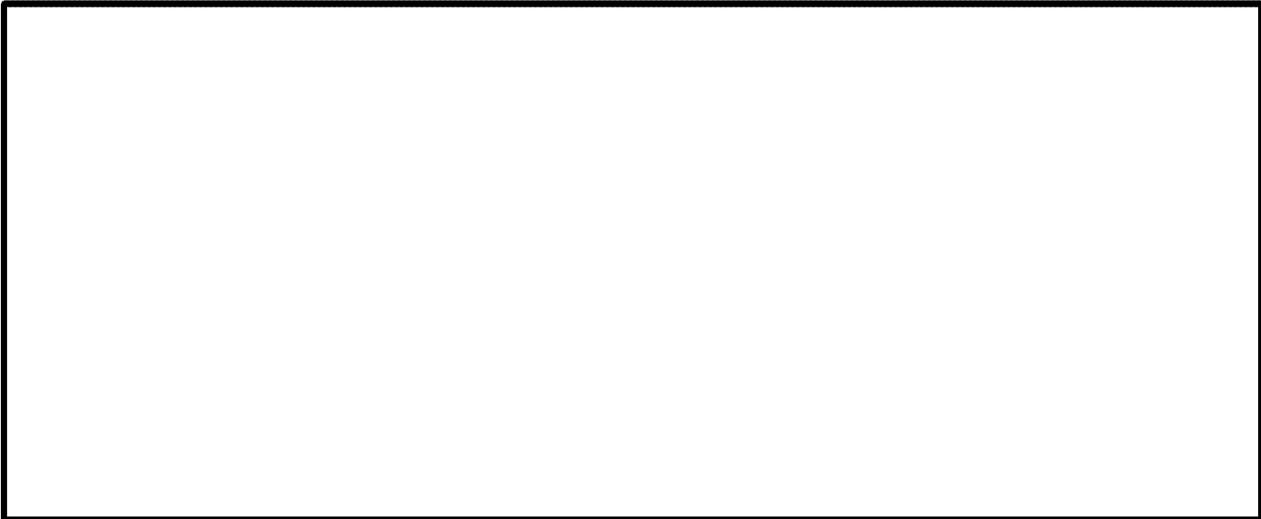
Hi Stephanie, Nicole and Kim,

Please the attached documents with the compiled comments on CSC’s updated RFEs from both VSC and NSC.

Thanks,

Lynn

From: Grabast, Dennis R
Sent: Tuesday, August 01, 2017 3:55 PM
To: Simon, Ronna J; Martin, Evelyn M; Hersey, Lucas I; Collins, Richard A; Roach, Joyce E; Peryea, Jaime L; Whittier, Michelle J; Plastrik, Steven T; Parent, Amy B; Roberts, Claudia R
Subject: Follow up - Recission Memo Discussion



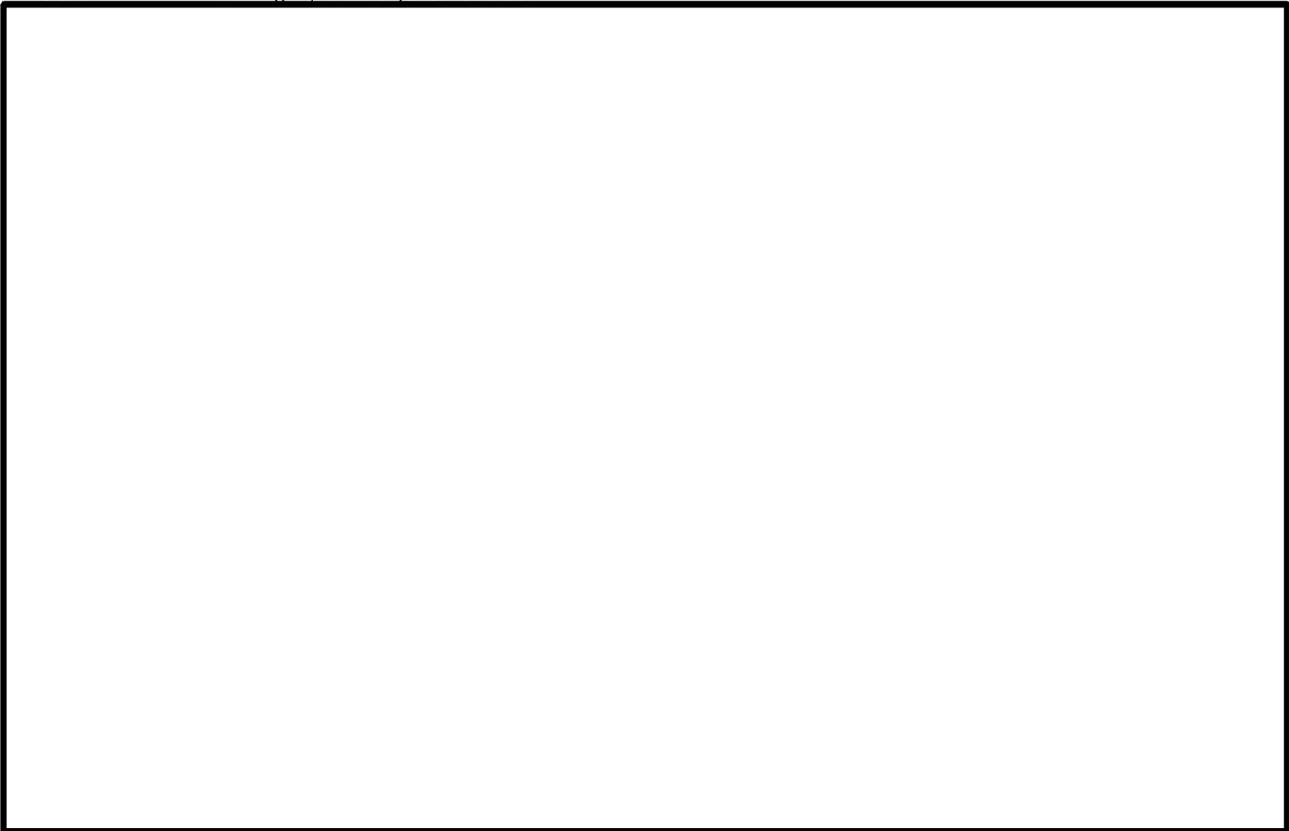
(b)(5)

Thanks
Dennis

Dennis Grabast | Supervisory Immigration Services Officer | Family Division – I-129H1B
USCIS/DHS/Nebraska Service Center | (402) 323-2548 | RM2051A | EX 365

From: [Plastrik, Steven T](#)
To: [Cox, Robert H](#); [Nakajima, Simon T](#)
Cc: [Schmalz, Peter N](#); [Dalal-Dheini, Sharvari P \(Shev\)](#); [Choi, Heesun S \(Sunny\)](#); [Bump, Micah N](#)
Subject: [REDACTED]
Date: Tuesday, September 05, 2017 4:40:31 PM

(b)(5)



If you have any questions or concerns, please let me know.

Thanks,

(b)(5)

Steve

From: Cox, Robert H
Sent: Tuesday, September 05, 2017 12:16 PM
To: [Plastrik, Steven T](#); [Nakajima, Simon T](#)
Cc: [Schmalz, Peter N](#); [Dalal-Dheini, Sharvari P \(Shev\)](#); [Choi, Heesun S \(Sunny\)](#); [Bump, Micah N](#)
Subject: [REDACTED]

Hi Steve,

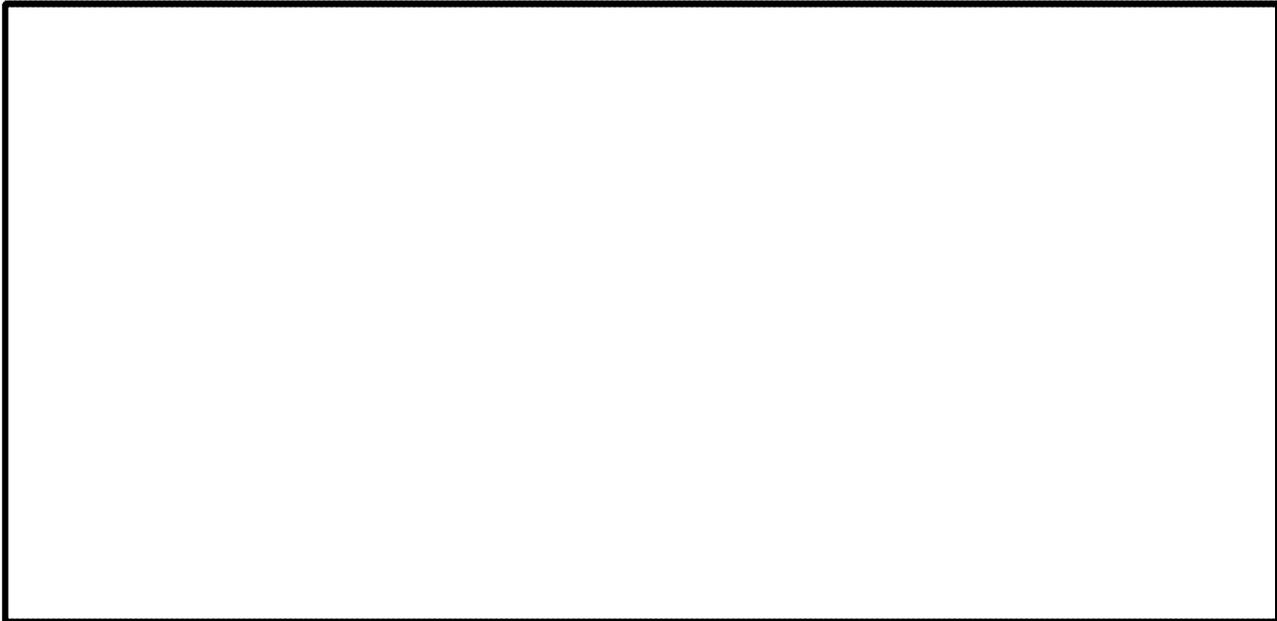
Thanks for the update and heads-up.

Robert

From: [Plastrik, Steven T](#)
Sent: Tuesday, September 05, 2017 8:27 AM
To: [Cox, Robert H](#); [Nakajima, Simon T](#)
Cc: [Schmalz, Peter N](#); [Dalal-Dheini, Sharvari P \(Shev\)](#); [Choi, Heesun S \(Sunny\)](#); [Bump, Micah N](#)

(b)(5)





Thanks,

Steve

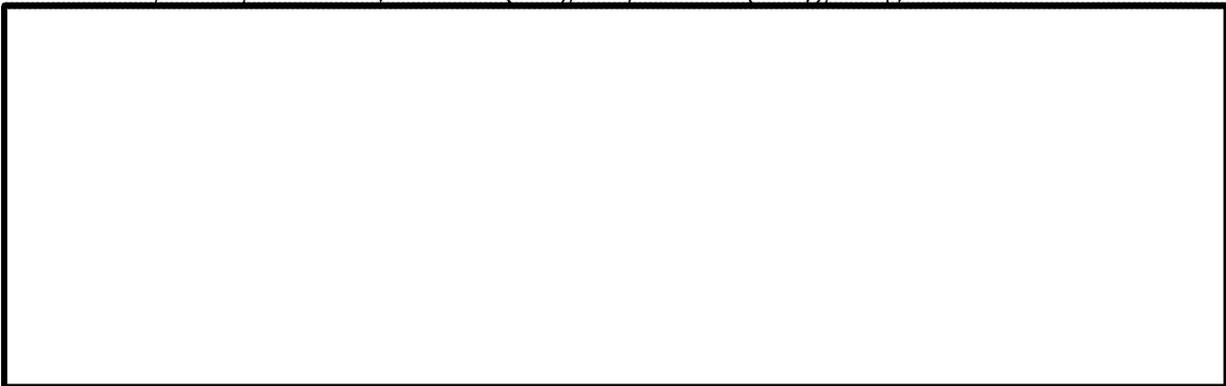
From: Cox, Robert H
Sent: Wednesday, June 07, 2017 9:27 AM
To: Plastrik, Steven T; Nakajima, Simon T
Cc: Schmalz, Peter N; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Bump, Micah N



(b)(5)

Sounds good. Thanks.

