

Form I-129 H-1B Adjudication



U.S. Citizenship
and Immigration
Services

2/22/2018 Contracts & Itineraries

Memo

- Intended to be read together with the Employer-Employee (E-E) Memo (January 8, 2010)
- Discusses potential employer violations arising when petitioners place employees at 3rd party worksites

Contracts & Itineraries Memo, cont'd

- Evidence, such as contracts and work orders, may demonstrate that, for the duration of the validity period:
 - Beneficiary will be employed in a specialty occupation
 - Employer will maintain an E-E relationship with beneficiary for the duration of the validity period
- Contracts that merely set forth the general obligations of the parties, and that do not provide specific information pertaining to the work to be performed, may be insufficient

Contracts & Itineraries Memo, cont'd

- Itineraries are a regulatory requirement for petitions requiring services to be performed in multiple locations
 - The itinerary must include the dates and locations of the services to be provided
- The inclusion of a worksite on an itinerary is not required if it is not required on the LCA because:
 - The petitioner establishes that the location is not a “place of employment” under 20 CFR 655.715
 - Peripatetic workers
 - Workers who travel occasionally
- Detailed itineraries can assist in demonstrating non-speculative employment in a specialty occupation for entire validity period

Contracts & Itineraries Memo, cont'd

- If eligibility is established, adjudicators should limit the approval period to the length of time demonstrated that the beneficiary will be placed in non-speculative work, and that the petitioner will maintain the requisite employer-employee relationship as documented by contracts, SOWs, etc.
- Extension requests should also establish that all H-1B requirements were met for entire prior approval period

Wage Level Analysis Guidance

- Clarifying internal guidance in relation to March 31, 2017, Rescission memo
- Meant to assist adjudicators in determining whether the wage level listed on the LCA is “clearly inconsistent” with the proffered position
- Provides additional information regarding DOL’s process
- Not comprehensive guidance and not intended to replace the 2009 DOL guidance

Wage Level Analysis Guidance

- A Level 1 wage would not be appropriate if:
 - The Petitioner's education requirement is higher than what is usual for the occupation per:
 - Appendix D of the DOL guidance, or
 - If not listed in Appendix D, the O*NET Job Zone information
 - The Petitioner's experience requirement is higher than the minimum experience requirement defined by the SVP range in O*NET
 - The Petitioner requires a foreign language, license or certification, or other special skill beyond the O*NET description
 - The proffered position is a combination of two unrelated occupations

Wage Level Analysis Guidance

DOL uses a 5 step process to determine wage level:

Step 1: Review SOC code

Step 2: Review experience required

Step 3: Review education requirement

Step 4: Look for potential level increases (special skills or other requirements)

Step 5: Look for supervisory duties

Wage Level Analysis Guidance

Step 1: Review SOC code

- Confirm that LCA SOC code is correct and includes documented worksites
- If a combination of two different occupations but:
 - Related: Use SOC code for the occupation with higher wage
 - Unrelated: One wage level increase and use SOC code for occupation with higher wage)

Wage Level Analysis Guidance

Step 2: Review experience required

- Compare Petitioner's experience requirements to those listed in O*NET
- Can't be Level I if:
 - Job Zone 4 with an SVP of $7 < 8$ and position requires more than 2 years of experience
 - Job Zone 5 with SVP of $8 < 9$ and position requires more than 4 years of experience

Wage Level Analysis Guidance

Step 3: Review education requirement

- Cannot be Level I if the education requirement is higher than that:
 - Listed in Appendix D of the DOL guidance, or
 - If SOC code not listed in Appendix D, the O*NET Job Zone information

Wage Level Analysis Guidance

Step 4: Special Skills or Other Requirements (look for potential level increases)

- Potential job requirements leading to level increases:
 - Foreign language
 - License or certification
 - Travel for more than incidental training & development
 - Special skills or requirements that aren't part of the normal duties as described in O*NET

Wage Level Analysis Guidance

Step 5: Look for supervisory duties

- Supervising individuals in the same (or parallel) occupations will usually mean the position can't be Level I
 - Unless provided for in O*NET
- Supervising subordinates will only require a one level increase if the supervision is not part of the normal duties as described in O*NET

Deference

- When evaluating whether or not an appropriate Labor Condition Application (LCA) was submitted with the petition, deference does not apply.
- USCIS must determine whether the attestations and content of an LCA correspond to and support the H-1B visa petition. See INA 101(a)(15)(H)(i)(B), INA 212(N), 8 CFR 214.2(h)(4)(B) and *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542, 546 (AAO 2015).

Deference Cont.

- Pursuant to an April 23, 2004 memo, when evaluating the specialty occupation for same/same EOS petitions, a position should be given deference unless you can articulate that there was
 - A material error
 - A substantial change in circumstances, or
 - New material information
- Pursuant to the March 31, 2017 memo, if USCIS previously approved a petition based on evidence solely from the OOH when seeking to sponsor a beneficiary for a computer programmer position, deference should not be given and the petition should be adjudicated consistent with the new guidance.

Implementation of March 31, 2017
Memo, *Rescission of the December
22, 2000 "Guidance memo on H1B
computer related positions"*

Main Analysis

- 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.
- For some occupations, such as computer programmers, the general discussion in the OOH may be insufficient, in the absence of additional evidence, to establish that the particular position is a specialty occupation.
- The OOH states “Most computer programmers have a bachelor’s degree in computer science or a related subject; however, some employers hire workers with an associate’s degree.”

Main Analysis Continued

- The fact that the OOH states that an individual may enter the field with an associate's degree suggests that entry level computer programmer positions do not necessarily require a bachelor's degree and would not generally qualify as a position in a specialty occupation.
- Therefore, for all computer programmer petitions, the petitioner will not have met its burden of proof based on the OOH alone.
- In such cases, the petitioner will need to submit other evidence to establish that the particular position is a specialty occupation as defined by 8 CFR 214.2(h)(4)(ii) that also meets one of the prongs at 8 CFR 214.2(h)(4)(iii).

Applicable to Many Occupations

- The Policy Memorandum is specific to the computer programmer occupation.
- However, this same analysis should be conducted for occupations where the OOH does not specify that the minimum requirement for a particular position is normally a bachelor's or higher degree in a specific specialty.

Specialty Occupation Vs. Beneficiary Qualifications

- The specialty occupation determination is not driven by a beneficiary's qualifications.
- Although the beneficiary may have a bachelor's or higher degree in a specific specialty, the beneficiary's degree alone does not independently establish that the position qualifies as a specialty occupation.
- Adjudicators should determine:
 - First, whether the proffered position qualifies for classification as a specialty occupation, and
 - Second, whether the beneficiary qualifies for the position.
- These are two separate issues.

Appropriate LCA?

- Adjudicators may also address inconsistencies when the job duties described in a petition do not correspond to the wage level indicated on the Labor Condition Application (LCA).
- USCIS is required to verify, by a preponderance of the evidence, that the information on the certified LCA corresponds to and supports the H-1B petition.
- Adjudicators may issue a request for evidence if they determine that the wage level selected by the petitioner does not appear to correspond to the petitioner's description and requirements for the proffered position.
- This type of analysis should be conducted on all H-1B petitions, including those that are clearly specialty occupations.

Adjudicating Different Wage Levels

- If a wage level I is *clearly inconsistent with/lower than* the level of responsibility of the position, etc., then the petitioner has not established that the petition is supported by a certified LCA corresponding to the petition/position. This would typically result in an RFE.
- If, however, an officer believes there is an issue with a Level II position, and that the Level II LCA appears to be *clearly inconsistent with/lower than* the position as stated in the petition, the officer may raise it with their supervisor and, if needed, seek the advice of counsel.
- Trying to distinguish a Level III from a Level IV position, however, is very difficult under the 2009 DOL guidance, so we recommend against analyzing the appropriateness of the wage level in such cases until further notice .

What is a Level I Wage?

- 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.

No Deference Given

- Consistent with the March 31, 2017 memo, and the exceptions set forth in the existing deference memo, if USCIS previously approved a petition based on evidence *solely* from the OOH for an entry level computer programmer or otherwise was not adjudicated consistent with the March 31, 2017 memo, deference should NOT be given, and the petition should be adjudicated consistent with the new guidance.
- In such cases, including extension petitions, motions, and consular returns, officers should conduct an independent review of the facts and evidence submitted in support of the petition in order to assess eligibility since deference will not apply.

How Does this Affect Adjudications?

- Note: The following examples are overly-simplified and for illustrative purposes only. They are intended only to provide examples of the areas that may be affected by this policy memo. Adjudicators should make each determination on a case by case basis, ensuring that they are considering the totality of the evidence.

Example 1

- A same/same extension for an accountant who has been in the United States for 9 years as an H-1B with the same financial company. The LCA is for a level I wage. The list of duties describe advanced accounting functions, nothing looks introductory. The beneficiary is listed as being a “subject matter expert.”
 - Consistent with the March 31, 2017 memo – Unless they have a sufficient explanation for selecting the level I wage, or are otherwise able to resolve the apparent wage level discrepancy, we would RFE/deny for not having a certified LCA that corresponds to and supports the H-1B petition. It does not appear that the bene is entry level, the duties do not support that the bene is doing routine tasks that require limited, if any, exercise of judgment, working under close supervision, etc.

Example 2

- A cap case for a computer programmer for a major IT consulting company. The LCA is for a level I wage. The beneficiary will be working off-site with “weekly phone calls” and “monthly evaluations” as her only real supervision. The list of duties describes only vaguely what any computer programmer does.
- Consistent with the March 31, 2017 memo –
 - We would RFE for evidence that this is a specialty occupation (unless the petitioner submitted additional documentation to demonstrate that they have met one of the prongs).
 - We would also RFE on whether a level I wage LCA is appropriate, as she is working offsite with minimal supervision, etc. This is not in line with a level I wage description.
 - The petitioner will need to submit additional evidence to establish that the particular position is a specialty occupation. If the position qualifies as a specialty occupation, particularly if based on evidence regarding the complexity of the position, then it’s probably not a level I wage.

Example 3

- A cap case for a systems analyst or software developer for a major IT consulting company. The LCA is for a level I wage. The beneficiary will be working off-site with “weekly phone calls” and “monthly evaluations” as his only real supervision. His list of duties is detailed and documents that he is performing normal, high-level systems analysis or software development.
 - Consistent with the March 31, 2017 memo – We would RFE/deny (unless they have a sufficient explanation, etc.) on whether a level I wage LCA is appropriate, as they are working offsite with minimal supervision. Also, the duties are not “basic” with only routine tasks. This is not in line with a level I wage description.

Example 4

- A change of employer/extension for a computer programmer for a IT consulting company. The LCA is for a level I wage. The beneficiary will be working on-site on an unnamed, undocumented in-house project. Her list of duties describes only vaguely what any computer programmer does.
 - Consistent with the March 31, 2017 memo – We would still issue an RFE for the same reasons. Now, we could add the level I wage issues into our discussion. A denial would still typically follow for the same reasons, but with added support from the level I wage analysis.

Final Reminder

- As always, adjudicators should make each determination on a case by case basis, ensuring that they are considering the totality of the evidence when making a final determination.

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In your response, you have provided a copy of a “Worksheet for Use in Determining OES Wage Level” (OES worksheet) relating to the proffered position. On the OES worksheet you have indicated a Wage Level Result of “0” for Experience, Education, Special Skills and Other Requirements, and Supervisory duties and, as such, you determined that the proffered position is a Level I wage position.

The DOL Policy Guidance provides several guides that can be used for reference during the process of determining the appropriate Wage Level. The OES worksheet you provided is listed as one of these reference documents as “. . .an example of a worksheet that [the National Prevailing Wage and Helpdesk Center] might use for determining the appropriate wage level.” **XXXINCLUDE AND MODIFY AS NEEDED IF THE PETITIONER PROVIDED OR REFERENCED QUINTANILLA V. MYRIAD:** It is noted that you have provided a copy of the DOL decision, *Vicente Carlos Quintanilla v. Myriad RBM, Inc. D/B/A Rules Based Medicine*, ALJ Case No. 2014-LCA-11 (Feb. 10, 2015), in which a DOL Administrative Law Judge (ALJ) discusses the employer’s use of the worksheet in making a Wage Level determination. The ALJ’s determination in *Quintanilla* was in the context of a complaint filed for back pay, which is a different context than the instant petition which pertains to USCIS’s determination whether the LCA properly corresponds to and supports the H-1B visa petition. Furthermore, USCIS is not bound by the ALJ’s determination in *Quintanilla*.**XXX** Consequently, while USCIS gives appropriate consideration to the OES worksheet submitted and the arguments set forth, the agency will consider the totality of the evidence in the record in assessing whether the LCA in the record corresponds to the proffered position.

XXXPROVIDE AN ANALYSIS OF THE PETITIONER’S ANSWERS ON STEPS 2-5 OF THE OES WORKSHEET AND EVIDENCE SUBMITTED. ADDRESS INCONSISTENCIES IN THE PETITIONER’S REQUIREMENTS LISTED ON THE OES WORKSHEET AND EVIDENCE, SUCH AS PETITIONER’S SUPPORT LETTER, LIST OF JOB DUTIES, JOB OFFER LETTER, ETC.XXX

XXXIF STEP 2 AND/OR 3 OF THE OES WORKSHEET CONTAIN ANY INCONSISTENCIES CONCERNING THE CLAIMED EXPERIENCE/EDUCATION REQUIREMENTS AS COMPARED TO THE EVIDENCE OF RECORD:

On the OES worksheet you indicated, in **XXXMODIFY AS NEEDED:** Step 2, that no previous work experience is required and, in Step 3, that a bachelor’s degree in FIELD(S) is/are required for an individual to perform the duties of the proffered position.**XXX** However, in your **XXXLIST AND DISCUSS THE DOCUMENT(S) AND INFORMATION WHICH CONTRADICT WITH THE INDICATED EXPERIENCE AND/OR EDUCATION**, e.g. petitioner’s support letter, position evaluation, etc.**XXX**

XXXMODIFY IN ACCORDANCE WITH THE EVIDENCE OF RECORD: The statements in your support letter concerning the education and work experience required for the proffered position are vague and appear to be inconsistent with your statement in your response and the requirements indicated on the OES worksheet. You have not provided additional evidence, such as, a job offer letter, official position description, job announcement, or other documentation in

support of the work experience and education requirements indicated on the OES worksheet. As the record appears to contain inconsistencies in the education and work experience requirements for the proffered position, and you have not submitted sufficient evidence to resolve these inconsistencies, USCIS is unable to determine where the education and work experience requirements for the proffered position actually lie.XXX

XXX IF THE SKILLS/DUTIES OF THE POSITION ARE INCONSISTENT WITH THE ANSWERS IN STEP 4 OF THE WORKSHEET:

You have indicated, in Step 4, of the OES worksheet, that the proffered position requires no license or certification and no special skills. The record appears to establish that a license and/or certification are not required for the proffered position; however, you have provided conflicting evidence concerning the special skills required for the proffered position. USCIS notes that the DOL Policy Guidance states that:

“The requirement of a specific skill not listed in the O*NET does not necessitate that a point should be added. If the specific skills required for the job are generally encompassed by the O*NET description for the position, no point should be added.”

You appear to indicate several duties which do not appear to be generally encompassed by the O*NET description for the position of a **XXXOCCUPATIONAL CLASSIFICATIONXXX**.