From: Plastrik, Steven T
Sent: Wednesday, June 07, 2017 8:41 AM
To: Cox, Robert H; Nakajima, Simon T
Cc: Schmalz, Peter N; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Bump, Micah N

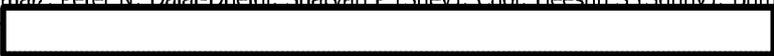


Thanks,

(b)(5)

Steve

From: Cox, Robert H
Sent: Tuesday, June 06, 2017 5:34 PM
To: Plastrik, Steven T; Nakajima, Simon T
Cc: Schmalz, Peter N; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Bump, Micah N
Subject:



(b)(5)

Okay, that makes more sense. Thanks.

(b)(5)

My immediate thoughts (not sure if others agree or disagree):



Thanks,
Robert

From: Plastrik, Steven T
Sent: Tuesday, June 06, 2017 4:38 PM
To: Cox, Robert H; Nakajima, Simon T
Cc: Schmalz, Peter N; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Bump, Micah N



From: Cox, Robert H
Sent: Tuesday, June 06, 2017 4:27 PM
To: Plastrik, Steven T; Nakajima, Simon T
Cc: Schmalz, Peter N; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Bump, Micah N

(b)(5)

[Redacted]

From: Cox, Robert H
Sent: Tuesday, June 06, 2017 4:21 PM
To: Plastrik, Steven T; Nakajima, Simon T
Cc: Schmalz, Peter N; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Bump, Micah N
Subject: RE: [Redacted]

(b)(5)

Thanks, Steve. Adding others as an FYI. We'll take a look and let you know if we have any immediate thoughts.

From: Plastrik, Steven T
Sent: Tuesday, June 06, 2017 4:16 PM
To: Nakajima, Simon T; Cox, Robert H
Cc: Schmalz, Peter N
Subject: [Redacted]

(b)(5)

[Redacted]

(b)(5)

If you have any immediate thoughts, let me know. I'll keep you updated on our discussions here.

Thanks,

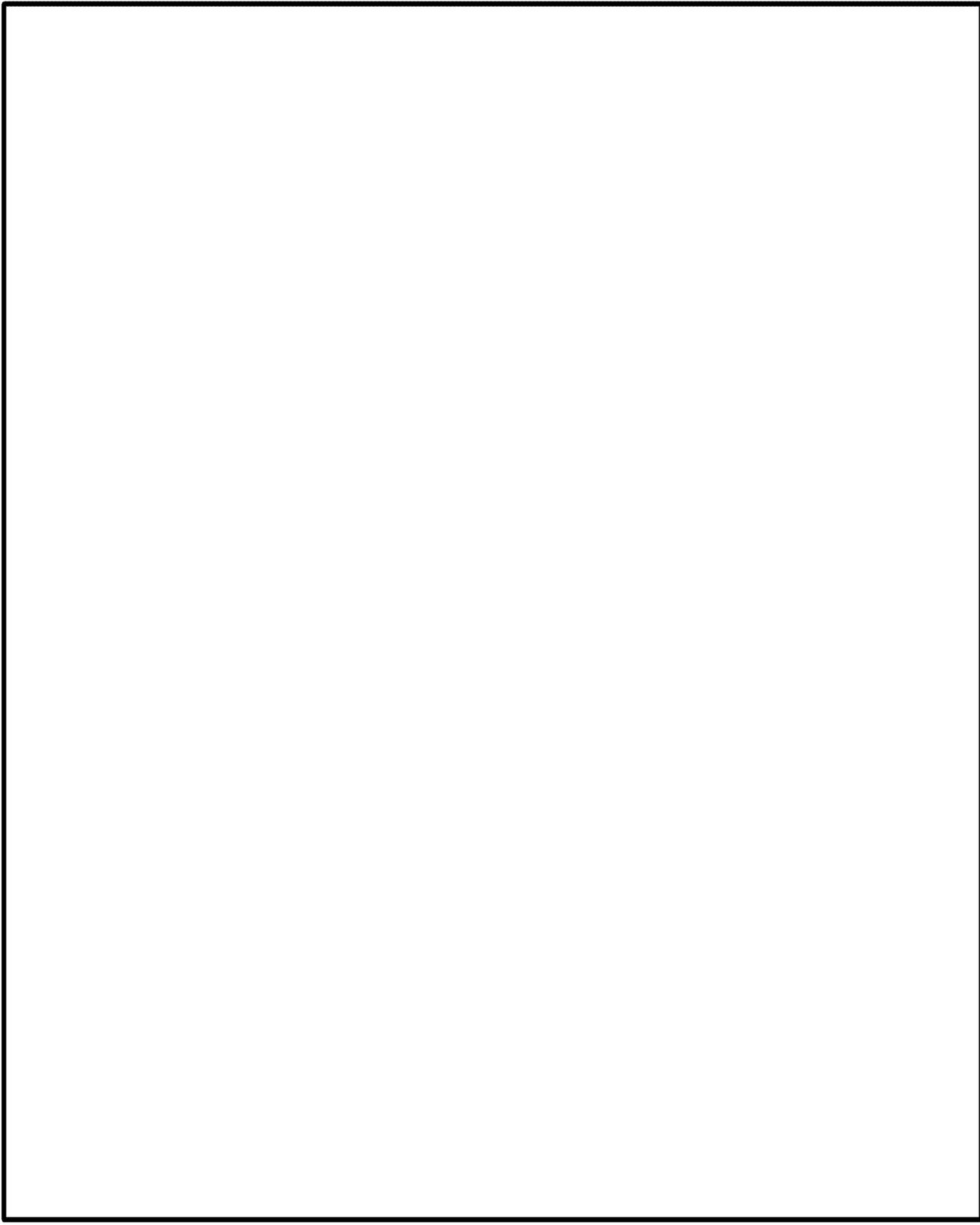
Steve Plastrik
Associate Counsel
Vermont Service Center
USCIS Office of the Chief Counsel
Office: (802) 288-7809

Cell: (b)(6)

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From: [Plastrik, Steven T](#)
To: [Cox, Robert H](#); [Mahmoudi, Sheila C](#); [Burford, Mary H](#); [Luna, Maria P \(Pilar\)](#); [Leonard, Kane C](#); [Wilder, Charlotte P](#); [Ammerman, Michael J](#); [Schmalz, Peter N](#); [Hanehan, Brendan J](#); [Young, Blanton R \(Roy\)](#)
Cc: [Choi, Heesun S \(Sunny\)](#); [Nakajima, Simon T](#); [Bump, Micah N](#)
Subject: RE: wage level analysis H1B
Date: Friday, September 08, 2017 4:25:16 PM
Attachments: [brief pages 1-7.pdf](#)
[brief pages 8-14.pdf](#)

(b)(5)





Any thoughts you have on that last point would be appreciated.

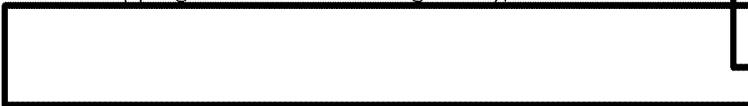
Thanks,

Steve

From: Cox, Robert H
Sent: Friday, September 08, 2017 3:55 PM
To: Mahmoudi, Sheila C; Plastrik, Steven T; Burford, Mary H; Luna, Maria P (Pilar); Leonard, Kane C; Wilder, Charlotte P; Ammerman, Michael J
Cc: Choi, Heesun S (Sunny); Nakajima, Simon T; Bump, Micah N
Subject: RE: wage level analysis H1B

(b)(5)

Hi - dropping Carmen and adding Sunny, Simon and Micah.



From: Mahmoudi, Sheila C
Sent: Friday, September 08, 2017 3:49 PM
To: Plastrik, Steven T; Burford, Mary H; Luna, Maria P (Pilar); Leonard, Kane C; Wilder, Charlotte P; Ammerman, Michael J
Cc: Cox, Robert H; Chase, Carmen M
Subject: wage level analysis H1B

(b)(5)



From: Bump, Micah N
To: [Cox, Robert H](#); [Nakajima, Simon T](#)
Cc: [Dalal-Dheini, Sharvari P \(Shev\)](#)
Subject: RE: Wage Leveling Draft RFE
Date: Wednesday, April 19, 2017 4:19:00 PM

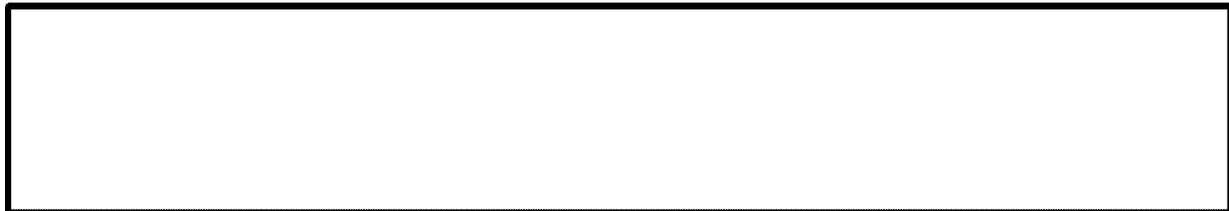
Thanks for clarifying.

From: Cox, Robert H
Sent: Wednesday, April 19, 2017 4:17 PM
To: Bump, Micah N; Nakajima, Simon T
Cc: Dalal-Dheini, Sharvari P (Shev)
Subject: RE: Wage Leveling Draft RFE



(b)(5)

From: Bump, Micah N
Sent: Wednesday, April 19, 2017 3:57 PM
To: Cox, Robert H; Nakajima, Simon T
Cc: Dalal-Dheini, Sharvari P (Shev)
Subject: RE: Wage Leveling Draft RFE



(b)(5)

From: Cox, Robert H
Sent: Wednesday, April 19, 2017 3:03 PM
To: Nakajima, Simon T; Bump, Micah N
Cc: Dalal-Dheini, Sharvari P (Shev)
Subject: RE: Wage Leveling Draft RFE



(b)(5)

From: Plastrik, Steven T
Sent: Tuesday, April 18, 2017 8:33 AM

To: Cox, Robert H; Nakajima, Simon T; Bump, Micah N
Cc: Hanehan, Brendan J; Young, Blanton R (Roy); Schmalz, Peter N; Love, Lucinda A; Austin, Stephanie H
Subject: FW: Wage Leveling Draft RFE (b)(5)



Thanks,

Steve

From: Whittier, Michelle J
Sent: Monday, April 17, 2017 3:40 PM
To: Collins, Richard A; Duty-Attorney, VSC
Subject: FW: Wage Leveling Draft RFE

Ricky...thank you for drafting the RFE. I sent this to Lynn and in turn she sent this to SCOPS.