For example, you indicate that the beneficiary will be **XXXLIST AND ANALYZE DUTIES/SKILLS THAT ARE CLEARLY MORE ADVANCED THAN THE LISTING FOR THE OCCUPATION IN THE O*NET**, e.g. a software developer who be responsible for project planning, management, and budgeting duties.XXX

XXXIF THE SUPERVISORY DUTIES OF THE POSITION ARE INCONSISTENT WITH THE ANSWERS IN STEP 5 OF THE WORKSHEET:

You have indicated, in Step 5, of the OES worksheet, that the proffered position has no supervisory duties. However, you have indicated that the beneficiary will **XXXDISCUSS AND LIST INDICATION OF SUPERVISION NOT REFLECTED BY THE O*NET LISTING FOR THE POSITION.XXX** It is noted that the DOL Policy Guidance indicates that a “1” should be indicated unless supervision is generally required by the O*NET occupation. A review of the O*NET indicates that **XXXLIST THE OCCUPATIONAL CLASSIFICATION AND DISCUSS SUPERVISION INDICATED ON THE O*NET OR DISCUSS LACK OF SUPERVISION REQUIREMENT**, e.g. may “[s]upervise the work of programmers, technologists and technicians and other engineering and scientific personnel.” This description appears to reflect supervision of lower level information technology workers and not supervision of other software developers or software developer teams.XXX As such, it does not appear that your indication of “0” in Step 5 of the OES worksheet is appropriate for the proffered position as additional supervisory duties are required.

Evaluating Specialty Occupation

Per 8 CFR 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must 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 are 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 INA section 214(i)(1)'s "degree in the specific specialty" requirement, and the definition of "specialty occupation" at 8 CFR 214.2(h)(4)(ii), the term "degree" as used above means not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the offered position.

Does This Meet Prong I?

Officers are reminded that we do not bear the burden of establishing that a particular position does not qualify as a specialty occupation. Instead, the petitioner bears the burden of establishing eligibility for the benefit sought.

We regularly review the Department of Labor's *Occupational Outlook Handbook (OOH)* on the duties and educational requirements of the wide variety of occupations that we address. Officers may not approve a petition based on inconclusive statements from the *OOH* about the entry-level requirements for a given occupation. However, we also do not maintain that the *OOH* is the exclusive source of relevant information in determining prong I. Rather, the petitioner bears the burden to submit probative evidence from objective and authoritative sources that the proffered position qualifies as an H-1B specialty occupation per one of the four prongs listed above.

Although the *OOH* speaks to occupational categories (e.g. Electrical Engineer, Computer Systems Analyst, etc.), prong I requires the petitioner to demonstrate that "the particular position" for which it is petitioning requires a baccalaureate or higher degree (or its equivalent) as the normal minimum for entry. As a result, the *OOH* is a mechanism for understanding what an occupational category normally requires, but does not itself directly speak to the petitioner's particular position. In other words, if the petitioner shows that the *OOH* states a baccalaureate degree is normally the minimum for entry into an occupational classification, the petitioner must also demonstrate that the occupational classification applies to the petitioner's particular position.

In simple terms, if a position does not meet prong I per our use of the *OOH*, the petitioner must establish that it either hits prong I via their own argument/documentation or that it hits prongs II, III, or IV via their own argument/documentation. Officers should be able to articulate which prong the petitioner has met and why.

Below are examples from the *OOH* to help indicate whether a position would typically meet prong I and the reasoning as to why or why not. A similar analysis can be applied to all positions listed in the *OOH*.

How to Become a Computer Systems Analyst

A bachelor's degree in a computer or information science field is common, although not always a requirement. Some firms hire analysts with business or liberal arts degrees who have skills in information technology or computer programming.

Education

Most computer systems analysts have a bachelor's degree in a computer-related field. Because these analysts also are heavily involved in the business side of a company, it may be helpful to take business courses or major in management information systems.

Some employers prefer applicants who have a master's degree in business administration (MBA) with a concentration in information systems. For more technically complex jobs, a master's degree in computer science may be more appropriate.

Although many computer systems analysts have technical degrees, such a degree is not always a requirement. Many analysts have liberal arts degrees and have gained programming or technical expertise elsewhere.

ANALYSIS: A position involving typical duties for a computer systems analyst would not typically hit prong I based on the *OOH*. By indicating that "many" analysts have unrelated degrees or gained the requisite experience elsewhere, the *OOH* is inconclusive regarding the requirements for this position. Consequently, the petitioner has the burden of submitting other evidence and/or argument to establish the position meets one of the four prongs. Multiple, unrelated degrees, such as liberal arts, business, and computer science, would qualify an individual for this position. Therefore, the position cannot be said to require a degree in a "specific specialty" as is required.

How to Become a Computer Programmer

Most computer programmers have a bachelor's degree in computer science or a related subject; however, some employers hire workers with an associate's degree. Most programmers specialize in a few programming languages.

Education

Most computer programmers have a bachelor's degree; however, some employers hire workers who have an associate's degree. Most programmers get a degree in computer science or a related subject. Programmers who work in specific fields, such as healthcare or accounting, may take classes in that field to supplement their degree in computer programming. In addition, employers value experience, which many students gain through internships.

ANALYSIS: A position involving typical duties for a computer programmer would not typically hit prong I based on the *OOH*. Because it indicates that an associate's degree, which is lesser than a bachelor's degree, would qualify an individual for this position, the *OOH* does not conclusively demonstrate that a bachelor's degree or higher in a specific specialty is required. Consequently, the petitioner has the burden of submitting other evidence and/or argument to establish the position meets one of the four prongs.

How to Become an Electrical or Electronics Engineer

Electrical and electronics engineers must have a bachelor's degree. Employers also value practical experience, so participation in cooperative engineering programs, in which students earn academic credit for structured work experience. Having a Professional Engineer (PE) license may improve an engineer's chances of finding employment.

Education

High school students interested in studying electrical or electronics engineering benefit from taking courses in physics and mathematics, including algebra, trigonometry, and calculus. Courses in drafting are also helpful, because electrical and electronics engineers often are required to prepare technical drawings.

In order to enter the occupation, prospective electrical and electronics engineers need a bachelor's degree in electrical engineering, electronics engineering, or electrical engineering technology.

ANALYSIS: A position involving typical duties for electrical or electronics engineers would typically hit prong I based on the *OOH*. A bachelor's degree in electrical engineering, electronics engineering, or electrical engineering technology is the minimum entry requirement. These fields are closely related, and the definitive language of the *OOH* is sufficient to establish that prong I is met.

How to Become a Market Research Analyst

Most market research analysts need at least a bachelor's degree. Top research positions may require a master's degree. Strong math and analytical skills are essential.

Education

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.

ANALYSIS: A position involving typical duties for a market research analyst would not typically hit prong 1 based on the *OOH*. Though most market research analyst positions will require a bachelor's degree, the *OOH* further explains that a wide variety of backgrounds might also qualify. While it appears that a minimum of a bachelor's degree is required for this position, this bachelor's degree can be in multiple, unrelated fields, such as market research, statistics, math, computer science, business administration, the social sciences, or communications. Because this *OOH* description is inconclusive as to whether a degree "in a specific specialty" is required, the petitioner has the burden of submitting other evidence and/or argument to establish the position meets one of the four prongs.

Many Unrelated Degrees

Below are real-life cover letter excerpts that indicate that the particular position in that petition could be performed by an individual with a variety of unrelated degrees. These statements would typically indicate the position is not a specialty occupation. As above, the reasoning would be that if a variety of unrelated bachelor's degrees would qualify an individual for that particular position, a degree in a specific specialty is not required. A similar analysis can be applied to similar statements in all petitions.

Example 1:

To execute these sophisticated and financial professional functions, PETITIONER generally requires its POSITION TITLE to possess at least a Bachelor's degree or equivalent in Marketing, Business, Translation or a quantitative field of academic study. Only through the pursuance of this particular prerequisite educational training can an

Example 2:

The skills required to perform the specialty occupation:

The position of POSITION TITLE requires a theoretical and practical application of acquired specialized knowledge. As with any POSITION TITLE, the usual minimum requirement for performance of the job duties is a Master's or Bachelor's of Science in any discipline in Engineering, or computer science or information systems or a related analytic or scientific discipline or its equivalent in education or work-related experience.

Example 3:

JOB REQUIREMENTS

The minimum requirement for entry into the specialty occupation position of POSITION TITLE internally designated as Associate, as with any similar organization, is at least a Bachelor's degree in computer science, instrumentation science, information technology, management information systems, engineering, math, physics or a closely related field of study, or the equivalent thereof and experience. A Bachelor's degree in any of the mentioned fields, or its equivalent, provides the candidate with the necessary theoretical, analytical, and intellectual

Beneficiary's Degree Not Relevant

Finally, officers are reminded that a beneficiary having a particular bachelor's degree is not typically relevant to the specialty occupation determination. The evaluation of whether the position is a specialty occupation and whether the beneficiary is qualified for the position are two different determinations. For example, if we have a position for a market research analyst, and the beneficiary had a degree in market research, this, alone, would not affect the determination that the position is not typically a specialty occupation by prong I. The specialty occupation analysis focuses on the requirements of the proffered position, rather than the qualifications of the particular beneficiary.

GENERAL NOTES:

1. The O*Net only has information on which level of degree is required generally (associate's, bachelor's, master's, etc.), not if these degrees have to be in a specific specialty. Accordingly, the O*Net will not be able to establish that a position is a specialty occupation by prong I.
2. Each case will stand on its own merits and should be adjudicated by the preponderance of the evidence based on the totality of the evidence of the record.
3. All OOH information was as of August 31, 2017. The OOH should be accessed electronically to ensure the most updated data.

ADDITIONAL GUIDANCE REGARDING WAGE LEVEL ANALYSIS

Prior email guidance issued by SCOPS instructed adjudicators to address inconsistencies when the job duties and requirements of the proffered position described in a petition contradict the wage level indicated on the Labor Condition Application (LCA). The internal guidance stated:

While USCIS does not have the authority or jurisdiction to mandate a specific wage level on the LCA, USCIS is required to verify that the information on the certified LCA corresponds to and supports the H-1B petition. The prevailing wage determination for an occupation is based on a comparison of the employer's job requirements to the occupational requirements: tasks, knowledge, skills, and specific vocational preparation (education, training, and experience) generally required for acceptable performance in that occupation. In general, a petitioner must distinguish its proffered position from others within the same occupation through the proper wage level designation to indicate factors such as the relative complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. The adjudicator may issue a request for evidence if he/she determines that the wage level selected by the petitioner does not appear to correspond to the petitioner's description and requirements for the proffered position. This type of analysis should be conducted on all H-1B petitions.

Officers have requested that more specific guidance be provided on when the wage level does not appear to correspond to the proffered position.

As noted in the prior internal guidance, officers should review all H-1B petitions to determine that the LCA properly corresponds to the position on which the petition is based. Officers should not rely on the wage level description on page 7 of the DOL *Prevailing Wage Determination Policy Guidance* to make the determination. The wage level descriptions are foundational and instructive, but have already been incorporated into DOL's five step process for determining the appropriate wage level (see Appendix A of the DOL guidance). As such, officers should follow DOL's five step process to determine if the wage level selected on the LCA properly corresponds to the petition. Wage levels begin at a Level I (entry level) and may increase based on a comparison of the duties and requirements for the employer's proffered position to the general duties and requirements for the most similar occupation as provided by the Occupational Information Network (O*NET). If it appears that the position requirements exceed what are normal for the occupation (e.g., Level I wage but education required exceeds normal education requirement for that occupation as stated in O*NET), otherwise exceed what is appropriate for the occupation and the wage level selected on the LCA (e.g., Level II wage, but experience required is at the high end of the experience and SVP range), or the position does not correspond to the occupational classification in the LCA (i.e., occupational classification selected is incorrect), officers should conduct a more detailed review of O*NET as described below.

In cases where the officer concludes that the LCA does not properly correspond to the petition, because the wage level selected by the petitioner is less than what appears to be required by DOL, officers must provide an explanation in the denial, based on O*NET, and not simply based on the definitional wage levels, explaining why the wage level selected by the petitioner on the LCA does not correspond to the position's requirements.

TIPS TO HELP IDENTIFY WHEN AN LCA WAGE LEVEL MAY BE INCONSISTENT WITH POSITION/PETITION:

A Level I wage might not be appropriate if:

- 1) The Petitioner's education requirement is higher than what is considered usual for the occupation, as provided in Appendix D of the DOL guidance or, if the SOC code is not listed in Appendix D, the O*NET Job Zone information.
- 2) The Petitioner's experience requirement is higher than the minimum experience requirement defined by the SVP range provided in the O*NET Job Zone information.
- 3) The Petitioner requires a foreign language, license or certification, or other special skill beyond what is provided for in the O*NET description.
- 4) The proffered position is a combination of two unrelated occupations.

In order for the LCA to support the petition, it must be for the correct SOC code and include all worksites described in the petition.

Please note that the following is not intended to replace the 2009 DOL guidance and is not comprehensive wage level guidance.¹ If you have additional questions regarding wage levels, you should consult the DOL guidance. Remember, officers should not determine what the proper wage level should have been. Instead, officers should only determine whether the content of the LCA, including the wage level, corresponds with the H-1B petition. In addition, the following analysis does not apply to employer provided surveys.

If an officer is issuing a denial based on an inconsistent wage level/LCA, please use the below detailed review process and DOL process overview as a guide for what is to be included in the analysis portion of the denial.

¹ http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf

DETAILED REVIEW PROCESS

| | |
|--|--|
| Step 1 SOC Code | <ul style="list-style-type: none">• Confirm that LCA SOC code is correct and includes documented worksites• If a combination of two different occupations but<ul style="list-style-type: none">• related (use SOC code for the higher wage)• unrelated (one level increase and use SOC code for higher wage) |
| Step 2 Experience | <ul style="list-style-type: none">• For a Job Zone 4 with an SVP of 7 < 8 - if more than 2 years of experience req'd, can't be Level I• For a Job Zone 5 with SVP of 8 < 9 - if more than 4 years of experience req'd, can't be Level I |
| Step 3 Education | <ul style="list-style-type: none">• If education requirement is higher than that listed in Appendix D of the DOL guidance or O*NET Job Zone, if SOC code not listed in Appendix D, can't be Level I |
| Step 4 Special Skills or Other Requirements | <ul style="list-style-type: none">• Potential level increases• Foreign language• License or certification• Travel for more than incidental training & development• Special skills or requirements that aren't part of the normal duties as described in O*NET |
| Step 5 Supervisory Duties | <ul style="list-style-type: none">• Supervising individuals in the same occupation will usually mean can't be Level I, unless provided for in O*NET• Supervising subordinates will only require a one level increase if the supervision is not part of the normal duties as described in O*NET |

DOL'S PROCESS FOR DETERMINING THE APPROPRIATE WAGE LEVEL

DOL guidance provides a five step process for determining the proper wage level for the proffered position, as follows:

Step 1: Determine whether the LCA contains the correct SOC code as described in O*NET and review the provided information including the tasks, knowledge, work activities and job zone information

Note: If the proffered position is a combination of two different, but *related* occupations (for example a combination of computer-related positions), the higher paying SOC code must be on the LCA. If the proffered position is a combination of two different, but *unrelated* occupations (for example a teacher who is also the school's accountant), a one level wage increase is required AND the higher paying SOC code must be on the LCA. In other words, the wage level would automatically increase one level because of the combination of unrelated occupations and the SOC code must be for the higher paying occupation. If the Petitioner did not select the higher paying occupation, and/or list a minimum of a Level II wage, then the LCA would not correspond to the petition. It is important to note that if a proffered position mainly conforms to the O*NET description, but only an insignificant portion of the beneficiary's time

will be spent on tasks encompassed under a different SOC code, the position would not be considered a combination of two different occupations. However, a wage level increase may still be required under step 4 below because the duties fall outside of the normal duties of the occupation.

Step 2: Compare the Petitioner's experience requirements to those listed in O*NET

For occupations in Job Zones 4 & 5, there is no increase in the wage level if the employer's experience requirement is at or below the level of experience and SVP range. Anything more will require an increase in the wage level.

The two most common SVPs in H-1B adjudications are as follows:

- SVP 7, which is defined as over 2 years up to and including 4 years of experience
- SVP 8, which is defined as over four years up to and including 10 years of experience

Therefore, for a Job Zone 4 position with an SVP of $7 < 8$ (an SVP of $7 < 8$ is the equivalent of an SVP of 7), if the employer requires zero to two years of experience, no wage level increase is required because the experience requirement is at or below the SVP range. If the employer requires more than two years of experience, a wage level increase is required as follows:

- more than two years and up to three years of experience = a one level increase (the low end of the range)
- more than three years and up to four years of experience = a two level increase (the high end of the range)
- more than four years of experience = a three level increase (greater than the range)

For a Job Zone 5 position with an SVP of $8 < 9$, if the employer requires zero to four years of experience, no wage level increase is required because the experience requirement is at or below the SVP range. If the employer requires more than four years of experience, a wage level increase is required as follows:

- more than four years and up to seven years of experience = a one level increase (low end of the range)
- more than seven years and up to ten years of experience = a two level increase (high end of the range)
- more than ten years of experience = a three level increase (greater than the range)

Step 3: Compare the petitioner's level of education requirement to that listed in Appendix D of the DOL guidance (listed by SOC code), or if the SOC code is not in the Appendix, to that listed in O*NET

If the employer's education requirement is higher than that provided in Appendix D of the DOL guidance or O*NET, if the SOC code is not in the Appendix, an increase is required and a Level 1 wage would not be appropriate. If the position usually requires a bachelor's degree and the Petitioner requires a master's degree, the wage would increase by one level and if the Petitioner requires a doctorate, the wage would increase by two levels.

Step 4: Determine whether the proffered position contains any special skills or other requirements which would warrant a wage level increase

Generally, any special skills or other requirements which are not listed in O*NET as usually being part of the occupation require an increase in the wage level.

LICENSES & CERTIFICATIONS:

Generally speaking, if the Petitioner requires a certification or a license that is not normally required for entry into the occupation as described in O*NET, then a wage level increase would be required. For example, if the proffered position is for an accountant and the employer requires a certified public accountant, or the proffered position requires a licensed professional engineer (as opposed to an engineer in training for example), a Level I wage would not be appropriate. If the occupation as described in O*NET normally requires a license even at the entry-level (such as a doctor or lawyer), then there would not be an increase in the wage level.

TRAVEL:

Generally, incidental travel for training and development would not require a wage level increase. However, extensive travel, especially outside of the beneficiary's location, may require a wage level increase. DOL has given the following examples: a house painter would typically travel to job sites in the same city, but national travel would require a one level increase. A sales manager travelling to regional offices to provide oversight and monitor performance would be considered typical, but more extensive travel may be considered atypical and require a one level increase. The same one level increase would likely be required for a physician travelling to various cities in the state or various states on a rotational basis to provide services. Review the information provided in O*NET to determine if the Petitioner's travel requirements are atypical for the occupation.

FOREIGN LANGUAGE:

A foreign language requirement will also generally require an increase in the wage level. An increase in the wage level would not be required, however, if the foreign language requirement is a normal requirement for the occupation (e.g., a foreign language teacher, interpreter, translator, or caption writer). Note: The following SOC codes include teaching a foreign language and would not require a wage level increase 25-1124.00 - Foreign Language and Literature Teachers, Postsecondary; 25-2022.00 - Middle School Teachers, Except Special and Career/Technical Education; and 25-2031.00 - Secondary School Teachers, Except Special and Career/Technical Education. However, if the beneficiary will be teaching more than one language, for example French and Spanish, a wage level increase would be required.

ADDITIONAL SKILLS & REQUIREMENTS:

Although the above are the most common instances when an increase in the wage level occurs, the Petitioner may require additional skills and/or requirements which are atypical for the occupation that would necessitate an increase in the wage level. As noted in step 1 above, when the proffered position's duties include duties that are not normally part of the occupation as described in O*NET, but do not rise to the level of a combination of occupations, a one level increase in the wage may be required.

Step 5: Review the duties the Petitioner provided to determine if there are any supervisory duties and compare to the information in O*NET

Supervisory duties do not automatically indicate that a Level 1 wage is not sufficient. A wage level increase is only required when supervision is not part of the information provided in O*NET. Further, if supervisory duties are in O*NET, it is important to determine the level of the individuals supervised. Generally speaking, if O*NET includes supervisory duties, they do not usually include supervising individuals in the same occupation. For example, if a lawyer is supervising other lawyers, a wage level increase is required, but if a lawyer is supervising legal assistants, there would not be an increase in the wage level because supervising legal assistants is one of the tasks listed in O*NET. If the employer describes the supervision in general terms, such as supervises/manages team, additional information regarding the titles and duties of the team members would be required.

DECISION

Dear Sir/Madam,

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

Section 101(a)(15)(H)(i)(b) of the Act defines such a beneficiary as 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).

Furthermore, section 212(n)(1) of the Act states:

No alien may be admitted or provided status as an H-1B nonimmigrant in an occupational classification unless the employer has filed with the Secretary of Labor an application stating the following:

(A) The employer-

(i) is offering and will offer during the period of authorized employment to aliens admitted or provided status as an H-1B nonimmigrant wages that are at least-

(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or

(II) the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application...

XXXINCLUDE IF THE POSITION IN THE INDEPENDENT SURVEY IS NOT THE PROPER OCCUPATIONAL CLASSIFICATION FOR THE PROFFERED POSITION

Title 8 Code of Federal Regulations (8 CFR), section 214.2(h)(4)(i) states in part:

(B) General requirements for petitions involving a specialty occupation.

(1) Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.XXX

Title 20 Code of Federal Regulations (20 CFR), section 655.705(b) states in pertinent part:

...DHS accepts the employer's petition (DHS Form I-129) with the DOL-certified LCA attached. In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the labor condition application is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements for H-1B visa classification.

XXXUSE IF A NEW LCA CERTIFIED AFTER FILING IS SUBMITTED: Finally, Title 8 Code of Federal Regulations (8 CFR), section 214.2(h)(4)(i) **OR** 8 CFR section 103.2 states in part:

(b) *Evidence and Processing.*

(1) *Demonstrating eligibility at time of filing.* An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions...

...

(12) *Effect where evidence submitted in response to a request does not establish eligibility at the time of filing.* A benefit request shall be denied where evidence submitted in response to a request for evidence does not establish filing eligibility at the time the benefit request was filed...

The LCA submitted with your response was certified after the date of filing your petition. This LCA does not establish eligibility at the time of filing as required by 8 CFR section 103.2(b)(12).XXX

Your XXX**INDICATE TYPE OF**XXX business seeks to employ the beneficiary as a XXX**POSITION**XXX at an annual salary of \$XXX**AMOUNT**XXX. Based on information provided, your business was established in XXX**YEAR**XXX and currently employs XXX**NUMBER**XXX workers. Included in your initial filing is an ETA 9035 Labor Condition Application (LCA) certified by the Department of Labor (DOL) for the position of XXX**POSITION**XXX under the XXX**OCCUPATIONAL CLASSIFICATION**XXX in XXX**LIST LOCATION(S) - CITY, STATE**XXX. The LCA lists the prevailing wage source as the XXX**SOURCE YEAR AND NAME FROM BOXES 11A AND 11B**, e.g., 2016 Towers Watson Data Services Acctg & Fin Compensation SurveyXXX, which appears to be an independent authoritative source.

At issue is whether the petition is supported by an LCA which corresponds with the proffered position XXX**INCLUDE IF THE POSITION IN THE INDEPENDENT SURVEY IS NOT THE PROPER OCCUPATIONAL CLASSIFICATION FOR THE PROFFERED**

POSITION: and whether that the LCA is certified for the specialty occupation in which the beneficiary will be employedXXX. USCIS does not use a position title alone in determining whether the position certified on the LCA relates to the proffered position; the agency reviews the educational and experience requirements, individual job duties and specific function, and supervisory duties, if any, of the proffered position. With the initial filing, you submitted the following description of duties for the proffered position: **XXXLIST DUTIES PROVIDED WITH INITIAL FILINGXXX**

On **XXXDATE OF RFEXXX**, USCIS informed you in a Request for Evidence (RFE) that the initial evidence did not establish that your petition was supported by an LCA which corresponded with the proffered position described in the petition. You were requested to submit evidence to demonstrate that the occupation listed in the independent authoritative source was comparable to the proffered position.

On **XXXDATE OF RESPONSEXXX**, USCIS received your response, which included: **XXXLIST EVIDENCE RECEIVEDXXX**

Your response is insufficient to establish that your petition is supported by an LCA that corresponds with the proffered position described in the petition.

As indicated in *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015), USCIS must determine whether the attestations and content of the LCA correspond to and support the H-1B visa petition.

In your response you have provided a copy of the **XXXSOURCE YEAR AND NAME FROM BOXES 11A AND 11B**, e.g., 2016 Towers Watson Data Services Acctg & Fin Compensation SurveyXXX prevailing wage survey for the position of **XXX POSITION FROM INDEPENDENT SOURCE XXX** at a **XXXLIST INDEPENDENT SOURCE CAREER LEVEL (IF APPLICABLE)**, e.g., P2 intermediate career level.XXX The prevailing wage survey describes the following roles and responsibilities for the position of a **XXXPOSITION AND CAREER LEVELXXX**:

XXXLIST DUTIES AND RESPONSIBILITIES FROM THE PREVAILING WAGE SURVEYXXX

In considering the description of the occupation as listed in the **XXXSOURCE YEAR AND NAME FROM BOXES 11A AND 11B**, e.g., 2016 Towers Watson Data Services Acctg & Fin Compensation SurveysXXX and the totality of the evidence in the record, it does not appear that the proffered position comports with the description for the occupation as certified on the LCA. A detailed analysis of the evidence provided in relation to that description follows.

XXXOFFICER'S ANALYSIS OF THE POSITION AS COMPARED TO THE ROLES AND RESPONSIBILITIES LISTED IN THE PREVAILING WAGE SURVEYXXX

In support of your petition, you submitted a certified LCA for the position of **XXX POSITION FROM INDEPENDENT SOURCE XXX** at a **XXXLIST INDEPENDENT SOURCE**

CAREER LEVEL (IF APPLICABLE), e.g., P2 intermediate career level.XXX. As discussed above, you have not established that the proffered position XXX**SUMMARIZE DEFICIENCY**, e.g., requires the performance of similar duties and responsibilities, is similar in scope and responsibility to a P2 intermediate career level position, etc.XXX

The record does not establish that the petition is supported by an LCA which corresponds with the proffered position described in the petition as required by 20 CFR 655.705(b) and *Matter of Simeio Solutions*. XXX**INCLUDE IF THE POSITION IN THE INDEPENDENT SURVEY IS NOT THE PROPER OCCUPATIONAL CLASSIFICATION FOR THE PROFFERED POSITION**: Additionally, you have not provided an LCA which is certified for the specialty occupation in which the beneficiary will be employed, as required by 8 CFR section 214.2(h)(4)(i).XXX **USE IF A NEW LCA CERTIFIED AFTER FILING IS SUBMITTED**: Furthermore, as discussed above, the LCA submitted with your response was certified after the date of filing your petition. Therefore, this LCA does not establish eligibility at the time filing as required by 8 CFR section 103.2(b)(12).XXX Therefore, your petition is denied.

If applicable, the portion of the petition requesting an extension of stay or change of status for the alien is now being denied as the nonimmigrant petition filed in the alien's behalf has been denied. **XXXINSERT AUTOTEXT 0054 IF THE ALIEN IS OUT OF STATUSXXX**

Worley, Jordan P

From: Stern, Kimberly M (Kim) [REDACTED]
Sent: Friday, March 09, 2018 2:33 PM
To: BEST_H1BGuidance@sptaas.dhs.gov
Subject: "Clearly Inconsistent" Clarifying Guidance
Attachments: H-1B Wage levels-Clearly Inconsistent_022218.docx

(b)(6)

From: Doumani, Stephanie M
Sent: Friday, March 09, 2018 3:27 PM
To: Fierro, Joseph; Martin, Evelyn M; Boudreau, Lynn A
Cc: Baran, Kathy A; Lee, Danielle L; Crandall, Kristine R; Brennan Seng, Mary Elizabeth (MB); Zuchowski, Laura B; Selby, Cara M (Carrie); Neufeld, Donald W; Colucci, Nicholas V; Hutchings, Pamela G; Nicklaw, Nicole C; Stern, Kimberly M (Kim); McMahon, Matthew E; Collins, Richard A
Subject: "Clearly Inconsistent" Clarifying Guidance

Good afternoon,

Attached please find clarifying internal guidance titled, "Additional Guidance Regarding Wage Level Analysis."

This guidance for adjudicators discusses wage levels in relation to the memorandum, "Rescission of the December 22, 2000 'Guidance memo on H-1B computer related positions,'" which was published on March 31, 2017. This guidance has been drafted in response to questions raised during the November 2017 Rescission Memo Workshop at the CSC. During the workshop, officers requested specific guidance regarding when the wage level does not appear to correspond to the proffered position.

This guidance delineates a detailed approach to assist adjudicators in determining whether the wage level listed on the LCA is "clearly inconsistent" with the proffered position. This guidance also provides additional information regarding DOL's process, and can be utilized as a resource when writing denials.

Our intent in crafting this guidance is to be responsive to the questions raised and assist the centers in their consistent and efficient adjudications related to the underlying memo. You are invited to provide additional thoughts and feedback on this document, as well as any follow-up questions. Please direct any correspondence relating to this guidance to me and my team (copied here). We will also be reaching out shortly to schedule a meeting to field additional questions and concerns.

Thank you,

Stephanie Doumani
Branch Chief
Service Center Operations
Business Employment Services Team

[REDACTED] Desk
[REDACTED] Cell

(b)(6)

Worley, Jordan P

From: Collins, Richard A [REDACTED]
Sent: Monday, May 14, 2018 1:54 PM
To: BEST_H1BGuidance@sptaas.dhs.gov
Subject: FW: Wage Level N/A & Private Survey Guidance

(b)(5)

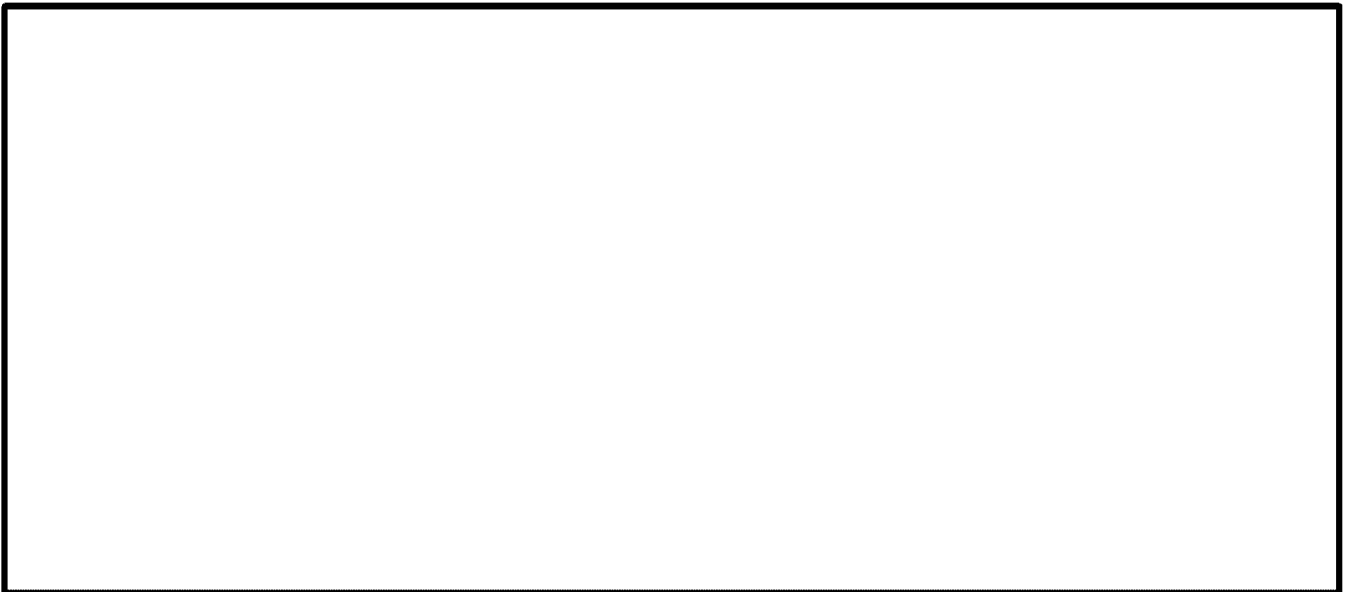
From: Collins, Richard A
Sent: Thursday, May 10, 2018 12:27 PM
To: Boudreau, Lynn A; Martin, Evelyn M; Fierro, Joseph; Lussier, Marcy R; Marble, Michelle J; Nguyen, Carolyn Q; Chau, Stephanie; Mello, Amy E; Simon, Ronna J
Cc: Doumani, Stephanie M; Nicklaw, Nicole C; McMahan, Matthew E
Subject: Wage Level N/A & Private Survey Guidance

Hello,

There have been a number of questions and concerns regarding the treatment of wage level N/A and private wage survey cases. The working group is drafting more detailed guidance related to this issue.