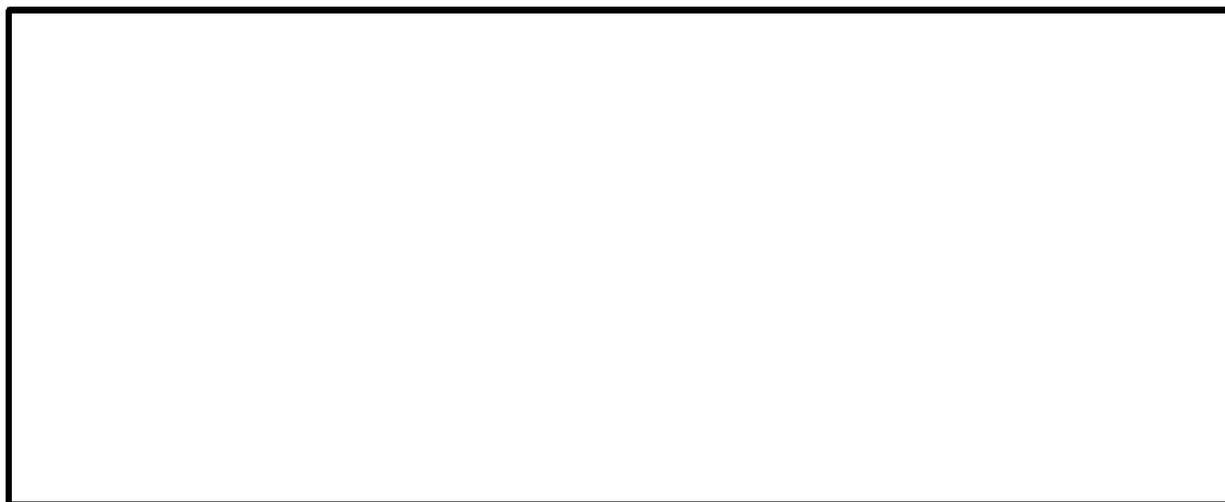
See Michael's response below...FYI.

Michelle

From: Violet, Michael D
Sent: Monday, April 17, 2017 10:44 AM
To: Boudreau, Lynn A; Doumani, Stephanie M
Cc: Martin, Evelyn M; Fierro, Joseph; Hutchings, Pamela G; Nicklaw, Nicole C; Whittier, Michelle J
Subject: RE: Wage Leveling Draft RFE

Good Morning Centers,

(b)(5)



Please let us know if you have any questions or concerns.

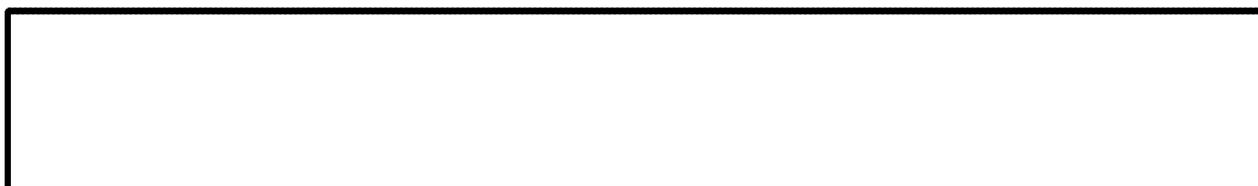
Thanks,

Michael Violet
Adjudications Officer
Business Employment Services Team
Service Center Operations
U.S. Citizenship and Immigration Services
202.272.2968 Desk
202.306.8021 Mobile

From: Boudreau, Lynn A
Sent: Monday, April 17, 2017 8:28 AM
To: Doumani, Stephanie M
Cc: Martin, Evelyn M; Fierro, Joseph; Hutchings, Pamela G; Violet, Michael D; Nicklaw, Nicole C; Whittier, Michelle J
Subject: FW: Wage Leveling Draft RFE

(b)(5)

Hi Stephanie,



Please also refer to email below for additional context and questions with regard to LCAs.

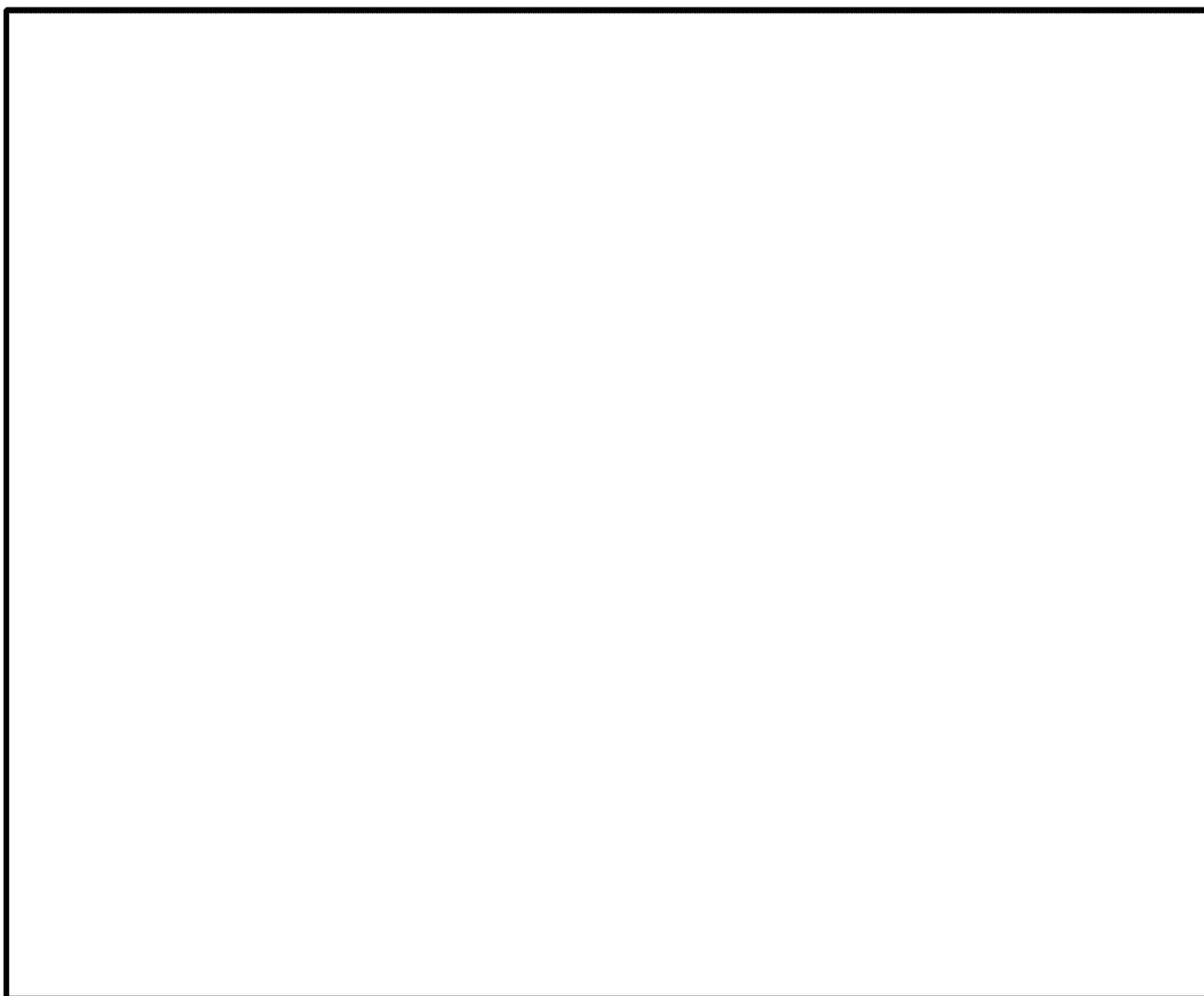
Thanks,

Lynn

From: Collins, Richard A
Sent: Friday, April 14, 2017 11:06 AM
To: Duty-Attorney, VSC
Cc: VSC Business Division ISO3; Whittier, Michelle J
Subject: Wage Leveling RFE

(b)(5)

Hello,



Thank you,

Ricky Collins
Senior Immigration Services Officer (3)
Business Division | VSC | USCIS | DHS
Cube: EX115
Ext: 4947

From: Gisser, Sheldon A (Alex)
To: Plastrik, Steven T; Hunt, Brian J; Shah, Liza H (Ami); Choi, Heesun S (Sunny); Dalal-Dheini, Sharvari P (Shev)
Cc: Young, Blanton R (Roy); Hanehan, Brendan J; Nakajima, Simon T; Cox, Robert H; Bump, Micah N
Subject: RE: Wage leveling in the E-3 context
Date: Tuesday, July 25, 2017 8:41:40 AM

Sure – as that now running facebook joke is going, ‘I’ll take others’ silence as a yes!’ 😊

From: Plastrik, Steven T
Sent: Tuesday, July 25, 2017 8:41 AM
To: Gisser, Sheldon A (Alex); Hunt, Brian J; Shah, Liza H (Ami); Choi, Heesun S (Sunny); Dalal-Dheini, Sharvari P (Shev)
Cc: Young, Blanton R (Roy); Hanehan, Brendan J; Nakajima, Simon T; Cox, Robert H; Bump, Micah N
Subject: RE: Wage leveling in the E-3 context

Will do. Thanks for your help! If there’s any more issues, I’ll loop in ALD.

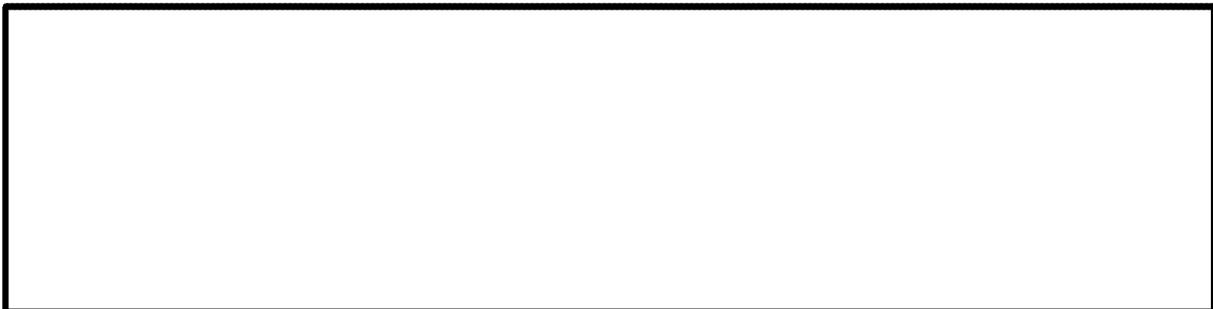
Thanks,

Steve

From: Gisser, Sheldon A (Alex)
Sent: Tuesday, July 25, 2017 8:10 AM
To: Plastrik, Steven T; Hunt, Brian J; Shah, Liza H (Ami); Choi, Heesun S (Sunny); Dalal-Dheini, Sharvari P (Shev)
Cc: Young, Blanton R (Roy); Hanehan, Brendan J; Nakajima, Simon T; Cox, Robert H; Bump, Micah N
Subject: RE: Wage leveling in the E-3 context

I’m okay with this. Since others don’t seem to object, feel free!