However, there is a need for information and there are premium cases that are being held. Accordingly, please see the preliminary guidance below. This outlines the general approach for wage level N/A and private wage survey cases:

(b)(5)



Again, more detailed guidance should be forthcoming. We hope that this is sufficient to address any premium cases that are being held.

Please let me know if you need any additional information or if you have any questions or concerns.

Thank you,

Ricky Collins | Adjudications Officer (Detail)
Business Employment Services Team (BEST) | SCOPS | USCIS

Office
Cell: (

(b)(6)

Worley, Jordan P

From: Nicklaw, Nicole C [REDACTED]
Sent: Thursday, May 31, 2018 8:19 AM
To: BEST_H1Bfoia@sptaas.dhs.gov
Subject: FW: Computer Programmer Memo Service Center Consistency

From: Doumani, Stephanie M
Sent: Tuesday, August 08, 2017 8:44 AM
To: Nakajima, Simon T; Bump, Micah N; Stern, Kimberly M (Kim); Cox, Robert H
Cc: Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C
Subject: RE: Computer Programmer Memo Service Center Consistency

Hi Simon,

(b)(5)

Our understanding from Craig/OCC was that the March 31st memo is applicable to all fields within the H-1B classification

[REDACTED]

If our understanding is incorrect, please let us know.

Thanks,
Stephanie

From: Nakajima, Simon T
Sent: Monday, August 07, 2017 2:41 PM
To: Doumani, Stephanie M; Bump, Micah N; Stern, Kimberly M (Kim); Cox, Robert H
Cc: Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C
Subject: RE: Computer Programmer Memo Service Center Consistency

Hi Stephanie/SCOPS,

(b)(5)

[REDACTED]

Thanks,
Simon

From: Doumani, Stephanie M
Sent: Monday, August 07, 2017 12:51 PM
To: Bump, Micah N; Stern, Kimberly M (Kim); Nakajima, Simon T; Cox, Robert H
Cc: Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C
Subject: RE: Computer Programmer Memo Service Center Consistency

Hi Everyone,

As Kim previously mentioned, we were notified that NSC is currently holding thousands of cases. They informed us that they need this training to train the new officers they've brought on to assist with this workload. We completely understand that OCC has competing priorities, especially in light of all the work needed on EOs. We just wanted to give

you all visibility on our game plan, which is to utilize the draft training until the final is ready if we are unable to finalize by Wednesday. We were going to move forward with this plan last week, but wanted to see if we could get the final version finished, as utilizing the final version from the start is our preferred approach.

Thanks very much for your understanding and your hard work on this.

Stephanie

From: Bump, Micah N
Sent: Monday, August 07, 2017 9:28 AM
To: Stern, Kimberly M (Kim); Nakajima, Simon T; Cox, Robert H
Cc: Doumani, Stephanie M; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C
Subject: RE: Computer Programmer Memo Service Center Consistency

Hi Kim,

We should be able to review by then. If we need more time, we'll be in touch.

Thanks,

Micah

From: Stern, Kimberly M (Kim)
Sent: Monday, August 07, 2017 8:20 AM
To: Nakajima, Simon T; Cox, Robert H; Bump, Micah N
Cc: Doumani, Stephanie M; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C
Subject: RE: Computer Programmer Memo Service Center Consistency

Good morning,

I've combined NSC's deference slides into the larger PPT, [Implementation of March 31 2017 Memo](#). The deference slides are #9 and 10, please review and revise as you see fit.

Do you think it would be possible complete initial review by COB Wed. Aug. 9th?

Thanks,
Kim

From: Nakajima, Simon T
Sent: Thursday, August 03, 2017 12:45 PM
To: Stern, Kimberly M (Kim); Cox, Robert H; Bump, Micah N
Cc: Doumani, Stephanie M; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C
Subject: RE: Computer Programmer Memo Service Center Consistency

I think splitting the deference slides into two slides is fine, but we'll need to review the slides first though. I don't think we'll be able to get these back to you this week. We'll need to make sure whatever we say is consistent with forthcoming guidance on the deference memo.

From: Stern, Kimberly M (Kim)
Sent: Thursday, August 03, 2017 12:41 PM
To: Nakajima, Simon T; Cox, Robert H; Bump, Micah N

Cc: Doumani, Stephanie M; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C
Subject: RE: Computer Programmer Memo Service Center Consistency

Hi Simon,

Thanks so much for the quick turnaround!

Regarding NSC's (2) slides. NSC would like to split the deference slides into two slides with more detail/emphasis due to the nature of the NSC workload being same/same EOS. Their suggested modifications are similar to the initial slide, but with more detail for their officers. Do you think a different approach would be preferable?

If you think NSC's slides are good-to-go, I can work on combining all the 3 slides (NSC's 2 slides + the current slide 9) into the PPT. In the alternative, I can revise specific pieces based on your comments. The main thing is to quickly provide the service centers with a deference slide(s) that OCC is comfortable with. Just let me know how I can best assist from my end.

Thanks,
Kim

From: Nakajima, Simon T
Sent: Thursday, August 03, 2017 12:04 PM
To: Stern, Kimberly M (Kim); Cox, Robert H; Bump, Micah N
Cc: Doumani, Stephanie M; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C
Subject: RE: Computer Programmer Memo Service Center Consistency

Hi Kim,

Please find our comments and edits to the slides. Where language remains pending regarding the material change issue, I have changed the font to yellow. You'll see it on slides 10 and 11 and 13. Note that we have not reviewed the 2 deference slides that Nicole sent us on Monday. Does NSC envision those two slides to replace slide 9 in the attached?

Thanks,
Simon

From: Stern, Kimberly M (Kim)
Sent: Thursday, August 03, 2017 9:59 AM
To: Nakajima, Simon T; Cox, Robert H; Bump, Micah N
Cc: Doumani, Stephanie M; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C
Subject: RE: Computer Programmer Memo Service Center Consistency

Good morning OCC,

I wanted to touch base regarding the status of the training slides, including NSC's suggested modifications for the deference slides. NSC is holding approximately 2000 cases, pending receipt of the finalized Rescission Memo training slides and deference guidance slides.

Aside from the material change issue (that you are waiting to hear back from OP&S on), are the remainder of training slides finalized?

If there are only 2 slides (material change) pending finalization on your end, would it be possible to send us the bulk of finalized training slides (minus the 2 material change slides) by COB today or early tomorrow? That would enable NSC to move forward, while also providing additional time to work with OP&S on finalizing the material change issue slides. In the alternative, we would have to begin utilizing the draft slides to prevent additional cases from being held at NSC.

Thoughts welcome,
Kim

From: Nakajima, Simon T
Sent: Wednesday, August 02, 2017 3:22 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,

I double checked my archives and didn't find anything from OP&S on the material change issue.

We'll take a look at the denial template and get back to you.

Thanks,
Simon

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

Hi OCC,

I am following up on whether you've heard back from OP&S on the material change issue which appeared in the training PPT. The centers were inquiring during our last weekly roundtable and we would like to provide them with an update. Also, NSC would like to split the deference slides into two slides with more detail/emphasis due to the nature of the NSC workload being same/same EOS. Their suggested modifications are in the attached slides (similar to the initial slide) but with more detail for their officers. We would also like to have you take a look at these slides to clear along with the main PPT as well.

On a related rescission memo note, VSC drafted a wage leveling denial to be cleared and used by all of the centers. It was drafted with their local counsel and is located on our ECN for review here: [WAGE LEVELING DENIAL SHELL](#). If possible, can you please clear the wage leveling denial by COB Friday, August 11? If you need additional time, please let us know.

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

Hi Nicole,

Just wanted to let you know that we are still working to finalize our review of the PPT, but wanted to hear back from OP&S first regarding the material change issue so that we can ensure this training sufficiently addresses that point.

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

Thanks so much, everyone. We really appreciate it!

After the initial rescission memo and guidance were distributed, the centers created a training power point which OCC reviewed. They have since revised the training power point based on the previous OCC comments and clarifying guidance given over the past few weeks and provided us with the attached late last week. Once the RFE templates are completed, can you also please take another look at the attached power point? If you could get back to us by COB Monday, July 3, we would 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
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

Not sure that is a legal call as much as it is an operational/policy call. Regardless, I think your response helped resolve Simon's comment and we are trying to finalize these and send them back asap.

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

Legally, do you view that as a material change?

Also, are you able to provide the final documents/templates by COB tomorrow? Cases are still being held with more and more accumulating. We really need to provide the centers with the templates as soon as possible so they can start moving the cases.

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,

Without seeing a file and looking at the evidence in its totality, I don't believe we can say for sure whether

[Redacted]

Thanks,

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,

[Redacted]

Thanks,
Robert

From: Nicklaw, Nicole C
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To: Nakajima, Simon T; Cox, Robert H; Bump, Micah N
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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)
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Please find some comments and edits in the attached.

Thanks,
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LOL. Definitely don't have a better plan. 😊

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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

Hi Nicole,

(b)(5)

Thanks,
Robert

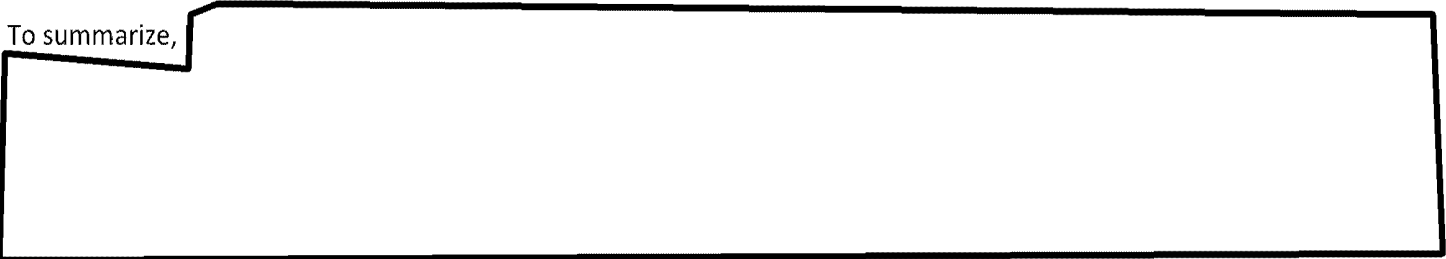
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Subject: RE: Computer Programmer Memo Service Center Consistency

(b)(5)

Hi Robert and OCC,



Attached are revised and reworked RFE templates based on the clarifying guidance you provided (thank you!) and many of your suggested edits were incorporated.

To summarize,



As you know, VSC is holding a very large number of cases pending the clearance of the RFE templates. Since an initial review was already completed, would it be possible to have your comments/edits **by COB Thursday, June 22?** Please let us know if you have any questions or need any additional information.

Thank you,

Nicole Nicklaw
Adjudications Officer
DHS|USCIS|SCOPS|Business Employment Services Team (BEST)
Desk: 
Mobil:  (b)(6)

From: Cox, Robert H
Sent: Wednesday, May 24, 2017 12:30 PM
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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

COB Wednesday will work – thank you!

For your visibility, VSC had a day 14 PP case that required a related RFE. Their local counsel reviewed so that they could take action and they are holding other cases pending our (OCC/SCOPS) feedback on the submitted RFEs.

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Nicole

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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: (b)(5)
Mobi:

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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!

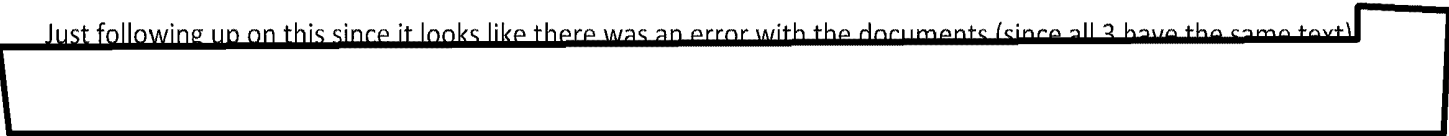
-Nicole

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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,

(b)(5)

Just following up on this since it looks like there was an error with the documents (since all 3 have the same text)



Thanks,
Robert

From: Nakajima, Simon T
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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

Hi OCC,

Attached are RFEs that VSC created based on the rescission memo guidance as well as a training presentation for officers. VSC already worked with their local counsel to draft the documents. SCOPS is in the process of reviewing and would like to also clear through you as well.

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

Hi Nicole,

(b)(5)

The VSC has shared the attached draft RFEs with POCs from both the NSC and CSC. It appears SCOPS may need to provide some additional clarification with regard to [REDACTED] Please refer to exchange/discussion below.

Please also note that the RFEs have been reviewed by VSC local OCC (see last attachment RE: Wage Leveling RFE)

The VSC does have some cases being held awaiting the clearance of said templates so I think they are ready to go to the working group for final vetting and concurrence. I also believe the working group should review the discussion below as I believe we need additional clarification in order to ensure a consistent approach at all three SCs.

Lastly, I have attached a copy of a PowerPoint with training slides that the we (VSC) provided to our officers. It would be great if we could get the presentation vetted and approved by the working group, as well.

Please let me know if you have any additional question or concerns.

Thanks,

Lynn

Thank you for your feedbacks. I read the attached email and realized that you have run this matter through your local counsel.

(b)(5)

[Redacted]

(b)(5)

I tried to respond to your points below in red.

The second RFE was created to address this guidance provided by SCOPS:

[Redacted]

The recession memo itself indicates

[Redacted]

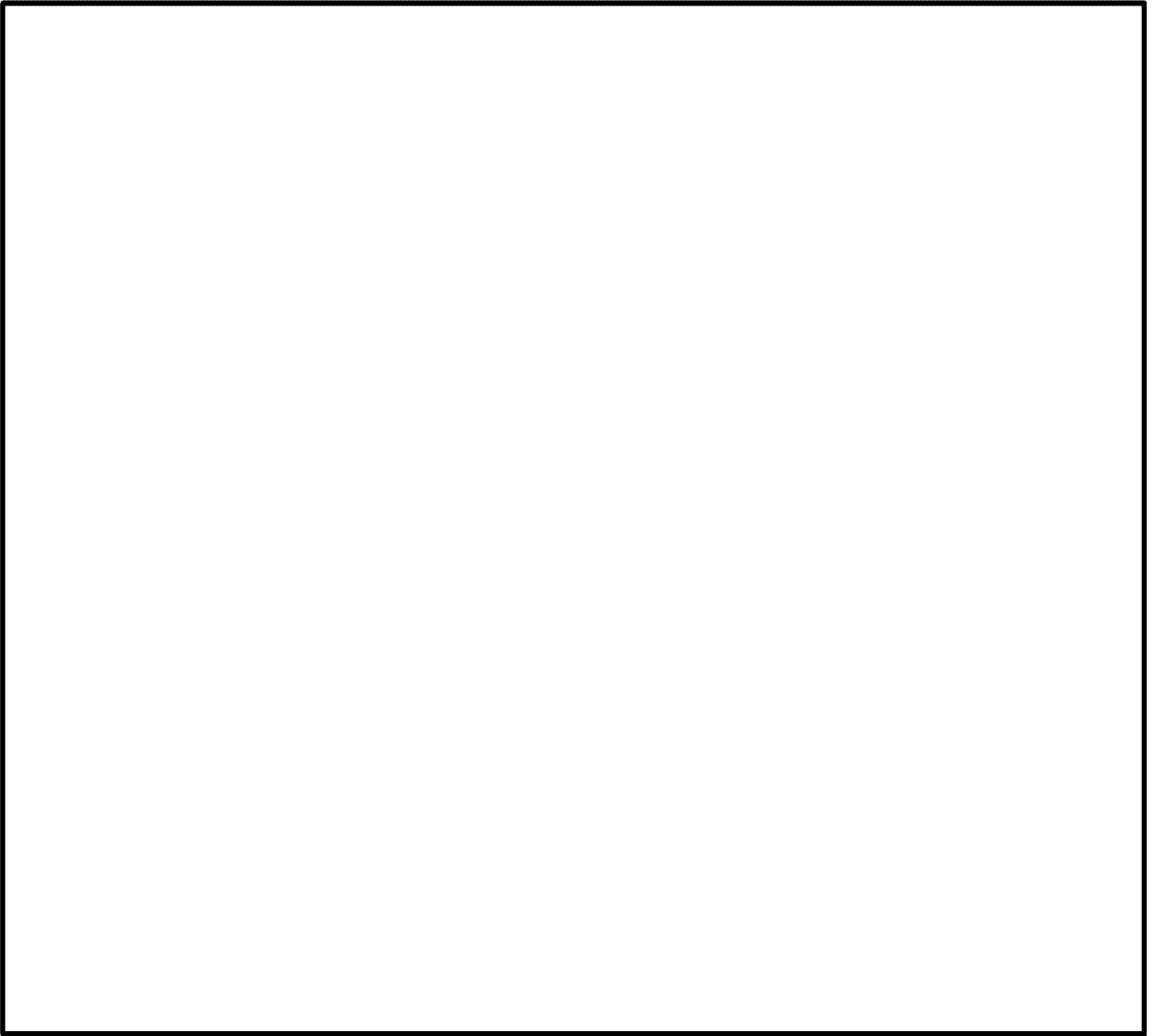
(b)(5)

Moreover, the second RFE was specifically developed based on feedback from our local counsel. I have attached the e-mail chain for background.