From: Plastrik, Steven T
Sent: Tuesday, July 25, 2017 8:06:36 AM
To: Gisser, Sheldon A (Alex); Hunt, Brian J; Shah, Liza H (Ami); Choi, Heesun S (Sunny); Dalal-Dheini, Sharvari P (Shev)
Cc: Young, Blanton R (Roy); Hanehan, Brendan J; Nakajima, Simon T; Cox, Robert H; Bump, Micah N
Subject: RE: Wage leveling in the E-3 context



(b)(5)

Thanks,

Steve

From: Gisser, Sheldon A (Alex)

Sent: Monday, July 24, 2017 12:37 PM

To: Plastrik, Steven T; Hunt, Brian J; Shah, Liza H (Ami); Choi, Heesun S (Sunny); Dalal-Dheini, Sharvari P (Shev)

Cc: Young, Blanton R (Roy); Hanehan, Brendan J; Nakajima, Simon T; Cox, Robert H; Bump, Micah N

Subject: RE: Wage leveling in the E-3 context



(b)(5)

From: Gisser, Sheldon A (Alex) [<mailto:Alex.Gisser@uscis.dhs.gov>]

Sent: Tuesday, July 11, 2017 8:06 PM

To: Dybdahl, Chloe J

Cc: Choi, Heesun S (Sunny); Cox, Robert H; Hunt, Brian J

Subject: RE: Wage leveling in the E-3 context

Love it! Thanks so much Chloe!!!!

From: Dybdahl, Chloe J

Sent: Tuesday, July 11, 2017 8:02:21 PM

To: Gisser, Sheldon A (Alex)

Cc: Choi, Heesun S (Sunny); Cox, Robert H; Hunt, Brian J

Subject: RE: Wage leveling in the E-3 context

No problem at all, here you go:

9 FAM 402.9-8 REQUIREMENTS FOR E-3 VISAS

9 FAM 402.9-8(A) Background

(CT:VISA-1; 11-18-2015)

- a. The E-3 visa classification ("treaty alien in a specialty occupation") was the result of Public Law 109-13, entitled "The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005" (May 11, 2005). The new law added paragraph (iii) to INA 101(a)(15)(E), establishing a visa classification for Australians in specialty occupations.
- b. The law allows for the temporary entry of Australian professionals to perform services in a "specialty occupation" for a United States employer. The temporary entry of nonimmigrants in specialty occupations is provided for at Section 501 of Public Law 109-13. The law establishes a new category of temporary entry for nonimmigrant professionals, the E-3 category. Unlike the current E-1 and E-2 visas, the E-3 visa is not limited to employment that is directly related to international trade and investment. Subject to the requirements discussed herein, E-3 visa holders are eligible to work for any employer in the United States. Dependent spouses and children accompanying or following to join are also eligible for temporary entry.
- c. To qualify for an E-3 visa, an Australian must:
 - (1) Present to you an approved Labor Condition Application (LCA) issued by the Department of Labor (DOL);

- (2) Demonstrate to you that the prospective employment meets the standard of being "specialty occupation employment" (see 9 FAM 402.9-8(E) below);
- (3) Show you that the necessary academic qualifications for the job have been met (see 9 FAM 402.9-8(H));
- (4) Convince you that the proposed stay in the United States will be temporary (see 9 FAM 402.9-4(C); and
- (5) Provide evidence of a license or other official permission to practice in the specialty occupation if required as a condition for the employment sought (see 9 FAM 402.9-8(H)). In certain cases, where such license or other official permission is not required immediately, an alien must demonstrate that he or she will obtain such licensure or permission within a reasonable period of time following admission to the United States.

d. A maximum of 10,500 E-3 visas can be issued annually.

9 FAM 402.9-8(B) What is Needed to Qualify for a Specialty Occupation Visa

(CT:VISA-390; 06-20-2017)

Principals: A treaty alien in a specialty occupation must meet the general academic and occupational requirements for the position pursuant to INA 214(i)(1). In addition to the nonimmigrant visa (NIV) application, the following documentary evidence must be submitted in connection with an application for an E-3 visa:

- (1) A completed Form ETA-9035-E, Labor Condition Application for Nonimmigrant Workers (formerly, Labor Condition Application for H-1B Nonimmigrants), certified by the Department of Labor (DOL).
- (2) Evidence of academic or other qualifying credentials as required under INA 214(i)(1) and a job offer letter or other documentation from the employer establishing that upon entry into the United States the applicant will be engaged in qualifying work in a specialty occupation and that the alien will be paid the actual or prevailing wage referred to in INA 212(t)(1). A certified copy of the foreign degree and evidence that it is equivalent to the required U.S. degree could be used to satisfy the "qualifying credentials" requirement. Likewise, a certified copy of a U.S. baccalaureate or higher degree, as required by the specialty occupation, would meet the minimum evidentiary standard.
- (3) In the absence of an academic or other qualifying credential(s), evidence of education and experience that is equivalent to the required U.S. degree.
- (4) Evidence establishing that the applicant's stay in the United States

will be temporary. (See 9 FAM 402.9-4(C) and 9 FAM 402.9-8(G).)

- (5) A certified copy of any required license or other official permission to practice the occupation in the state of intended employment if so required or, where licensure is not necessary to commence immediately the intended specialty occupation employment upon admission, evidence that the alien will be obtaining the required license within a reasonable time after admission.
- (6) Evidence of payment of the Machine Readable Visa (MRV) fee.

9 FAM 402.9-8(C) Form ETA-9035 Labor Condition Application (LCA) from the Department of Labor (DOL) Required (CT:VISA-185; 09-26-2016)

- a. **Filing Form ETA-9035-E:** For all prospective E-3 hires, employers must submit a Labor Condition Application (LCA) to the Department of Labor (DOL) containing attestations relating to wages and working conditions.
- b. LCAs for E-3 cases must be submitted electronically via the Department's iCERT Portal System. The iCERT Portal System is available at: <http://icert.doleta.gov>. The only two exceptions for electronic filing are physical disability and lack of internet access preventing the employer from filing electronically. Employers with physical disabilities or lack of internet access preventing them from filing electronic applications may submit a written request for special permission to file their LCAs via U.S. mail. Such requests MUST be made prior to submitting an application by mail and should be addressed to:

Administrator, Office of Foreign Labor Certification
Employment Training Administration
U.S. Department of Labor
Room C-4312
200 Constitution Avenue, NW
Washington, DC 20210
- c. The Form ETA-9035 used for requests by mail and Form ETA-9035E used for electronic submissions are the same form. The current ETA-9035/9035E is six to seven pages long. Page 1 (numbered page 1 of 1) includes three attestations for the employer to complete in the electronic filing system. Pages 2-6 (numbered page 1 of 5 through page 5 of 5) contain Sections A through O, and the 7th page is optional for any Addendum to Section G to list additional worksite details.
- d. All E-3 LCAs will contain case numbers in the following format: I-203-xxxxx-xxxxxx. All LCAs that were submitted online will display the case number, case status and period of employment on the bottom of each page. Section K on page 4 should contain the signature of the employer. If there is no employer signature, the LCA is not valid for processing and consular staff should 221(g) the case until a signed copy of the LCA has been submitted. In section M of the LCA, the signature block will contain the validity dates of the certification, the Department of Labor's signature as "Certifying Officer" (not a specific official's name), the determination date, the case number, and the case status as "Certified." A mailed LCA likely would not have a computer-generated footer at the bottom of the form with the case number, case status, and period of employment. A mailed-in LCA would likely also be completed in a different computer font or contain handwritten information.
- e. **Acceptance of Form ETA-9035 by Posts:** For mailed-in applications, DOL faxes the LCA back to the employer after approval. Applications approved online are presented on-screen to the employer at the completion of the filing process in the form of a PDF/.pdf document. Consequently the applicant will be presenting either the initial faxed LCA, a printed PDF/.pdf document, or a copy of either of these; there will be no "original" document that will be presented. You must check to make sure the approval date of the LCA is

later than September 2, 2005 (the effective date of the Department of State's E-3 regulatory publication).

- f. **Verifying Authenticity of the E-3 LCA:** Your acceptance of the LCA certification is discretionary. If you are not satisfied that the LCA being presented is authentic, you should suspend action on the case ([INA 221\(g\)](#)) and verify the LCA with the [Department of Labor](#) (DOL).
- g. DOL posts html versions of all certified E-3 LCAs on the [Labor Certification Registry](#) website. For additional questions concerning the authenticity of a particular LCA, you should send requests to the LCA Help Desk at LCA.Chicago@dol.gov, or by mail to U.S. [Department of Labor](#), Employment and Training Administration, Office of Foreign Labor Certification, Chicago National Processing Center, 11 West Quincy Court, Chicago, IL 60604-2105.
- h. **Petition Filing with DHS Not Required:** An employer of an E-3 treaty alien in a specialty occupation is not required to file a petition with DHS. Instead, a prospective employee will present evidence for classification, including the approved Form ETA-9035-E, directly to you at the time of visa application.

9 FAM 402.9-8(D) Definition of Specialty Occupation

(CT:VISA-185; 09-26-2016)

The E-3 category provides for the issuance of visas solely to E-3 qualifying nationals performing employment within a "specialty occupation." The definition of "specialty occupation" is one that requires:

- (1) A theoretical and practical application of a body of specialized knowledge; and
- (2) The attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States. Note: In determining whether an occupation qualifies as a "specialty occupation," follow the definition contained at [INA 214\(i\)\(1\)](#) for H-1B nonimmigrants and applicable standards and criteria determined by the [Department of Homeland Security](#) (DHS) and legacy Immigration and Naturalization Service (legacy INS). See [9 FAM 402.10-5\(E\)](#).

9 FAM 402.9-8(E) Determining "Specialty Occupation" Qualification

(CT:VISA-185; 09-26-2016)

Although the term "specialty occupation" is specifically defined at [INA 214\(i\)\(1\)](#), and further elaborated upon in DHS's regulations ([8 CFR 214.2\(h\)\(4\)\(iii\)\(A\)](#)), consular determinations of what qualifies as a "specialty occupation" will often come down to a judgment call by the adjudicating consular officer. You must determine whether the job itself falls within the definition of "specialty occupation," and also examine the alien's qualifications, including his or her education and experience. You should consider the available offer of employment and the information obtained during the interview, and then on the basis of this information, make a reasoned evaluation whether or not the offer of employment is for a "specialty occupation." Then you must be sure that the applicant has the required degree, or equivalency of experience and education, to

adequately perform the stipulated job duties.

9 FAM 402.9-8(F) Referring Questionable Cases to CA/VO/L/A and/or the Kentucky Consular Center (KCC)

(CT:VISA-185; 09-26-2016)

- a. Request additional assistance/guidance from CA/VO/L/A if significant doubt remains regarding the E-3 alien's work experience, or if the proposed employment does not appear to meet the requirements for "specialty occupation" as described above in 9 FAM 402.9-8(E). The Department of Homeland Security's Bureau of U.S. Customs and Immigration Services (USCIS) has significant experience in making "specialty occupation" determinations related to adjudicating H-1B cases, so the advisory opinions division will work closely with USCIS on issues you send in for opinion.
- b. If you have concerns about information regarding or provided by the employer (e.g., you doubt that the employer can pay the prevailing wage, or you do not believe the business is large enough to support additional employees), please email KCC at FPMKCC@state.gov with your concerns, providing as much factual detail as possible. KCC will review the information, investigate, and attempt to provide you with information to address those concerns.

9 FAM 402.9-8(G) Intent to Depart Upon Termination of Status

(CT:VISA-1; 11-18-2015)

- a. Temporary entry for treaty aliens in specialty occupations is the same standard used for treaty traders/investors.
- b. The alien's expression of an unequivocal intent to return when the E-3 status ends is normally sufficient, in the absence of specific evidence that the alien's intent is to the contrary.
- c. The applicant must satisfy you that he or she plans to depart the United States upon termination of status; however, he or she does not need to establish intent to proceed to the United States for a specific temporary period of time nor does an applicant for an E-3 visa need to have a residence in a foreign country that the applicant does not intend to abandon.
- d. The alien may sell his or her residence and move all household effects to the United States.
- e. An E-3 applicant may be a beneficiary of an immigrant visa (IV) petition filed on his or her behalf.

9 FAM 402.9-8(H) E-3 Licensing Requirements

(CT:VISA-1; 11-18-2015)

- a. An E-3 alien must meet academic and occupational requirements, including licensure where appropriate, for admission into the United States in a specialty occupation. If the job requires licensure or other official permission to perform the specialty occupation, the applicant must submit proof of the requisite license or permission before the E-3 visa may be granted. In certain cases, where such a license or other official permission is not immediately required to perform the duties described in the visa application, the alien must show that he or she will obtain such licensure within a reasonable period of time following admission to the United States. However, as illustrated in the example in paragraph b(4) below, in other instances, an alien will be required to present proof of actual licensure or permission to practice prior to visa issuance. In all cases, an alien must show that he or she meets the minimum eligibility requirements to obtain such licensure or sit for such licensure examination (e.g., he or she must have the requisite degree and/or experience). Even when not required to engage in the employment specified in the visa application, a visa applicant may provide proof of licensure to practice in a given profession in the United States together with a job offer letter, or other documentation, in support of an application for an E-3 visa.

b. The following examples are illustrative:

- (1) An alien is seeking an E-3 visa in order to work as a law clerk at a U.S.-based law firm. The alien may, if otherwise eligible, be granted an E-3 visa if it can be shown that the position of unlicensed law clerk is a specialty occupation, even if he or she has not been admitted to the bar.
- (2) An alien has a job offer from a law firm promising him or her a position as an associate if the alien passes the bar exam. The application indicates that the position in question meets the definition of a specialty occupation. The alien may apply for an E-3 visa even if he or she will not be immediately employed in the position offered, but will be studying for the bar examination upon admission to the United States. You may issue the visa if you are satisfied that the alien will be taking steps to obtain bar admission within a reasonable period of time following admission to the United States. What constitutes a reasonable period of time will depend on the specific facts presented, such as licensure examination schedules and bar preparation course schedules.
- (3) An alien does not have a job offer, but wishes to study for the bar upon admission to the United States with the hope of finding a position at a United States-based law firm. The alien would not be eligible for E-3 classification, since he or she would not be coming to work in a specialty occupation. This person would be required to obtain another type of visa, such as a B-1, in order to study for the bar in this country.
- (4) An alien has an offer for employer with a law firm as a litigator, and is to begin working within two weeks of entry into the United States. The applicant must demonstrate that he or she has been admitted to the appropriate bar, or otherwise has obtained permission from the respective jurisdiction or jurisdictions where he or she intends to practice to make court appearances.

9 FAM 402.9-8(I) Numerical Limitation on E-3 Visas

(CT:VISA-185; 09-26-2016)

- a. Only E-3 principals who are initially being issued E-3 visas for the first time, or who are otherwise obtaining E-3 status (in the United States) for the first time, are subject to the 10,500 annual numerical limitation provisions of [INA 214\(g\)\(11\)\(B\)](#). Consequently, spouses and children of E-3 principals, as well as returning E-3 principals who are being issued new E-3 visas for continuing employment with the original employer, are exempt from the annual numerical limit (see b. and c. immediately below).
- b. An E-3 principal who is applying for a new visa following the expiration of the initial E-3 visa, or who is applying for a visa after initially obtaining E-3 status in the United States, is not subject to the annual E-3 numerical limit, provided it is established to your satisfaction that there has been uninterrupted continuity of employment. "Uninterrupted continuity of employment" means that the applicant has worked, and continues to work, for the U.S.-based employer who submitted the original Labor Condition Application (LCA) and offer of employment. To ensure that such applicants are not counted against any subsequent numerical limit,

returning E-3 principals will be identified by the visa code "E-3R" (with "R" representing the status of "returning").

- c. To ensure that the spouse and children of E-3 principals are not counted against the numerical limit, they will be identified by the visa code "E-3D" (with "D" representing the status of "dependent").
- d. At the end of each fiscal year, any unused E-3 numbers are forfeited; such visa numbers do not carry over to the next fiscal year.
- e. The Department of State will keep count of the number of E-3 visas issued, and of changes of status to E-3 in the United States as reported by the Department of Homeland Security (DHS). If it appears that the 10,500 annual numerical limits will be reached in any fiscal year, the Department of State will instruct posts to cease E-3 issuances for that fiscal year.

9 FAM 402.9-8(J) Part-Time Employment by E-3 Applicants

(CT:VISA-185; 09-26-2016)

An E-3 worker may work full or part-time and remain in status based upon the attestations made on the LCA. Section B.4 on the LCA provides the option to request part time employment and DOL approves LCAs for part-time employment. Although nothing is specifically stated in the law/regulation about full-time employment for E-3s, you will need to evaluate the public charge ramifications for any E-3 applicant planning on coming to the United States as a part-time employee.

9 FAM 402.9-8(K) Applicants with Multiple LCAs

(CT:VISA-374; 06-06-2017)

- a. If an applicant presents more than one valid LCA, consular officers should evaluate each LCA on its own merits. The applicant will have to qualify for each LCA separately, and each proposed employment situation must overcome public charge concerns on its own. Clearly indicate in the case remarks which LCAs and positions the applicant qualifies for.
- b. Multiple annotations: You should annotate the visa with the employer's name, LCA case number and LCA issuance date for each employer. You may need to use abbreviations in order to make more than one set of annotations fit onto the visa foil. If there is not enough room on the visa foils to add all of the required annotations contact VO/F for additional guidance regarding the possibility of providing a letter for employers.
- c. If an applicant presents multiple LCAs for E-3 and E-3R (returning E-3) positions at the same time, and is approved for multiple positions, only one visa should be issued. The visa should be issued for an E-3 position to ensure that the visa is counted towards the annual numerical limit. The visa should be annotated with the employer's name, LCA case number and LCA issuance date for each E-3 position AND the employer's name, LCA case number and LCA issuance date for each E-3R position. If there is not enough room on the visa foils to add all of the required annotations contact VO/F for additional guidance.

9 FAM 402.9-8(L) Considerations in Processing E-3 Visas

(CT:VISA-185; 09-26-2016)

- a. **Validity of Issued Visa:** The validity of the visa should not exceed the validity period of the LCA. The Department of State and DHS have agreed to a 24-month maximum validity period for E-3 visas.
- b. **Initial Authorized Period of Stay for E-3 Applicants:** E-3 applicants are admitted for a two-year period renewable indefinitely, provided the alien is able to demonstrate that he or she does not intend to remain or

work permanently in the United States.

- c. **Fees:** Other than the normal visa-related Machine Readable Visa (MRV) fees, there is no other fee associated with the issuance of an E-3 visa.
- d. **Reports of Cancelled or Revoked E-3 Visas:** In the event an E-3 visa is cancelled or revoked prior to the applicant's entry into the United States, a report must be sent to CA/VO/DO/I explaining the circumstances attendant to the non-use of the E-3 number. In cases where the E-3 number has not been used, it will be added back into the remaining pool of unused E-3 visa numbers for that fiscal year.
- e. **Annotation of E-3 Visas:** Annotate E-3 visas of the principal applicant with the name of the employer, the ETA case number (found at the bottom of each page of the Form [ETA-9035](#)), and the LCA's issuance date (the "Determination Date" listed in part M. on page 5 of the Form [ETA-9035](#).) Annotate E-3D visas for derivatives of the principal applicant with the name of the principal applicant, the name of the employer, the ETA case number and the LCA's issuance date.

9 FAM 402.9-8(M) Special Note about H-1B Petitions

(CT:VISA-374; 06-06-2017)

When the H-1B numerical cap is reached before the end of the fiscal year, it is likely that there will be numerous Australian H-1B applicants who will have approved Labor Condition Application's (LCA) but whose petitions for H-1B status are returned unapproved by the DHS for lack of an available H-1B visa number. Currently, you are not permitted to accept LCAs approved based upon H-1B-related offers of employment for E-3 applications. Rather, the United States employer must submit a new LCA request to DOL and receive a separate E-3-based LCA approval for any employee possessing a previously approved H-1B-based LCA.

Official - SBU
UNCLASSIFIED

From: Gisser, Sheldon A (Alex) [<mailto:Alex.Gisser@uscis.dhs.gov>]
Sent: Tuesday, July 11, 2017 6:01 PM
To: Dybdahl, Chloe J
Cc: Choi, Heesun S (Sunny); Cox, Robert H; Hunt, Brian J
Subject: RE: Wage leveling in the E-3 context

(b)(5)

Sorry for any confusion Chloe.

Hope that's a bit clearer...

Thanks!

Alex

From: Dybdahl, Chloe J [<mailto:DybdahlCJ@state.gov>]
Sent: Tuesday, July 11, 2017 5:45 PM
To: Gisser, Sheldon A (Alex)
Cc: Choi, Heesun S (Sunny); Cox, Robert H; Hunt, Brian J
Subject: RE: Wage leveling in the E-3 context

(b)(5)



Official - SBU
UNCLASSIFIED

From: Gisser, Sheldon A (Alex) [<mailto:Alex.Gisser@uscis.dhs.gov>]
Sent: Tuesday, July 11, 2017 4:24 PM
To: Dybdahl, Chloe J
Cc: Choi, Heesun S (Sunny); Cox, Robert H; Hunt, Brian J
Subject: FW: Wage leveling in the E-3 context

(b)(5)



Thanks!