[Redacted]

(b)(5)

[Redacted]



Worley, Jordan P

From: Nicklaw, Nicole C [REDACTED] (b)(5)
Sent: Thursday, May 31, 2018 8:12 AM
To: BEST_H1Bfoia@sptaas.dhs.gov
Subject: FW: Computer Programmer Memo Service Center Consistency

From: Doumani, Stephanie M
Sent: Friday, July 07, 2017 2:48 PM
To: Bump, Micah N
Cc: Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Cox, Robert H; Nicklaw, Nicole C; Nakajima, Simon T; Cummings, Kevin J; Parascandola, Ciro A
Subject: RE: Computer Programmer Memo Service Center Consistency (b)(5)

Thanks, Micah. We appreciate OCC's analysis/input [REDACTED]

Policy, can you please weigh in at your earliest convenience? We would like to provide a response to this question to the centers by next week.

Happy Friday.

Stephanie

From: Bump, Micah N
Sent: Friday, July 07, 2017 2:28:08 PM
To: Doumani, Stephanie M
Cc: Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Cox, Robert H; Nicklaw, Nicole C; Nakajima, Simon T
Subject: RE: Computer Programmer Memo Service Center Consistency

Stephanie/SCOPS: (b)(5)

[REDACTED]

[Redacted]

Enjoy the weekend!

(b)(5)

Best,

Micah

Micah N. Bump
Associate Counsel
Department of Homeland Security
Citizenship and Immigration Services
20 Massachusetts Avenue, NW
Washington, D.C. 20529

Tel: (20

[Redacted]

Mobile

(b)(6)

WARNING: This email contains a document(s) categorized as FOR OFFICIAL USE ONLY (FOUO). The document(s) contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). This email and its attachment(s) are to be controlled, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to Sensitive But Unclassified (SBU) information and are not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval from the originator.

From: Doumani, Stephanie M
Sent: Tuesday, June 27, 2017 3:06 PM
To: Cox, Robert H; Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N
Cc: Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)
Subject: RE: Computer Programmer Memo Service Center Consistency

Hey Robert,

(b)(5)

[Redacted]

Also, do you mind providing an update on the templates? Our hope is to get them to the centers tomorrow as we are still holding *thousands* of cases.

Apologies for my obnoxious use of italics. It helps the time pass.

Thanks,
Stephanie

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

Not sure that is a legal call as much as it is an operational/policy call. Regardless, I think your response helped resolve Simon's comment and we are trying to finalize these and send them back asap.

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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

Legally, do you view that as a material change?

Also, are you able to provide the final documents/templates by COB tomorrow? Cases are still being held with more and more accumulating. We really need to provide the centers with the templates as soon as possible so they can start moving the cases.

Thank you,

Nicole

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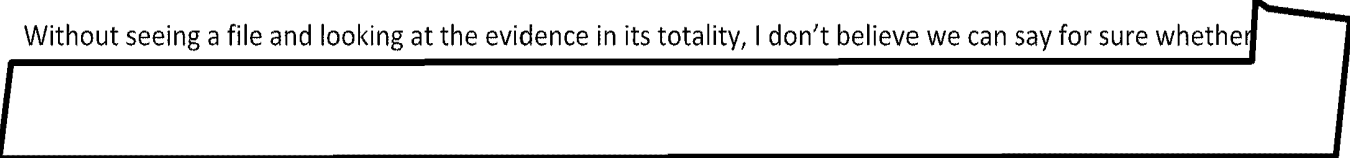
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Subject: RE: Computer Programmer Memo Service Center Consistency

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Hi Robert,

Without seeing a file and looking at the evidence in its totality, I don't believe we can say for sure whether



Thanks,

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Hi Robert,

That's the current plan, pending OCC suggestions for a better plan of attack. ☺

Thanks!

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Thank you,

Nicole Nicklaw

Adjudications Officer

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

Desk:

Mobil

(b)(6)

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Nicole Nicklaw

Adjudications Officer

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

Desk:

Mobile:



(b)(6)

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Subject: RE: Computer Programmer Memo Service Center Consistency

Cool. Thanks.

From: Nicklaw, Nicole C

Sent: Monday, May 22, 2017 4:40:20 PM

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Cc: Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)

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Thank you!

-Nicole

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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

Hi OCC,

Attached are RFEs that VSC created based on the rescission memo guidance as well as a training presentation for officers. VSC already worked with their local counsel to draft the documents. SCOPS is in the process of reviewing and would like to also clear through you as well.

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

Hi Nicole,

The VSC has shared the attached draft RFEs with POCs from both the NSC and CSC. It appears SCOPS may need to provide some additional clarification with regard to wage leveling and the second RFE (#2 wage leveling). Please refer to exchange/discussion below.

Please also note that the RFEs have been reviewed by VSC local OCC (see last attachment RE: Wage Leveling RFE)

The VSC does have some cases being held awaiting the clearance of said templates so I think they are ready to go to the working group for final vetting and concurrence. I also believe the working group should review the discussion below as I believe we need additional clarification in order to ensure a consistent approach at all three SCs.

Lastly, I have attached a copy of a PowerPoint with training slides that the we (VSC) provided to our officers. It would be great if we could get the presentation vetted and approved by the working group, as well.

Please let me know if you have any additional question or concerns.

Thanks,

Lynn

Thank you for your feedbacks. I read the attached email and realized that you have run this matter through your local counsel.

(b)(5)



I tried to respond to your points below in red.

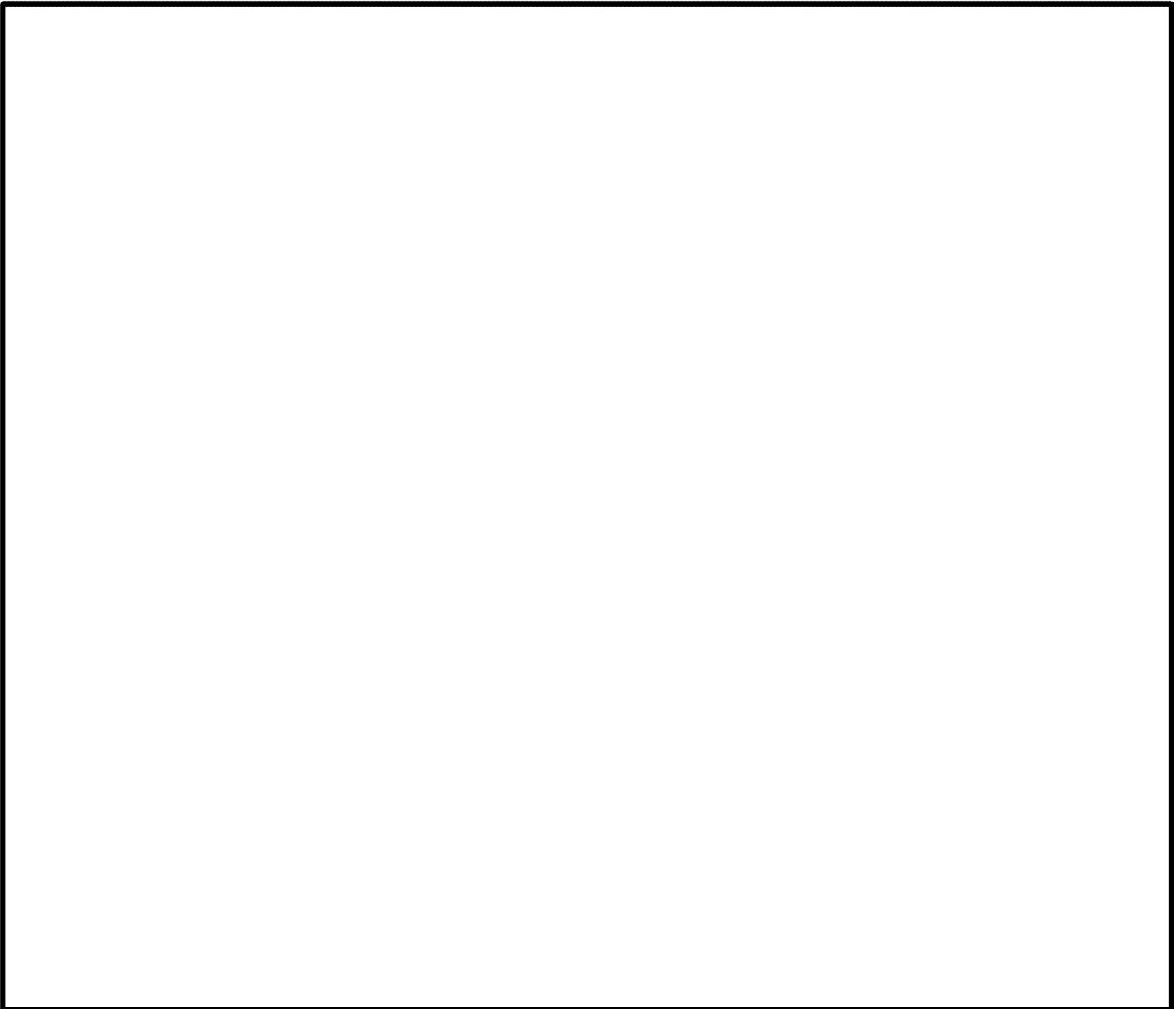
The second RFE was created to address this guidance provided by SCOPS:



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(b)(5)

Worley, Jordan P

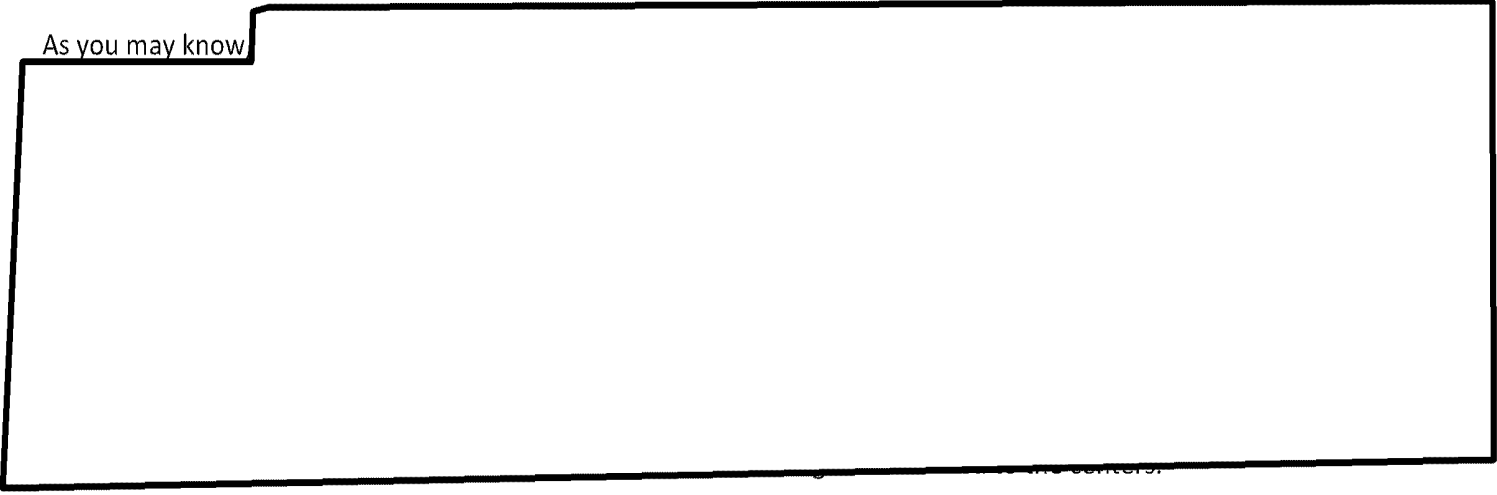
From: Nicklaw, Nicole C <Nicole.C.Nicklaw@uscis.dhs.gov>
Sent: Thursday, May 31, 2018 8:18 AM
To: BEST_H1Bfoia@sptaas.dhs.gov
Subject: FW: Deference and PM-602-0142 (Rescission Memo)

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)

(b)(5)



Hello Working Group,

As you may know



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,

Nicole Nicklaw
Adjudications Officer
DHS | USCIS | SCOPS | Business Employment Services Team (BEST)
Desk: 
Mobile:  (b)(6)

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

Hello all,

(b)(5)



Thank you,

Nicole Nicklaw

Adjudications Officer

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

Desk:



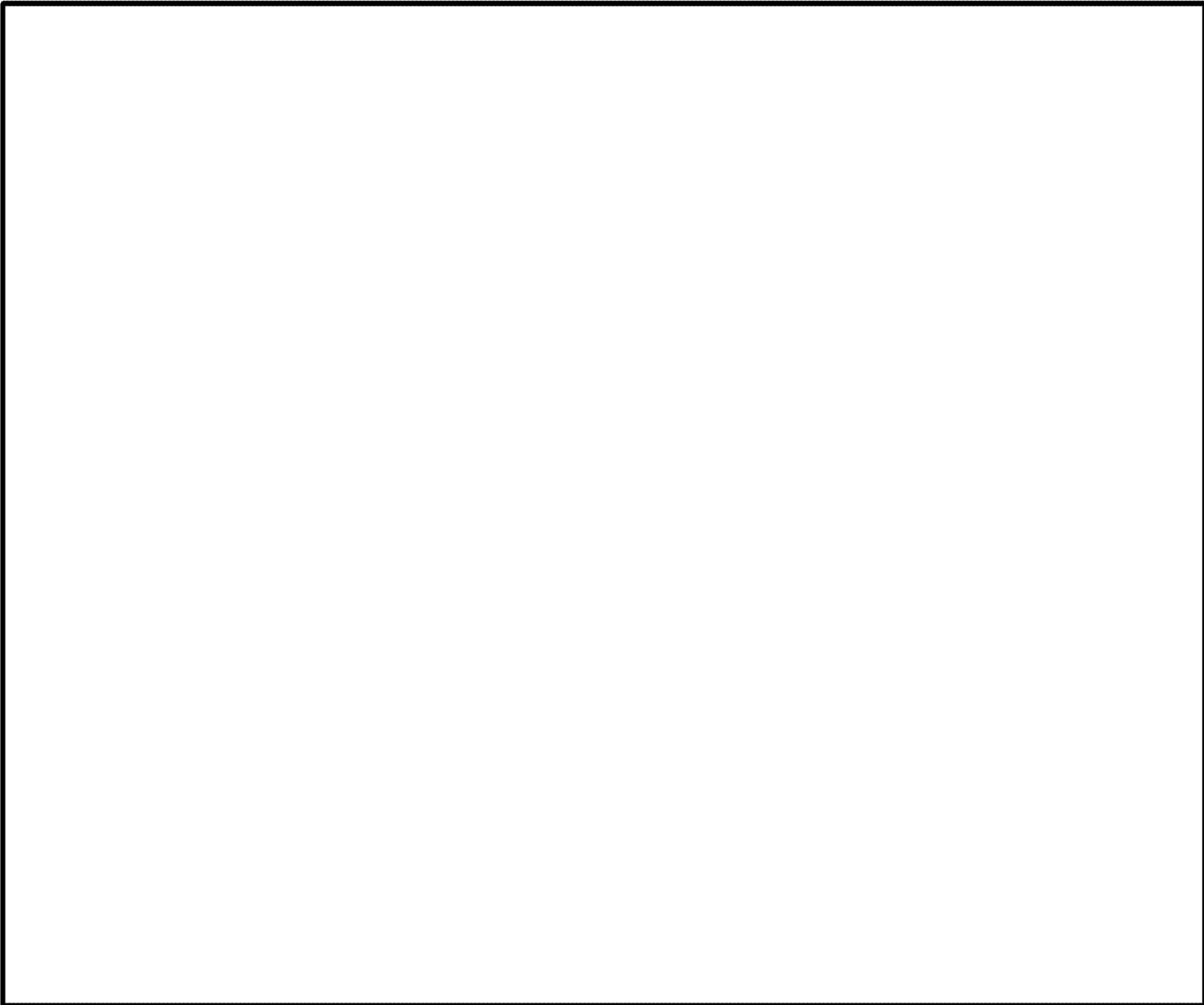
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(b)(6)

***** (b)(5)



(b)(5)



Worley, Jordan P

From: Nicklaw, Nicole C <Nicole.C.Nicklaw@uscis.dhs.gov>
Sent: Thursday, May 31, 2018 8:12 AM
To: BEST_H1Bfoia@sptaas.dhs.gov
Subject: FW: Follow up - Rescission Memo Discussion

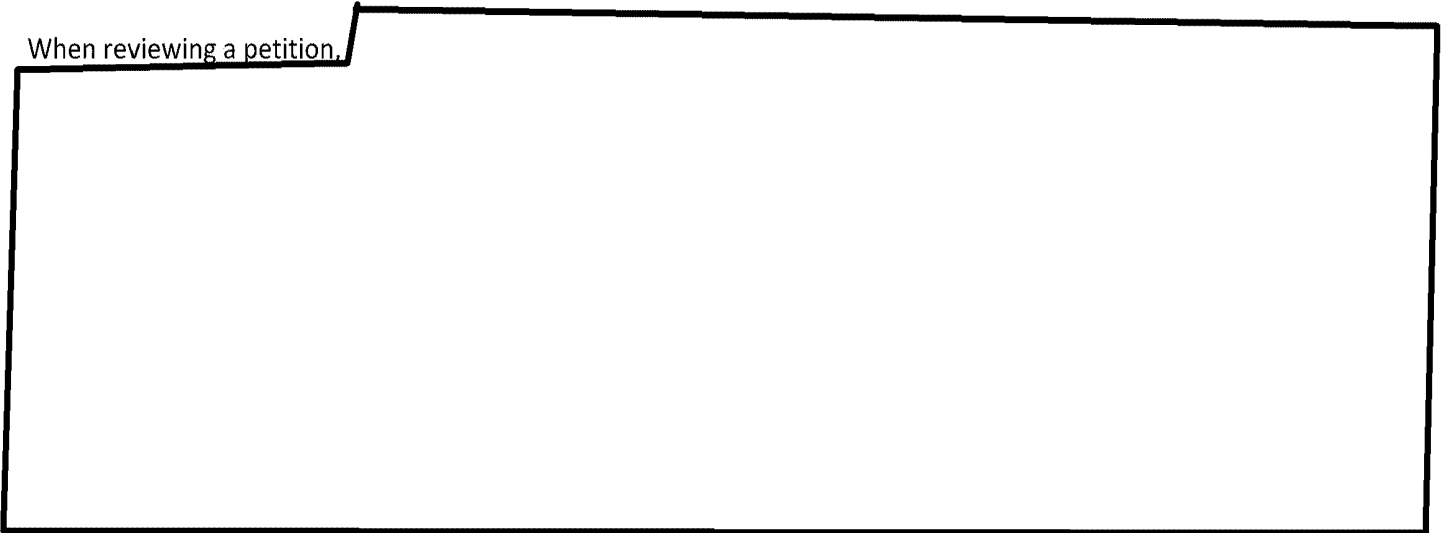
From: Nicklaw, Nicole C
Sent: Tuesday, June 20, 2017 2:17 PM
To: Boudreau, Lynn A; Fierro, Joseph; Martin, Evelyn M; Selby, Cara M (Carrie); Tamanaha, Emisa T; Crandall, Kristine R
Cc: Hutchings, Pamela G; Doumani, Stephanie M; Stern, Kimberly M (Kim)
Subject: Follow up - Rescission Memo Discussion

Hello Centers,

(b)(5)

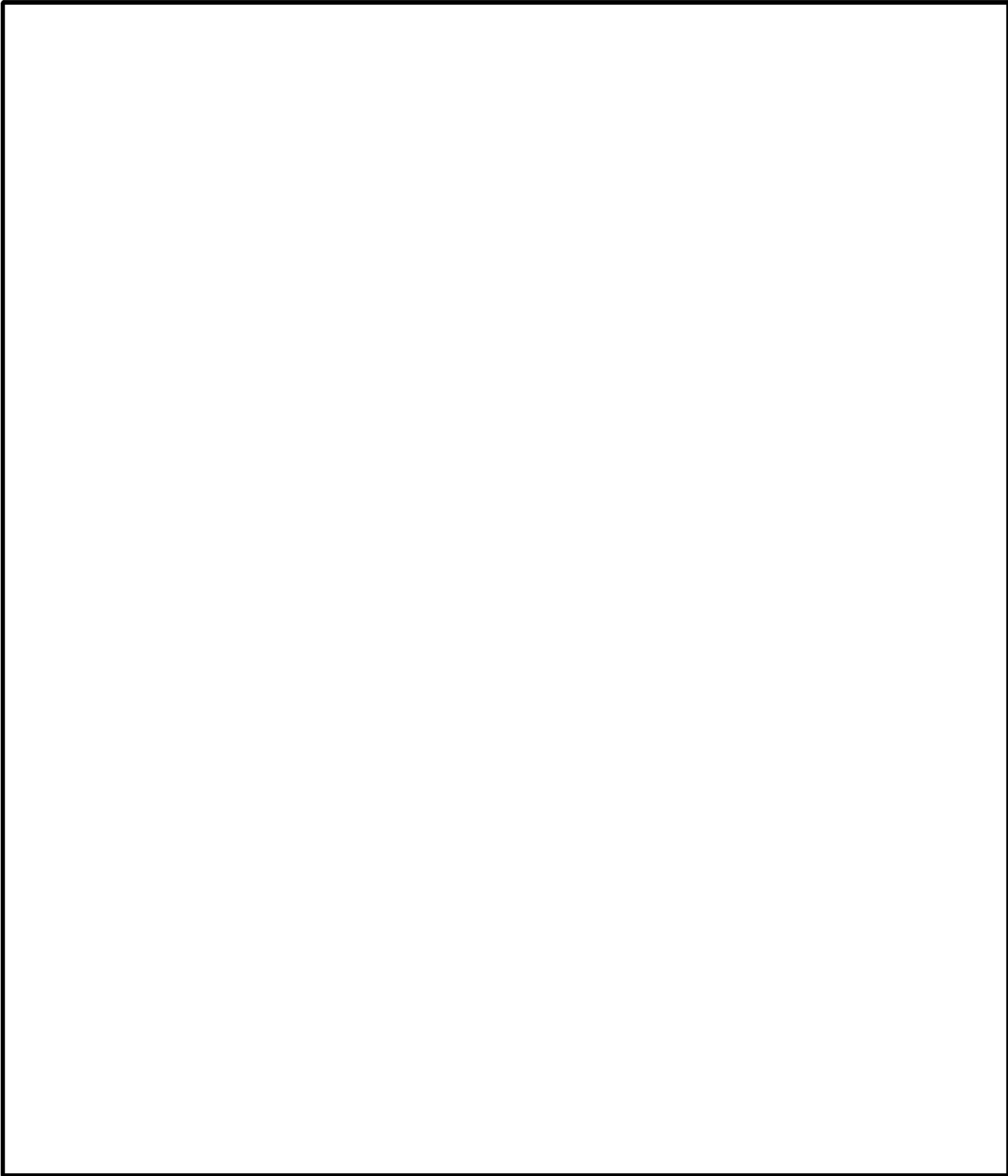
Thank you for participating in the call on Friday to further discuss the implementation of the rescission memo. SCOPS is currently working with OCC to clear the RFE templates and would like to reiterate and elaborate on our recent discussion.

When reviewing a petition,



OCC summarized the wage level analysis in their clarifying guidance (quoted below):





As discussed during our last call, we will begin round table sessions next week to discuss particular case scenarios. Please feel free to reach out to us with any additional questions.

Thank you,

Nicole Nicklaw
Adjudications Officer

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

Desk:

Mobil



(b)(6)

Worley, Jordan P

From: Nicklaw, Nicole C <[REDACTED]>
Sent: Thursday, May 31, 2018 8:15 AM
To: BEST_H1Bfoia@sptaas.dhs.gov
Subject: FW: Recission Memo Questions

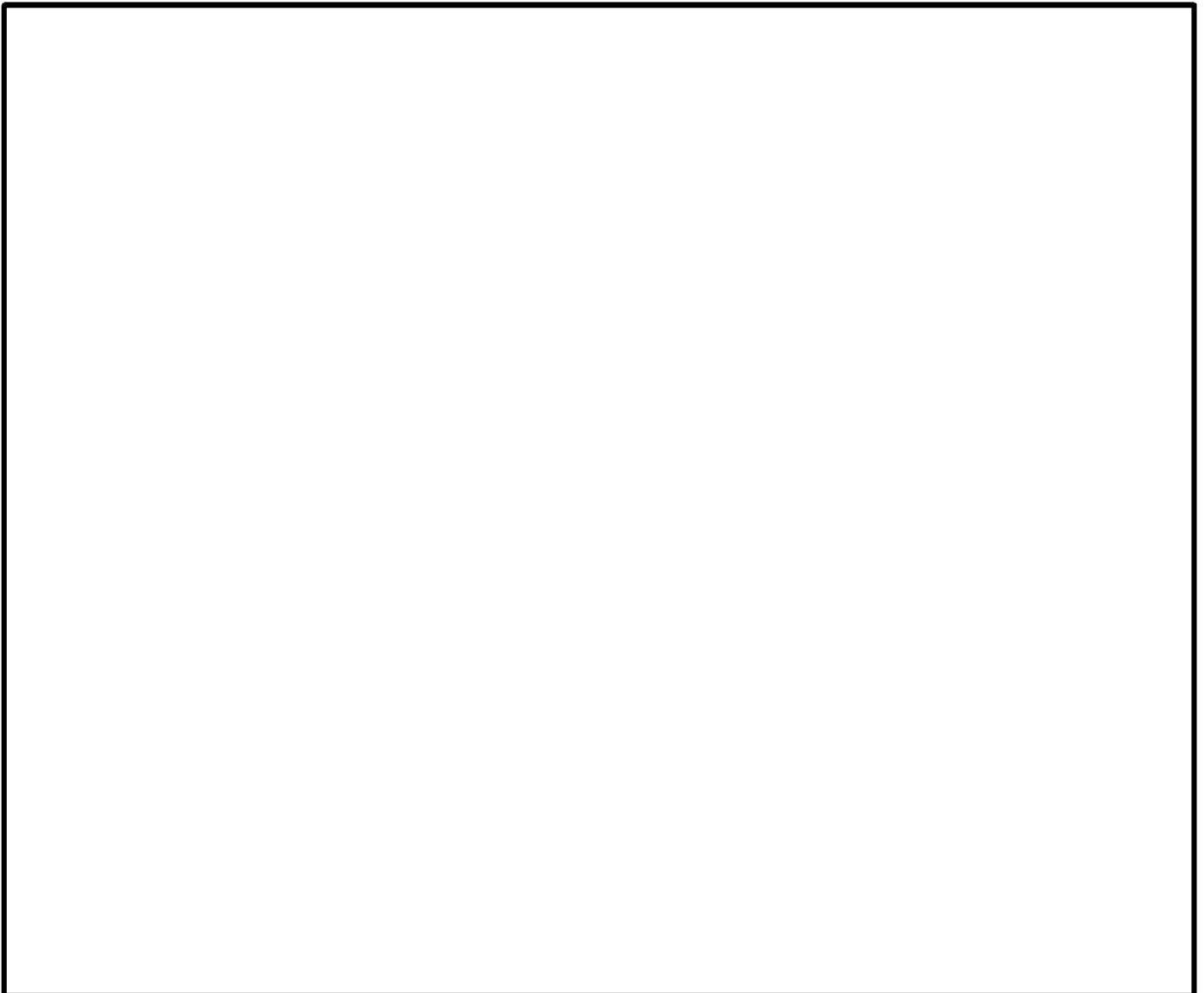
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From: Boudreau, Lynn A
Sent: Thursday, October 12, 2017 12:01 PM
To: Doumani, Stephanie M; Nicklaw, Nicole C
Cc: Fierro, Joseph; Martin, Evelyn M; Whittier, Michelle J
Subject: Recission Memo Questions

(b)(5)

Hi Stephanie,

Per our discussion last week, please see some of our outstanding issues below -



Thanks,

Lynn

Worley, Jordan P

From: Nicklaw, Nicole C [REDACTED]
Sent: Thursday, May 31, 2018 8:18 AM
To: BEST_H1Bfoia@sptaas.dhs.gov
Subject: FW: Rescission: Computer Related Positions

(b)(6)

From: Nicklaw, Nicole C
Sent: Friday, April 07, 2017 9:45 AM
To: Doumani, Stephanie M; Violett, Michael D
Subject: RE: Rescission: Computer Related Positions

Nothing to add from me.

Thanks!

From: Doumani, Stephanie M
Sent: Friday, April 07, 2017 9:43 AM
To: Violett, Michael D; Nicklaw, Nicole C
Subject: RE: Rescission: Computer Related Positions

(b)(5)

Anything else to add?

Hi Kevin,

I've added Pam Hutchings to this email, our Division Chief, as well as Carrie Selby, our Deputy Director. Pam and I discussed this approach yesterday after conferring with the service centers. The concern is [REDACTED]

[REDACTED] That said, holding these cases until we clarify such points will add a significant delay in our processing.

While cap cases will be impacted by this memo as well, cap processing does not begin until all lottery winners are data entered. (This likely won't take place until the beginning of May.) The concern is more so with the remainder of the H-1B population.

Thanks,

Stephanie

From: Cummings, Kevin J
Sent: Friday, April 07, 2017 9:21 AM

To: Doumani, Stephanie M; Parascandola, Ciro A
Subject: FW: Rescission: Computer Related Positions

Steph? Please see the plethora of questions posed by Larry below. Thanks.

--Kevin

Kevin J. Cummings
Chief, Business & Foreign Workers Division
USCIS Office of Policy and Strategy
Department of Homeland Security

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From: Levine, Laurence D
Sent: Friday, April 07, 2017 9:19 AM
To: Cummings, Kevin J; Parascandola, Ciro A; Nuebel Kovarik, Kathy
Cc: Rather, Michael B
Subject: RE: Rescission: Computer Related Positions

Kevin – do you have a sense from how high up in SCOPS the request to keep adjudicating petitions in the way it was prior to the memo came from? Service Center directors? SCOPS FO? Why would they want to push forward instead of holding them in the absence of guidance? Is it a cap question?