Alex

From: Plastrik, Steven T
Sent: Monday, July 24, 2017 12:27 PM
To: Hunt, Brian J; Shah, Liza H (Ami); Gisser, Sheldon A (Alex); Choi, Heesun S (Sunny); Dalal-Dheini, Sharvari P (Shev)
Cc: Young, Blanton R (Roy); Hanehan, Brendan J; Nakajima, Simon T; Cox, Robert H; Bump, Micah N
Subject: RE: Wage leveling in the E-3 context

(b)(5)



Thanks,

Steve

From: Plastrik, Steven T

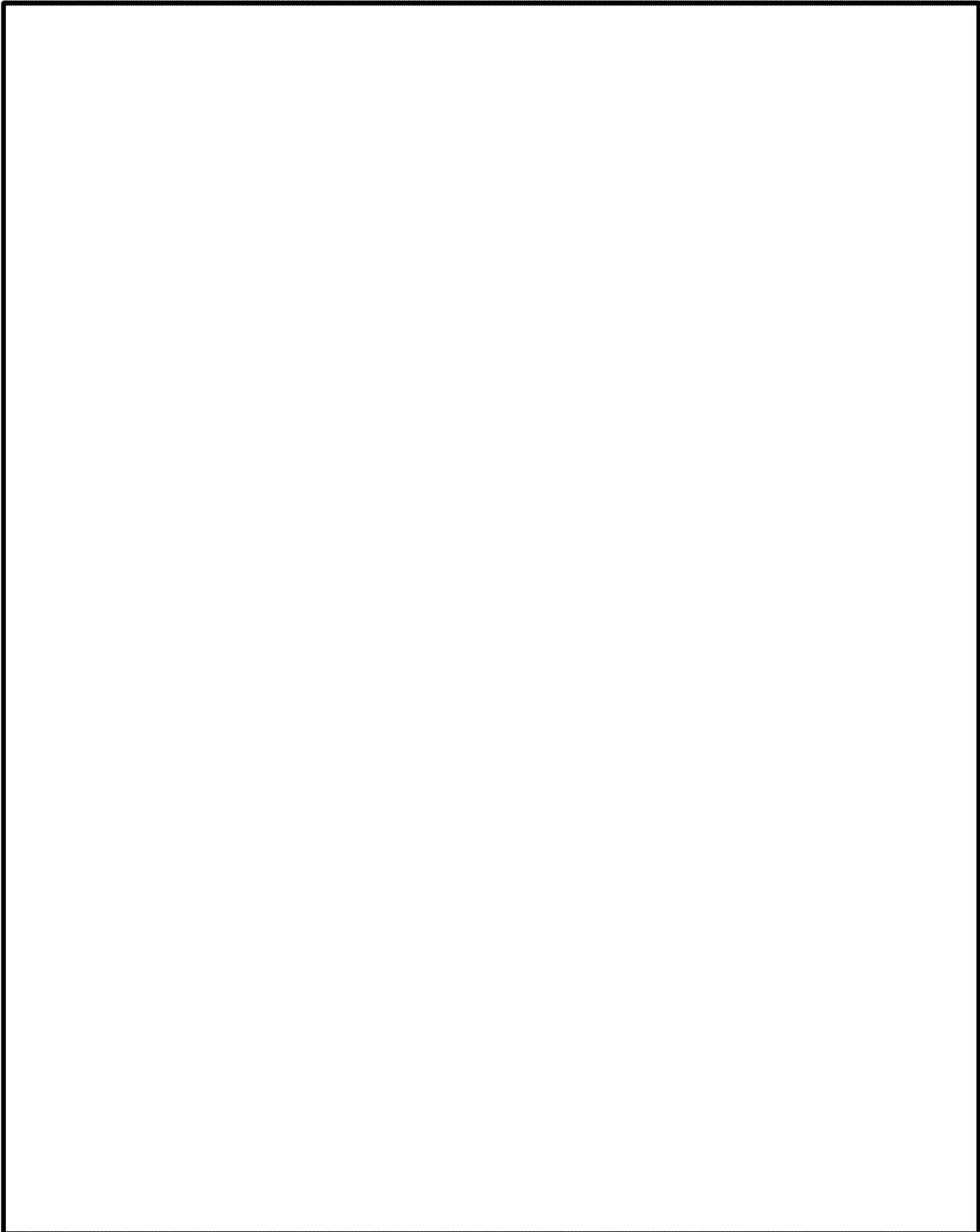
Sent: Monday, June 26, 2017 10:20 AM

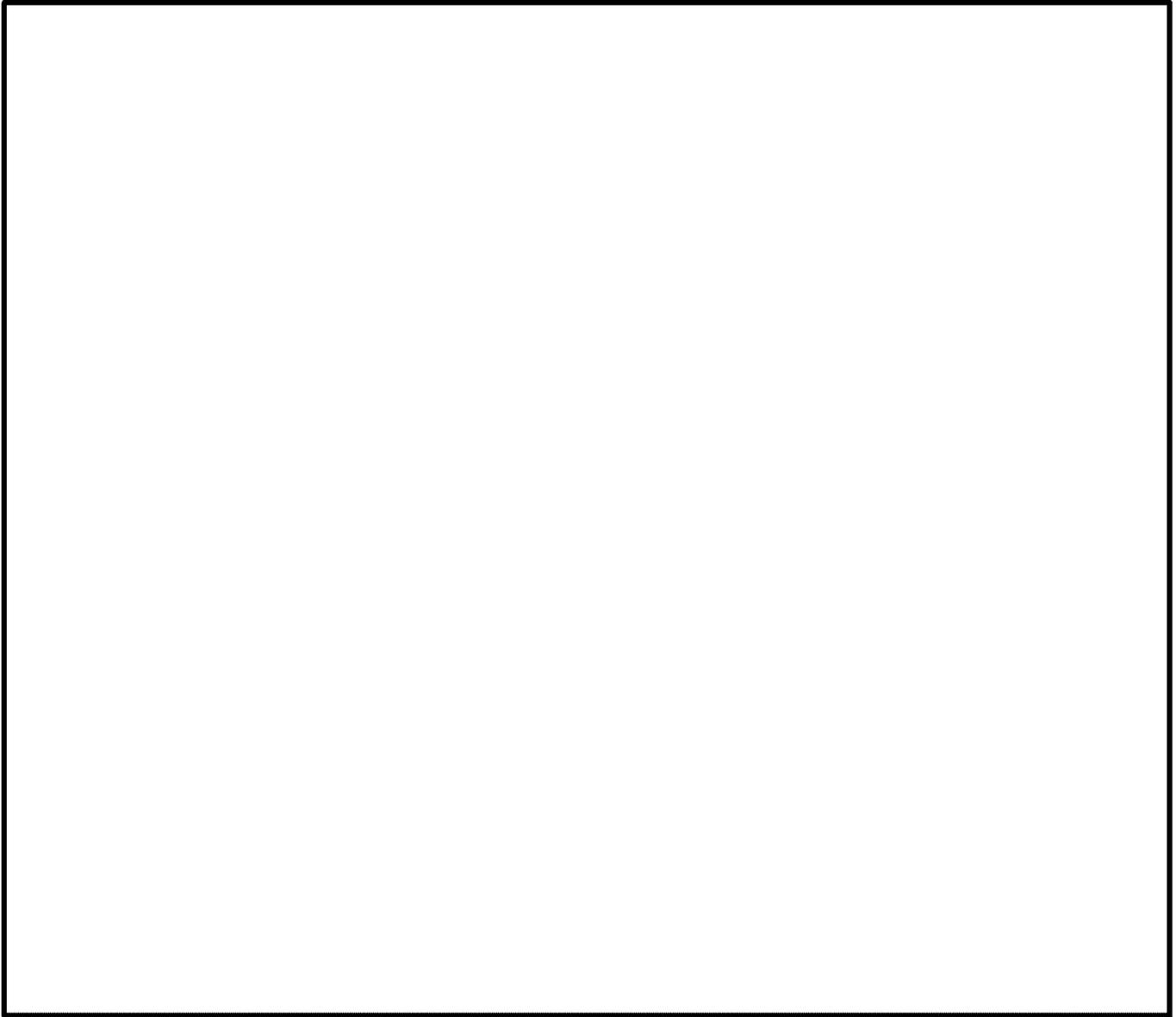
To: Hunt, Brian J; Shah, Liza H (Ami); Gisser, Sheldon A (Alex)

Cc: Young, Blanton R (Roy); Hanehan, Brendan J; Nakajima, Simon T; Cox, Robert H; Bump, Micah N

Subject: Wage leveling in the E-3 context

(b)(5)





Anyway, what are your thoughts?

If you'd like to discuss on the phone, just let me know and I can set something up.

Thanks,

Steve Plastrik
Associate Counsel
Vermont Service Center
USCIS Office of the Chief Counsel
Office: (802) 288-7809
Cell: [REDACTED] (b)(6)
E-mail: Steven.T.Plastrik@uscis.dhs.gov

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From: [Plastrik, Steven T](#)
To: [Cox, Robert H](#); [Civic, Amanda M](#); [Mahmoudi, Sheila C](#); [Hanehan, Brendan J](#); [Schmalz, Peter N](#); [Young, Blanton R \(Roy\)](#); [Bump, Micah N](#); [Nakajima, Simon T](#); [Dalal-Dheini, Sharvari P \(Shev\)](#); [Choi, Heesun S \(Sunny\)](#)
Cc: [Love, Lucinda A](#); [Leonard, Kane C](#); [Luna, Maria P \(Pilar\)](#); [Burford, Mary H](#); [Wilder, Charlotte P](#); [Kenny, Allen \(Allen\)](#)
Subject: RE: Wage leveling Premium Denials
Date: Wednesday, July 19, 2017 12:33:01 PM

[Redacted]

(b)(5)

From: Cox, Robert H
Sent: Wednesday, July 19, 2017 12:31 PM
To: Plastrik, Steven T; Civic, Amanda M; Mahmoudi, Sheila C; Hanehan, Brendan J; Schmalz, Peter N; Young, Blanton R (Roy); Bump, Micah N; Nakajima, Simon T; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Cc: Love, Lucinda A; Leonard, Kane C; Luna, Maria P (Pilar); Burford, Mary H; Wilder, Charlotte P; Kenny, Allen (Allen)
Subject: RE: Wage leveling Premium Denials

SCLD,

[Redacted]

(b)(5)

Thanks,
Robert

From: Plastrik, Steven T
Sent: Tuesday, July 18, 2017 3:32 PM
To: Civic, Amanda M; Mahmoudi, Sheila C; Cox, Robert H; Hanehan, Brendan J; Schmalz, Peter N; Young, Blanton R (Roy); Bump, Micah N; Nakajima, Simon T; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Cc: Love, Lucinda A; Leonard, Kane C; Luna, Maria P (Pilar); Burford, Mary H; Wilder, Charlotte P; Kenny, Allen (Allen)
Subject: RE: Wage leveling Premium Denials

Me too. It wouldn't be the last time I had an informal thought that sounded foolish at a later point.

Thanks,

Steve

From: Civic, Amanda M
Sent: Tuesday, July 18, 2017 3:30 PM
To: Mahmoudi, Sheila C; Cox, Robert H; Plastrik, Steven T; Hanehan, Brendan J; Schmalz, Peter N; Young, Blanton R (Roy); Bump, Micah N; Nakajima, Simon T; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Cc: Love, Lucinda A; Leonard, Kane C; Luna, Maria P (Pilar); Burford, Mary H; Wilder, Charlotte P; Kenny, Allen (Allen)
Subject: RE: Wage leveling Premium Denials

I'm fine with it as well.