Thanks,

Larry

Larry Levine
Senior Advisor
Office of Policy & Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

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From: Cummings, Kevin J
Sent: Friday, April 07, 2017 9:15 AM
To: Parascandola, Ciro A; Levine, Laurence D; Nuebel Kovarik, Kathy
Cc: Rather, Michael B
Subject: FW: Rescission: Computer Related Positions
Importance: High

Kathy,

Please see the e-mail below from SCOPS. They are concerned that the H-1B rescission guidance is not clear enough for adjudicative purposes at the Service Centers. This is something that we really feel does require feedback from you and/or Craig. Thanks in advance for your assistance, and Happy Friday!

--Kevin

Kevin J. Cummings
Chief, Business & Foreign Workers Division
USCIS Office of Policy and Strategy
Department of Homeland Security

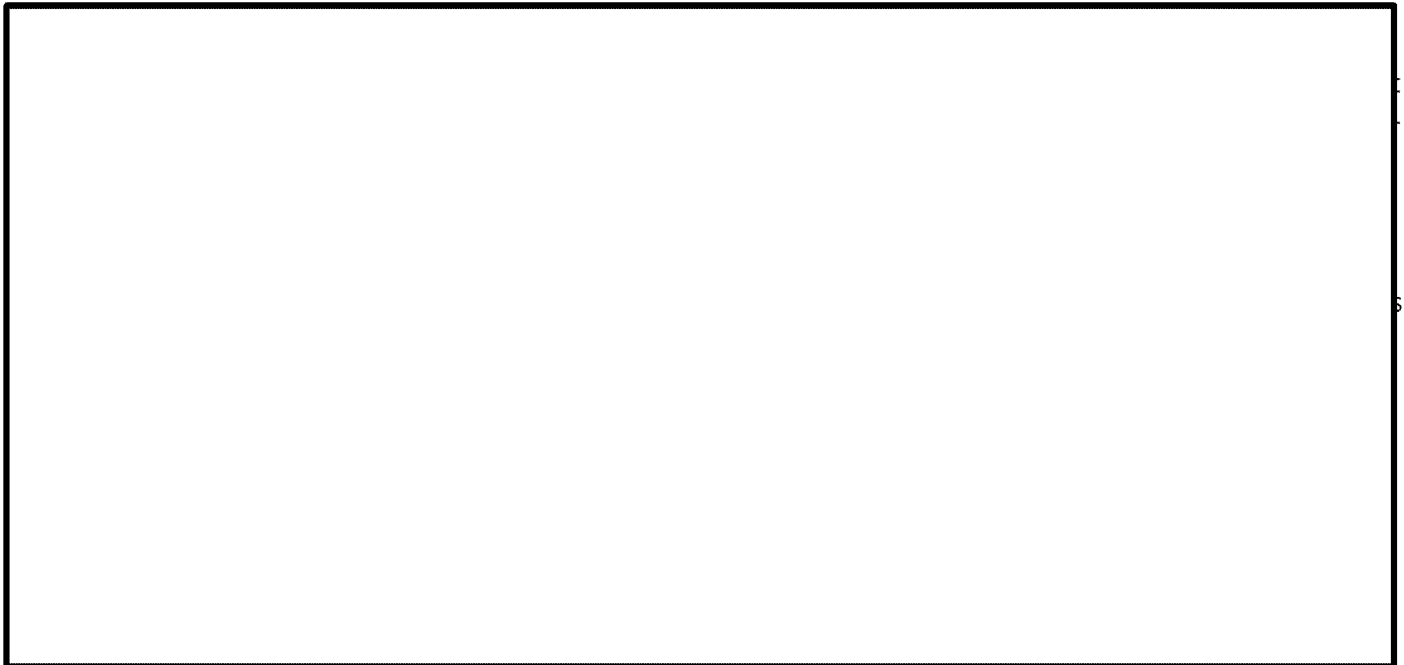
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From: Doumani, Stephanie M
Sent: Thursday, April 06, 2017 5:30 PM
To: Cummings, Kevin J; Parascandola, Ciro A
Cc: Hutchings, Pamela G; Violett, Michael D; Nicklaw, Nicole C
Subject: Rescission: Computer Related Positions
Importance: High

Hi Kevin and Ciro,

(b)(5)

I hope this email finds you well.



Thank you,

Stephanie Doumani
Branch Chief
Service Center Operations
Business Employment Services Team

 Desk

(b)(6)

[Redacted] Cell
[Redacted]

(b)(6)



(b)(5)

Thanks,

Lynn

From: Fierro, Joseph

Sent: Monday, April 10, 2017 4:39 PM

To: Doumani, Stephanie M

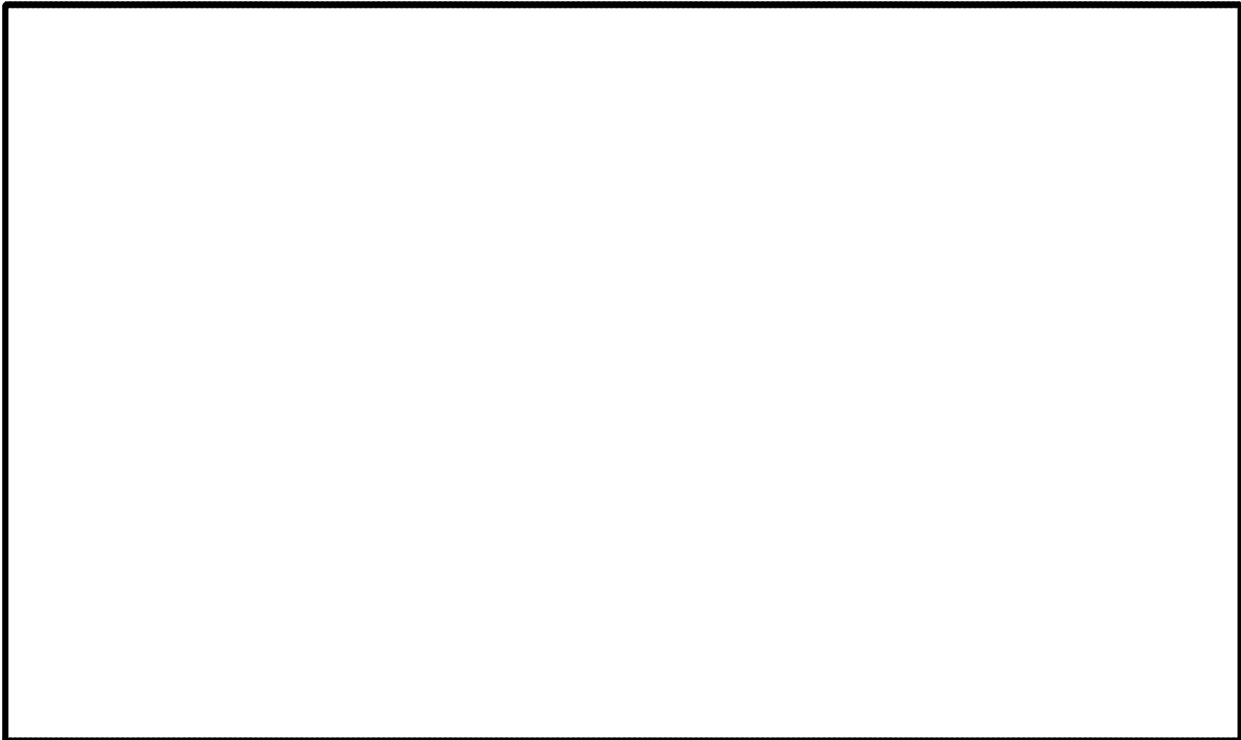
Cc: Boudreau, Lynn A; Martin, Evelyn M; Campagnolo, Donna P; Crandall, Kristine R; Hutchings, Pamela G; Nicklaw, Nicole C; Violett, Michael D

Subject: Rescission: Guidance Memo On H-B Computer Related Positions

Hi Stephanie:

CSC has the following questions:

(b)(5)



We are available if you wish to have a call for any discussion you may wish to have.

Thank you,

Joseph Fierro

Associate Center Director, Employment Branch 2
California Service Center

[Redacted]

(b)(6)

From: Doumani, Stephanie M
Sent: Thursday, April 06, 2017 2:24:04 PM
To: Boudreau, Lynn A; Fierro, Joseph; Martin, Evelyn M
Cc: Selby, Cara M (Carrie); Campagnolo, Donna P; Crandall, Kristine R; Hutchings, Pamela G; Nicklaw, Nicole C; Violett, Michael D
Subject: Rescission: Guidance Memo On H-B Computer Related Positions

Hi Everyone,

As many of you know, the front office recently issued a Policy Memo titled *Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions"* PM-602-0142.

(<https://www.uscis.gov/sites/default/files/files/natedocuments/PM-6002-0142-H-1BComputerRelatedPositionsRecission.pdf>).

(b)(5)

We understand that as written

[Large redacted area]

When submitting your questions, please be sure to include everyone on this thread. Please submit your questions by COB Monday, April 10th.

Thank you very much for your patience while we look further into this.

Sincerely,

Stephanie Doumani

Branch Chief

Service Center Operations

Business Employment Services Team

[Redacted] Desk
[Redacted] Cell

(b)(6)

[Redacted]

Worley, Jordan P

From: Nicklaw, Nicole C [REDACTED]
Sent: Thursday, May 31, 2018 8:13 AM
To: BEST_H1Bfoia@sptaas.dhs.gov
Subject: FW: Rescission Memo Discussion

(b)(5)

From: Cox, Robert H
Sent: Wednesday, June 14, 2017 4:15 PM
To: Parascandola, Ciro A; Doumani, Stephanie M
Cc: Nicklaw, Nicole C; Stern, Kimberly M (Kim); Hutchings, Pamela G; Viger, Steven W; Buten, Elizabeth C; Chulapakorn, Adrienne; Buono, Paul M; Hale, Paola R; Bailey, Morgan; Choi, Hae-Jin; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Bump, Micah N; Nakajima, Simon T; Plastrik, Steven T; Hanehan, Brendan J; Luna, Maria P (Pilar)
Subject: RE: Rescission Memo Discussion

Hi Stephanie and Ciro,

(b)(5)

[REDACTED]

Please let us know if you have any questions.

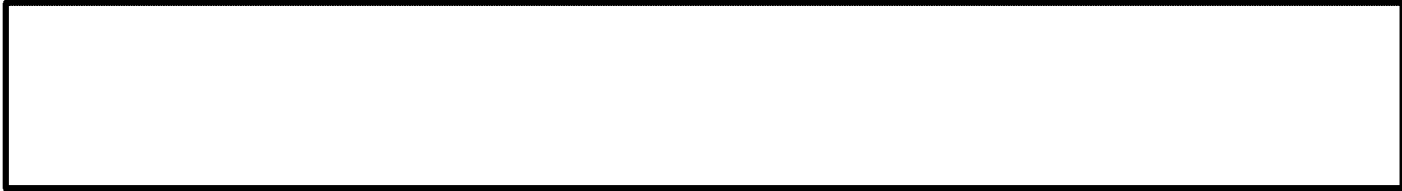
Thanks,
Robert

From: Parascandola, Ciro A
Sent: Monday, June 12, 2017 2:49 PM
To: Doumani, Stephanie M; Cox, Robert H
Cc: Nicklaw, Nicole C; Stern, Kimberly M (Kim); Hutchings, Pamela G; Viger, Steven W; Buten, Elizabeth C; Chulapakorn, Adrienne; Buono, Paul M; Hale, Paola R
Subject: RE: Rescission Memo Discussion

(b)(5)

Hi Stephanie –

[REDACTED]



(b)(5)

Ciro Parascandola

Acting Chief, Business and Foreign Workers Division

USCIS Office of Policy and Strategy, DHS

Office:



(b)(6)

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From: Doumani, Stephanie M

Sent: Monday, June 12, 2017 2:17 PM

To: Parascandola, Ciro A; Cox, Robert H

Cc: Nicklaw, Nicole C; Stern, Kimberly M (Kim); Hutchings, Pamela G

Subject: Rescission Memo Discussion

Hi Ciro and Robert,

Happy Monday.

I wanted to see if by chance you were able to confer with your leadership regarding our discussion last week. If so, we would really like to discuss next steps.

Thanks,
Stephanie

Worley, Jordan P

From: Nicklaw, Nicole C <[REDACTED]>
Sent: Thursday, May 31, 2018 8:13 AM
To: BEST_H1Bfoia@sptaas.dhs.gov
Subject: FW: Rescission Memo Discussion

(b)(6)

From: Parascandola, Ciro A
Sent: Monday, June 12, 2017 2:49 PM
To: Doumani, Stephanie M; Cox, Robert H
Cc: Nicklaw, Nicole C; Stern, Kimberly M (Kim); Hutchings, Pamela G; Viger, Steven W; Buten, Elizabeth C; Chulapakorn, Adrienne; Buono, Paul M; Hale, Paola R
Subject: RE: Rescission Memo Discussion

Hi Stephanie –

(b)(5)

[REDACTED]

Ciro Parascandola

Acting Chief, Business and Foreign Workers Division
USCIS Office of Policy and Strategy, DHS
Office: [REDACTED]

(b)(6)

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From: Doumani, Stephanie M
Sent: Monday, June 12, 2017 2:17 PM
To: Parascandola, Ciro A; Cox, Robert H
Cc: Nicklaw, Nicole C; Stern, Kimberly M (Kim); Hutchings, Pamela G
Subject: Rescission Memo Discussion

Hi Ciro and Robert,

Happy Monday.

I wanted to see if by chance you were able to confer with your leadership regarding our discussion last week. If so, we would really like to discuss next steps.

Thanks,
Stephanie

Worley, Jordan P

From: Nicklaw, Nicole C [REDACTED] (b)(6)
Sent: Thursday, May 31, 2018 8:15 AM
To: BEST_H1Bfoia@sptaas.dhs.gov
Subject: FW: Updated RFEs, Snippet & Denials for Wage Leveling
Attachments: RFE 2050 Edits.docx; RFE 2124 Edits.docx; RFE 2125 Edits.docx; RFE 2126 Edits.docx; 2049 SNIPPET FOR H-1B WAGE LEVELING DENIAL.docx; I129H1NA DENIAL H-1B WAGE LEVEL NA.docx; I129H1WL DENIAL H-1B WAGE LEVELING.docx

From: Boudreau, Lynn A (b)(5)
Sent: Friday, December 08, 2017 4:49 PM
To: Nicklaw, Nicole C; Buten, Elizabeth C; Parascandola, Ciro A; Doumani, Stephanie M; Martin, Evelyn M; Fierro, Joseph; Simon, Ronna J; Whittier, Michelle J
Cc: Moran, Karla V; Hutchings, Pamela G; Cox, Robert H; Lin, Peggy P; Aucoin, Lauren J; Hardy, Amanda L; Choi, Hae-Jin; Viger, Steven W; Cummings, Kevin J; Selby, Cara M (Carrie); Plastrik, Steven T; Hanehan, Brendan J
Subject: Updated RFEs, Snippet & Denials for Wage Leveling

Please see the attached updated RFEs. [REDACTED]

Thanks,

Lynn

Worley, Jordan P

From: Nicklaw, Nicole C [REDACTED] (b)(6)
Sent: Thursday, May 31, 2018 8:15 AM
To: BEST_H1Bfoia@sptaas.dhs.gov
Subject: FW: Workshop Summary
Attachments: Wage Leveling Chart.docx; Evaluating Specialty Occupation.docx

From: Boudreau, Lynn A
Sent: Thursday, December 07, 2017 4:33 PM
To: Nicklaw, Nicole C; Buten, Elizabeth C; Parascandola, Ciro A; Doumani, Stephanie M; Martin, Evelyn M; Fierro, Joseph; Simon, Ronna J; Whittier, Michelle J
Cc: Moran, Karla V; Hutchings, Pamela G; Cox, Robert H; Lin, Peggy P; Aucoin, Lauren J; Hardy, Amanda L; Choi, Hae-Jin; Viger, Steven W; Cummings, Kevin J; Selby, Cara M (Carrie); Plastrik, Steven T
Subject: RE: Workshop Summary

Please see the attached training tools the VSC has created based on our discussions at the workshop. We are sharing for circulation, comment & concurrence.