Best,

Amanda

Amanda M. Civic
Associate Counsel, Service Center Law Division
U.S.C.I.S., Office of the Chief Counsel
850 "S" Street
Lincoln, NE 68508
Office: (402) 323-2532
Mobile: (402) 417-3434
Email: amanda.m.civic@uscis.dhs.gov
Office: Room 1005C, Star
NFTS Code: GC0027

From: Mahmoudi, Sheila C
Sent: Tuesday, July 18, 2017 2:30 PM
To: Cox, Robert H; Plastrik, Steven T; Civic, Amanda M; Hanehan, Brendan J; Schmalz, Peter N; Young, Blanton R (Roy); Bump, Micah N; Nakajima, Simon T; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Cc: Love, Lucinda A; Leonard, Kane C; Luna, Maria P (Pilar); Burford, Mary H; Wilder, Charlotte P; Kenny, Allen (Allen)
Subject: RE: Wage leveling Premium Denials

I'm fine with it- you all have such great comments below anyways 😊

From: Cox, Robert H
Sent: Tuesday, July 18, 2017 12:25 PM
To: Plastrik, Steven T; Civic, Amanda M; Mahmoudi, Sheila C; Hanehan, Brendan J; Schmalz, Peter N; Young, Blanton R (Roy); Bump, Micah N; Nakajima, Simon T; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Cc: Love, Lucinda A; Leonard, Kane C; Luna, Maria P (Pilar); Burford, Mary H; Wilder, Charlotte P; Kenny, Allen (Allen)
Subject: RE: Wage leveling Premium Denials

Hi,

[Redacted]

(b)(5)

Thanks,
Robert

From: Plastrik, Steven T
Sent: Tuesday, July 18, 2017 11:16 AM
To: Civic, Amanda M; Mahmoudi, Sheila C; Hanehan, Brendan J; Cox, Robert H; Schmalz, Peter N; Young, Blanton R (Roy); Bump, Micah N; Nakajima, Simon T; Dalal-Dheini, Sharvari P (Shev)
Cc: Love, Lucinda A; Leonard, Kane C; Luna, Maria P (Pilar); Burford, Mary H; Wilder, Charlotte P; Kenny, Allen (Allen)
Subject: RE: Wage leveling Premium Denials

[Redacted]

(b)(5)

What are your thoughts on that guidance and issue?

Thanks,
Steve

-----Original Message-----

From: Civic, Amanda M
Sent: Friday, July 14, 2017 11:18 AM
To: Mahmoudi, Sheila C; Plastrik, Steven T; Hanehan, Brendan J; Cox, Robert H; Schmalz, Peter N; Young, Blanton R (Roy); Bump, Micah N; Nakajima, Simon T; Dalal-Dheini, Sharvari P (Shev)
Cc: Love, Lucinda A; Leonard, Kane C; Luna, Maria P (Pilar); Burford, Mary H; Wilder, Charlotte P; Kenny, Allen (Allen)
Subject: RE: Wage leveling Premium Denials

[Redacted]

(b)(5)

[Redacted]

(b)(5)

Best,

Amanda

Amanda M. Civic
Associate Counsel, Service Center Law Division U.S.C.I.S., Office of the Chief Counsel
850 "S" Street
Lincoln, NE 68508
Office: (402) 323-2532
Mobile: (402) 417-3434
Email: amanda.m.civic@uscis.dhs.gov
Office: Room 1005C, Star
NFTS Code: GC0027

-----Original Message-----

From: Mahmoudi, Sheila C
Sent: Friday, July 14, 2017 9:08 AM
To: Plastrik, Steven T; Hanehan, Brendan J; Cox, Robert H; Schmalz, Peter N; Young, Blanton R (Roy); Bump, Micah N; Nakajima, Simon T; Dalal-Dheini, Sharvari P (Shev)
Cc: Love, Lucinda A; Leonard, Kane C; Civic, Amanda M; Luna, Maria P (Pilar); Burford, Mary H; Wilder, Charlotte P; Kenny, Allen (Allen)
Subject: RE: Wage leveling Premium Denials

[Redacted]

(b)(5)

From: Plastrik, Steven T
Sent: Friday, July 14, 2017 7:01:53 AM
To: Hanehan, Brendan J; Mahmoudi, Sheila C; Cox, Robert H; Schmalz, Peter N; Young, Blanton R (Roy); Bump, Micah N; Nakajima, Simon T; Dalal-Dheini, Sharvari P (Shev)
Cc: Love, Lucinda A; Leonard, Kane C; Civic, Amanda M; Luna, Maria P (Pilar); Burford, Mary H; Wilder, Charlotte P; Kenny, Allen (Allen)
Subject: RE: Wage leveling Premium Denials

[Redacted]

(b)(5)

Thoughts?

Steve

From: Hanehan, Brendan J
Sent: Friday, July 14, 2017 9:05 AM
To: Mahmoudi, Sheila C; Plastrik, Steven T; Cox, Robert H; Schmalz, Peter N; Young, Blanton R (Roy); Bump, Micah N; Nakajima, Simon T; Dalal-Dheini, Sharvari P (Shev)
Cc: Love, Lucinda A; Leonard, Kane C; Civic, Amanda M; Luna, Maria P (Pilar); Burford, Mary H; Wilder, Charlotte P; Kenny, Allen (Allen)
Subject: RE: Wage leveling Premium Denials

Hi everyone,

[Redacted]

(b)(5)

[Redacted]

(b)(5)

Thanks,

-Brendan

From: Mahmoudi, Sheila C
Sent: Thursday, July 13, 2017 4:04 PM
To: Plastrik, Steven T; Cox, Robert H; Schmalz, Peter N; Hanehan, Brendan J; Young, Blanton R (Roy); Bump, Micah N; Nakajima, Simon T; Dalal-Dheini, Sharvari P (Shev)
Cc: Love, Lucinda A; Leonard, Kane C; Civic, Amanda M; Luna, Maria P (Pilar); Burford, Mary H; Wilder, Charlotte P; Kenny, Allen (Allen)
Subject: RE: Wage leveling Premium Denials

[Redacted]

(b)(5)

From: Plastrik, Steven T
Sent: Thursday, July 13, 2017 12:47 PM
To: Cox, Robert H; Schmalz, Peter N; Hanehan, Brendan J; Young, Blanton R (Roy); Bump, Micah N; Nakajima, Simon T; Dalal-Dheini, Sharvari P (Shev)
Cc: Love, Lucinda A; Leonard, Kane C; Civic, Amanda M; Mahmoudi, Sheila C; Luna, Maria P (Pilar); Burford, Mary H; Wilder, Charlotte P; Kenny, Allen (Allen)
Subject: RE: Wage leveling Premium Denials

[Redacted]

(b)(5)

Thanks,

Steve

From: Cox, Robert H
Sent: Tuesday, July 11, 2017 1:25 PM
To: Schmalz, Peter N; Plastrik, Steven T; Hanehan, Brendan J; Young, Blanton R (Roy); Bump, Micah N; Nakajima, Simon T; Dalal-Dheini, Sharvari P (Shev)
Cc: Love, Lucinda A
Subject: RE: Wage leveling Premium Denials

(b)(5)

Hi Pete,

[Redacted]

Thanks,
Robert

From: Schmalz, Peter N
Sent: Thursday, July 06, 2017 3:46 PM
To: Cox, Robert H; Plastrik, Steven T; Hanehan, Brendan J; Young, Blanton R (Roy); Bump, Micah N; Nakajima, Simon T; Dalal-Dheini, Sharvari P (Shev)
Cc: Love, Lucinda A
Subject: RE: Wage leveling Premium Denials

(b)(5)

[Redacted]

PETE

From: Cox, Robert H
Sent: Friday, June 30, 2017 10:44 AM
To: Plastrik, Steven T; Hanehan, Brendan J; Young, Blanton R (Roy); Bump, Micah N; Nakajima, Simon T; Dalal-Dheini, Sharvari P (Shev)
Cc: Schmalz, Peter N; Love, Lucinda A
Subject: RE: Wage leveling Premium Denials

(b)(5)

Hi Steve,

[Redacted]

Thanks,
Robert

From: Plastrik, Steven T
Sent: Friday, June 30, 2017 8:20 AM
To: Hanehan, Brendan J; Young, Blanton R (Roy); Bump, Micah N; Cox, Robert H; Nakajima, Simon T; Dalal-Dheini, Sharvari P (Shev)
Cc: Schmalz, Peter N; Love, Lucinda A
Subject: RE: Wage leveling Premium Denials
Importance: High

(b)(5)

[Redacted]

(b)(5)

[Redacted]

Thanks,

Steve

From: Plastrik, Steven T
Sent: Thursday, June 29, 2017 2:26 PM
To: Hanehan, Brendan J; Young, Blanton R (Roy); Bump, Micah N; Cox, Robert H; Nakajima, Simon T; Dalal-Dheini, Sharvari P (Shev)
Cc: Schmalz, Peter N; Love, Lucinda A
Subject: RE: Wage leveling Premium Denials

(b)(5)

[Redacted]

What about everyone else's thoughts?

Thanks,

Steve

From: Hanehan, Brendan J
Sent: Thursday, June 29, 2017 8:32 AM
To: Young, Blanton R (Roy); Bump, Micah N; Cox, Robert H; Nakajima, Simon T; Dalal-Dheini, Sharvari P (Shev)
Cc: Schmalz, Peter N; Plastrik, Steven T; Love, Lucinda A
Subject: RE: Wage leveling Premium Denials

(b)(5)

[Redacted]

-Brendan

From: Young, Blanton R (Roy)
Sent: Thursday, June 29, 2017 8:23 AM
To: Bump, Micah N; Hanehan, Brendan J; Cox, Robert H; Nakajima, Simon T; Dalal-Dheini, Sharvari P (Shev)
Cc: Schmalz, Peter N; Plastrik, Steven T; Love, Lucinda A
Subject: RE: Wage leveling Premium Denials

(b)(5)

[Redacted]

(b)(5)

[Redacted]

Roy

B. Roy Young, Associate Counsel
USCIS Office of Chief Counsel, Vermont Service Center
802-288-7841 (office) [Redacted] cell)

(b)(6)

From: Bump, Micah N
Sent: Wednesday, June 28, 2017 5:49 PM
To: Hanehan, Brendan J; Cox, Robert H; Nakajima, Simon T; Dalal-Dheini, Sharvari P (Shev)
Cc: Schmalz, Peter N; Plastrik, Steven T; Young, Blanton R (Roy); Love, Lucinda A
Subject: RE: Wage leveling Premium Denials

Thank you, Brendan. Look forward to receiving it.

From: Hanehan, Brendan J
Sent: Wednesday, June 28, 2017 5:47 PM
To: Bump, Micah N; Cox, Robert H; Nakajima, Simon T; Dalal-Dheini, Sharvari P (Shev)
Cc: Schmalz, Peter N; Plastrik, Steven T; Young, Blanton R (Roy); Love, Lucinda A
Subject: RE: Wage leveling Premium Denials

(b)(5)

Micah,

[Redacted]

-Brendan

From: Bump, Micah N
Sent: Wednesday, June 28, 2017 4:52 PM
To: Hanehan, Brendan J; Cox, Robert H; Nakajima, Simon T; Dalal-Dheini, Sharvari P (Shev)
Cc: Schmalz, Peter N; Plastrik, Steven T; Young, Blanton R (Roy); Love, Lucinda A
Subject: RE: Wage leveling Premium Denials

Brendan,

[Redacted]

(b)(5)

Thank you,

Micah

Micah N. Bump
Associate Counsel
Department of Homeland Security
Citizenship and Immigration Services
20 Massachusetts Avenue, NW
Washington, D.C. 20529
Tel: (202)272-1405
Mobile: (202) 704-5095

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From: Hanehan, Brendan J
Sent: Wednesday, June 28, 2017 3:35 PM
To: Cox, Robert H; Nakajima, Simon T; Bump, Micah N; Dalal-Dheini, Sharvari P (Shev)
Cc: Schmalz, Peter N; Plastrik, Steven T; Young, Blanton R (Roy); Love, Lucinda A
Subject: Wage leveling Premium Denials
Importance: High

(b)(5)

Hi ALD,

[Redacted]

(b)(5)



Thanks,
-Brendan
Brendan J. Hanehan
Associate Counsel

Vermont Service Center | Service Center Law Division Office of the Chief Counsel | USCIS | DHS Desk Phone: (802) 527-4729 Work Cell [redacted]
Email: Brendan.J.Hanehan@uscis.dhs.gov

(b)(6)

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From: Hersey, Lucas I
Sent: Wednesday, June 28, 2017 12:21 PM
To: Duty-Attorney, VSC
Subject: Wage leveling
Importance: High

(b)(5)

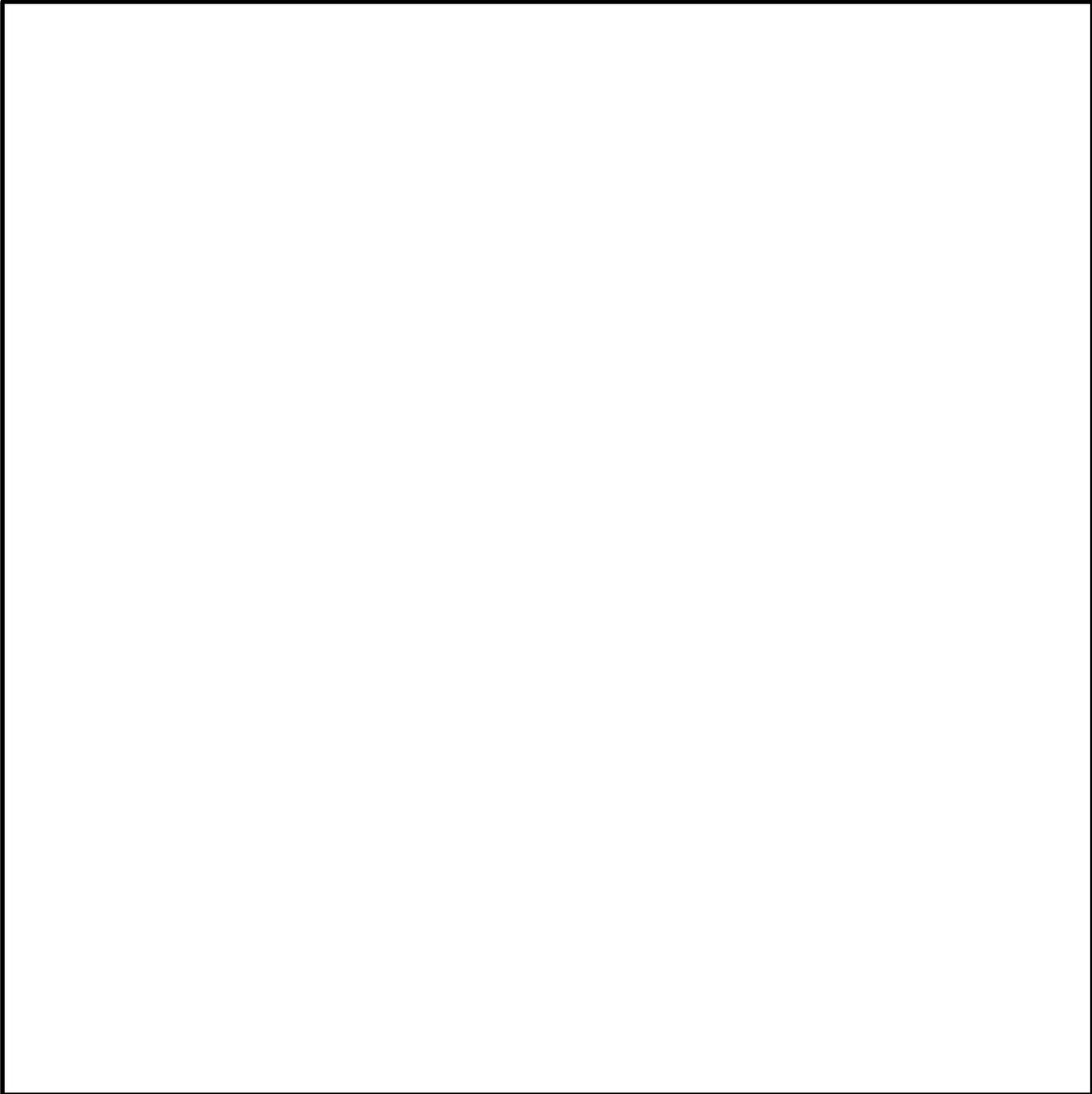
Good afternoon,



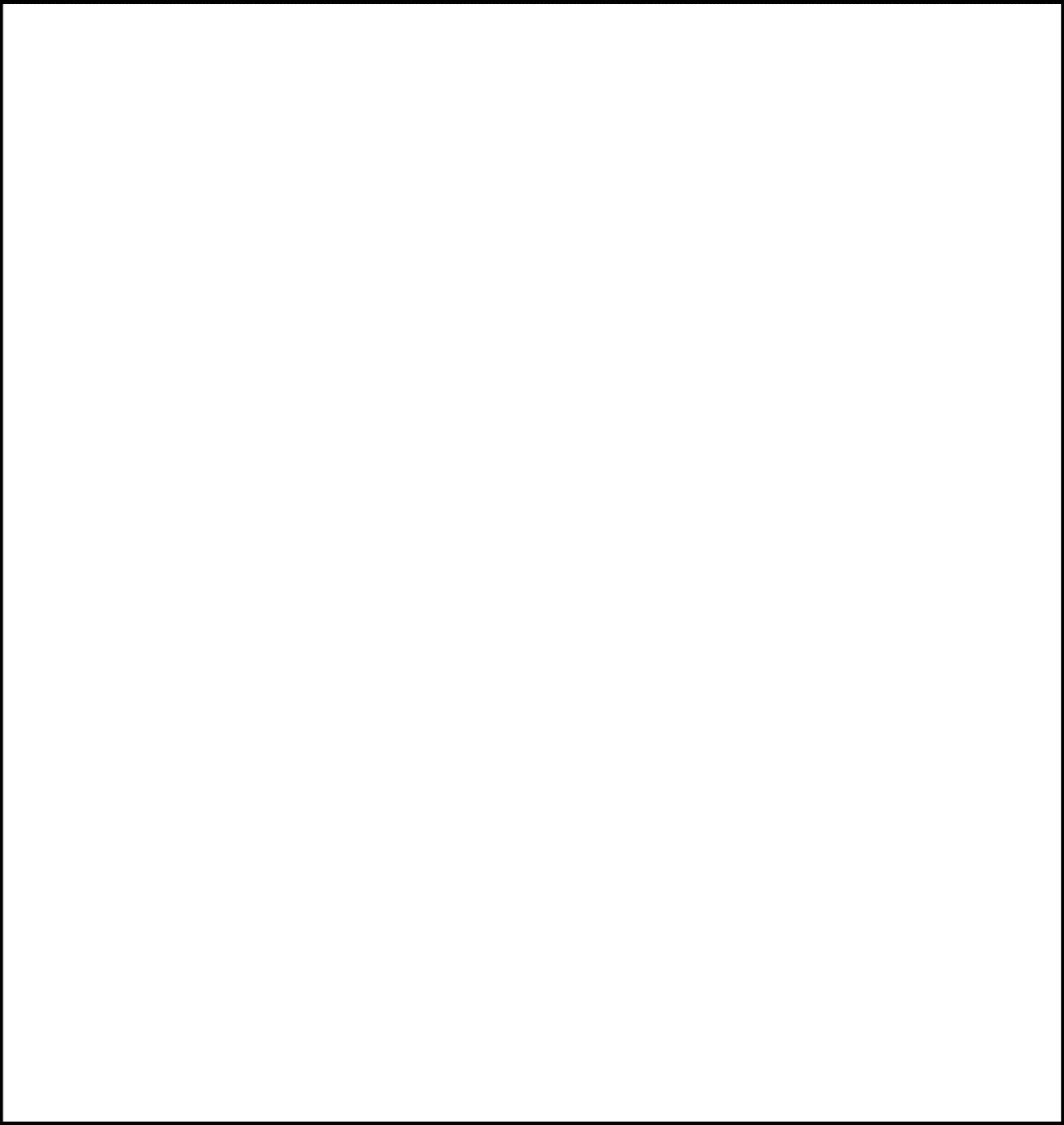
Lucas I. Hersey
Immigration Services Officer III
DHS/USCIS/VSC/Business Division/Essex – 38RR Cube EV112 – 802 871-3764
AA0626
lucas.i.hersey2@uscis.dhs.gov

Talking Points for CIS Director Meeting with Ombudsman
Drafted by BFWD, OP&S, 4/17/2017

(b)(5)



(b)(5)



(b)(5)

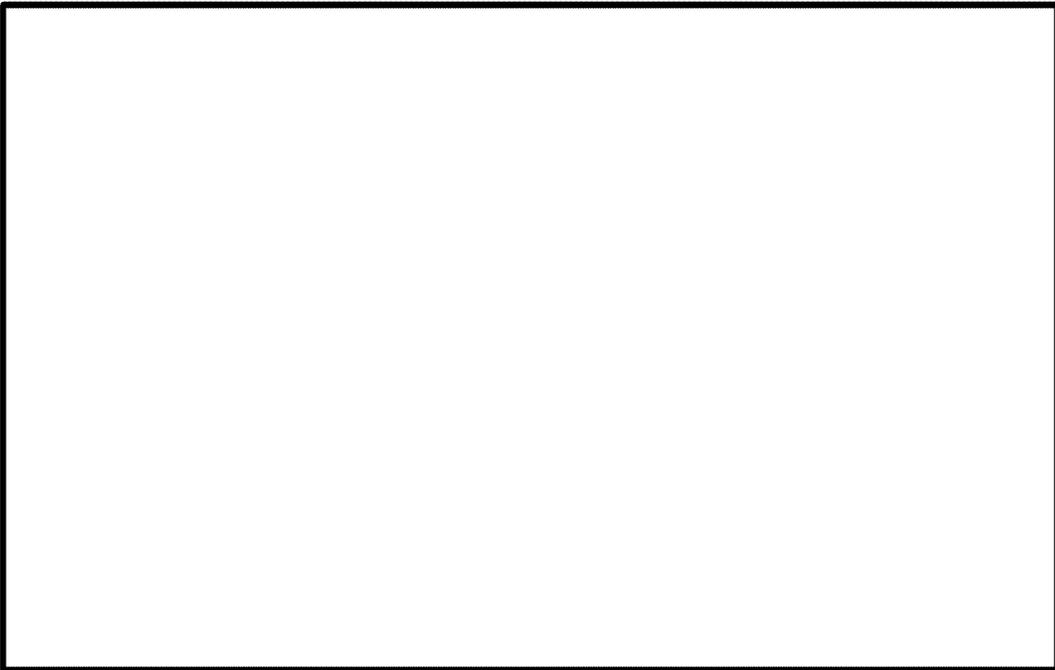


USCIS routinely consults the Department of Labor's *Occupational Outlook Handbook (OOH)* for information about the duties and educational requirements of particular occupations. You have provided a labor condition application (LCA) for the position of XXX[POSITION]XXX. The *OOH* states the following regarding the training and educational requirements for a XXX[POSITION]XXX:

XXX[INCLUDE RELEVANT INFORMATION]XXX

Accordingly, a range of educational credentials, including those less than a bachelor's degree in a specific specialty would qualify an individual to perform the duties of a XXX[POSITION]XXX. On your LCA, you have designated the proffered position as a Level I wage (the lowest of four assignable wage levels). The "Prevailing Wage Determination Policy Guidance" issued by the Department of Labor provides a description of the wage levels. A Level I wage is defined as:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.



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(b)(5)