- Wage Leveling Guidance
- Evaluation of Specialty Occupation

Thanks,

Lynn

From: Nicklaw, Nicole C
Sent: Tuesday, November 28, 2017 10:10 AM
To: Buten, Elizabeth C; Parascandola, Ciro A; Doumani, Stephanie M; Boudreau, Lynn A; Martin, Evelyn M; Fierro, Joseph; Simon, Ronna J
Cc: Moran, Karla V; Hutchings, Pamela G; Cox, Robert H; Lin, Peggy P; Aucoin, Lauren J; Hardy, Amanda L; Choi, Hae-Jin; Viger, Steven W; Cummings, Kevin J
Subject: RE: Workshop Summary

Hi everyone,

Hope you all had a great Thanksgiving also! SCOPS is meeting internally later this afternoon to discuss the takebacks in further detail. We will be back in touch soon thereafter to get a plan together.

Thanks for reaching out OP&S!

Nicole

From: Buten, Elizabeth C
Sent: Monday, November 27, 2017 2:27 PM
To: Parascandola, Ciro A; Doumani, Stephanie M; Boudreau, Lynn A; Martin, Evelyn M; Fierro, Joseph; Simon, Ronna J
Cc: Moran, Karla V; Hutchings, Pamela G; Nicklaw, Nicole C; Cox, Robert H; Lin, Peggy P; Aucoin, Lauren J; Hardy,

Amanda L; Choi, Hae-Jin; Viger, Steven W; Cummings, Kevin J

Subject: RE: Workshop Summary

Good afternoon and I hope everyone had a good Thanksgiving! We just had a brief meeting on the workshop at OP&S so I wanted to reach out to see what our next steps will be. SCOPS, have you all had a chance to discuss the proposed memos below (under items due)? Should we set up a meeting with the H-1B working group to discuss these proposals? Thanks.

Elizabeth

From: Parascandola, Ciro A

Sent: Wednesday, November 22, 2017 9:56 AM

To: Doumani, Stephanie M; Boudreau, Lynn A; Martin, Evelyn M; Fierro, Joseph; Simon, Ronna J

Cc: Moran, Karla V; Hutchings, Pamela G; Nicklaw, Nicole C; Cox, Robert H; Lin, Peggy P; Aucoin, Lauren J; Hardy, Amanda L; Choi, Hae-Jin; Viger, Steven W; Buten, Elizabeth C; Cummings, Kevin J

Subject: RE: Workshop Summary

Adding the H-1B team from OP&S.

Ciro Parascandola

Special Assistant

USCIS Office of Policy and Strategy, DHS

Office

(b)(6)

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From: Doumani, Stephanie M

Sent: Tuesday, November 21, 2017 5:42 PM

To: Boudreau, Lynn A; Martin, Evelyn M; Fierro, Joseph; Simon, Ronna J

Cc: Moran, Karla V; Hutchings, Pamela G; Nicklaw, Nicole C; Parascandola, Ciro A; Cox, Robert H; Lin, Peggy P; Aucoin, Lauren J; Hardy, Amanda L; Choi, Hae-Jin

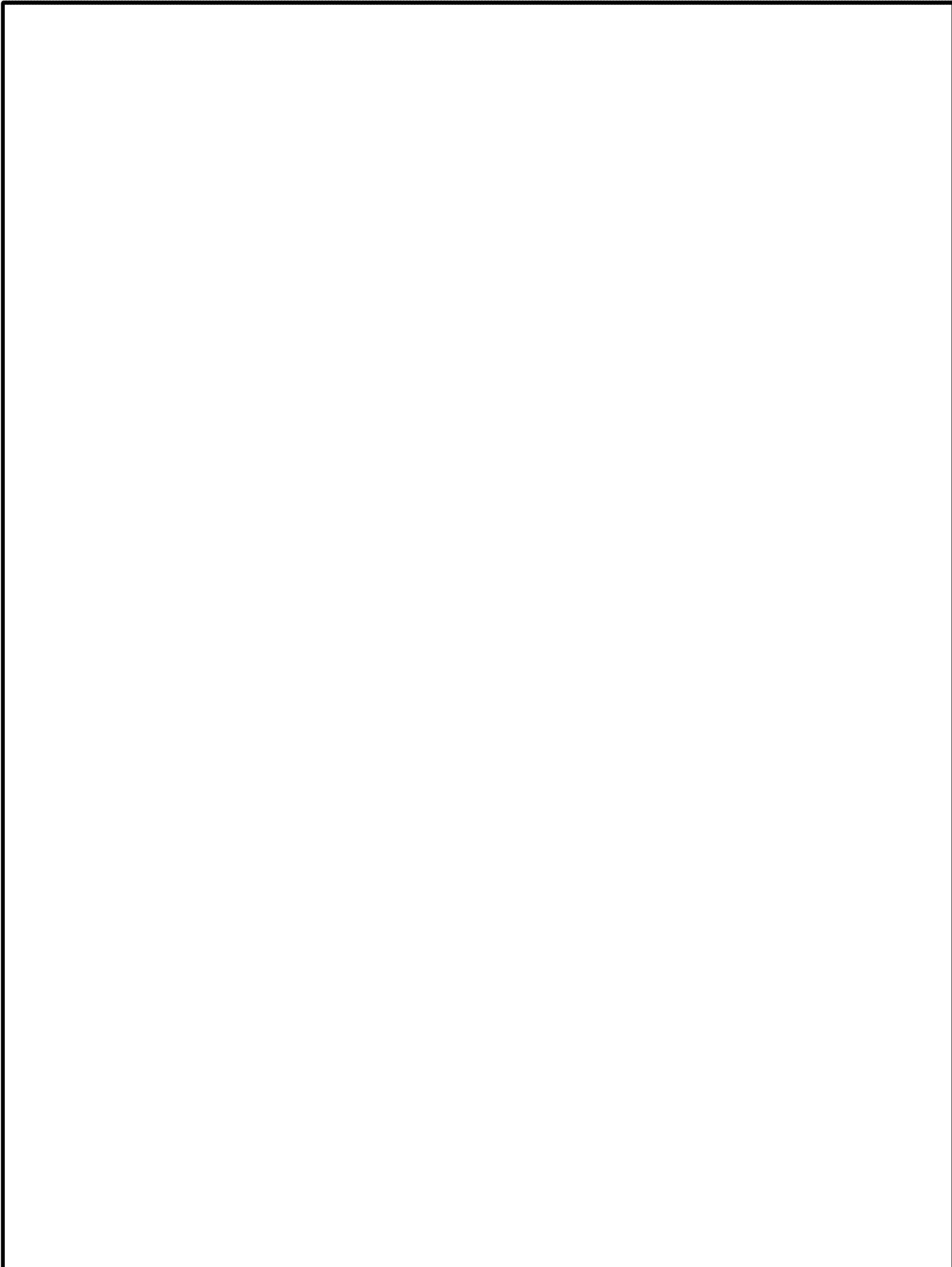
Subject: Workshop Summary

Good Afternoon Everyone,

First and foremost, thank you all for your participation in our rescission workshop. This past week was very successful in that we were able to make decisions regarding pending policy calls, identify areas where additional guidance is needed, and identify inconsistencies in our interpretation of the memo. This would not have been possible without your insight and expertise. We are very grateful to all of you for your assistance and are confident that we are well on our way to establishing a road map for the policy set forth in this memo.

As promised, we have compiled a list of all the decisions we made, in addition to items that we agreed to work on collectively. They are as follows:

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In terms of prioritizing the abovementioned items, SCOPS BEST will first begin to work on the agreed-upon changes for the RFE and Denial templates. All templates will be circulated through the working group and the centers for comments before they are finalized. SCOPS will also reach out to DOL to obtain training materials and see if they are amenable to offering an overview of their process to the centers.

Next, SCOPS BEST will work with policy and OCC to draft the aforementioned guidance. That will also be circulated to the working group and the centers to ensure it is legally sound and addresses the needs of adjudicators.

If there is anything we missed, please let us know at your earliest convenience. Also, please don't forget to send your denial examples so that we can begin circulating samples through the working group.

Thanks very much.

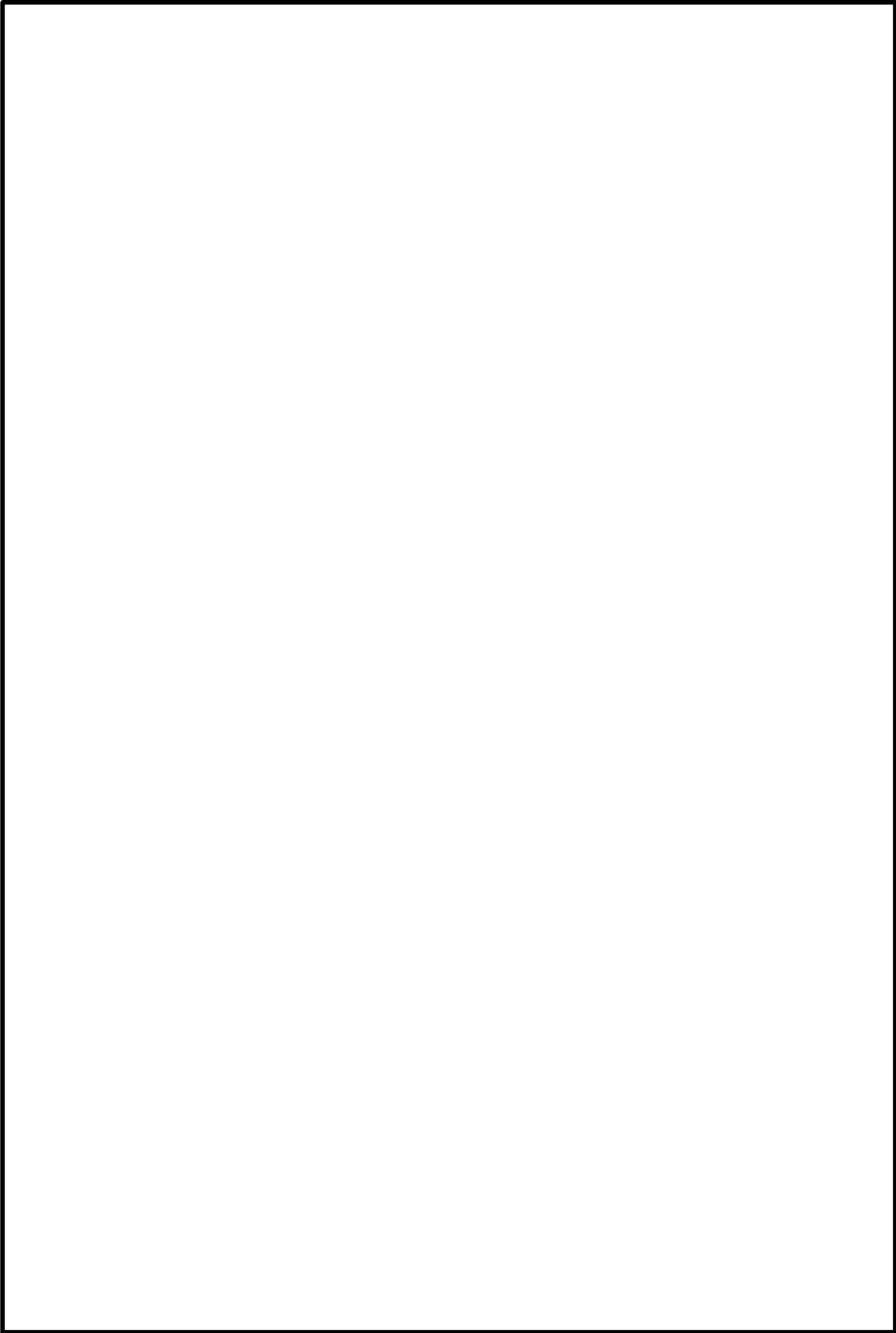
Stephanie Doumani
Branch Chief
Service Center Operations
Business Employment Services Team

 Desk
Cell

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Labor Condition Application

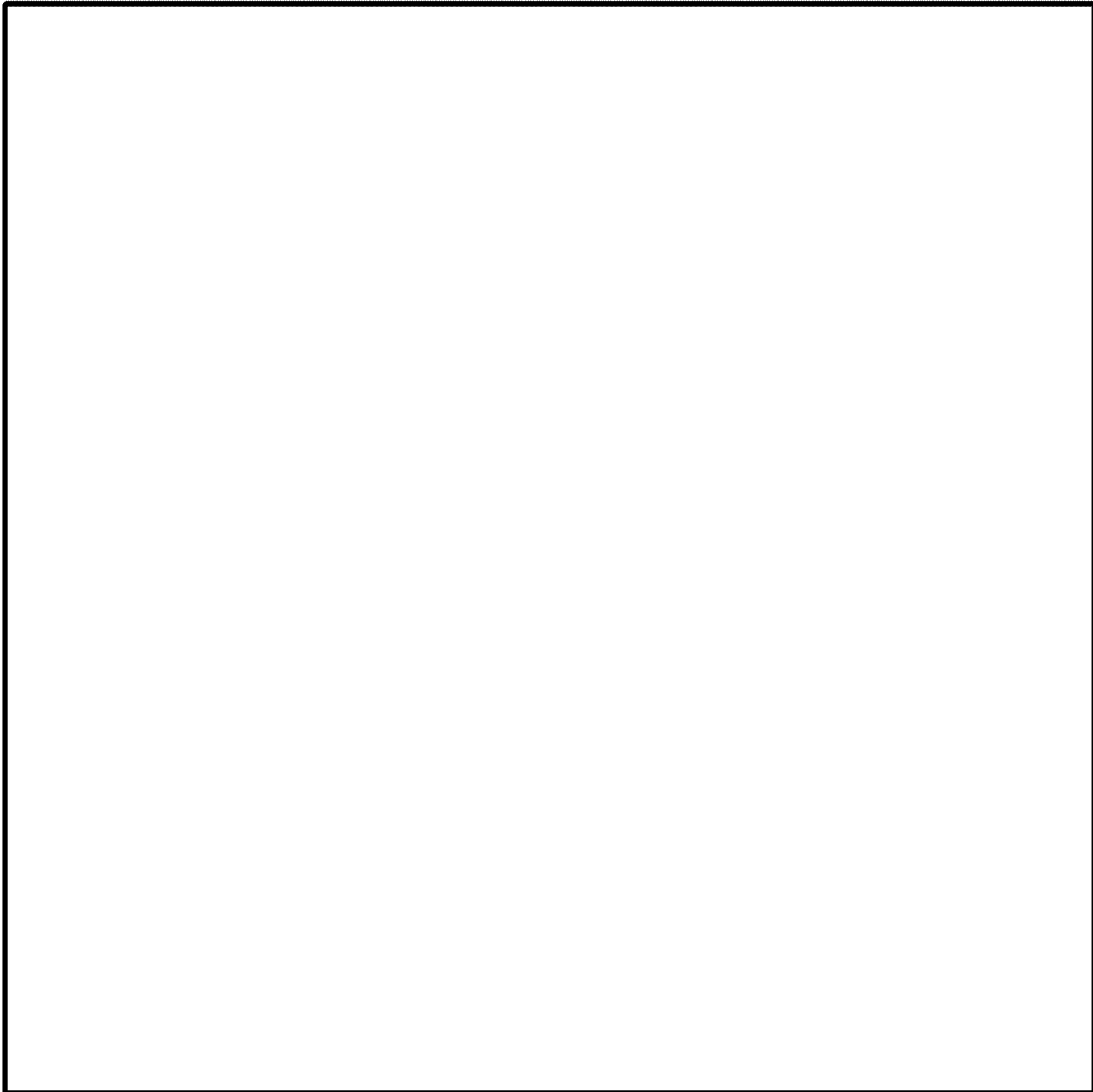
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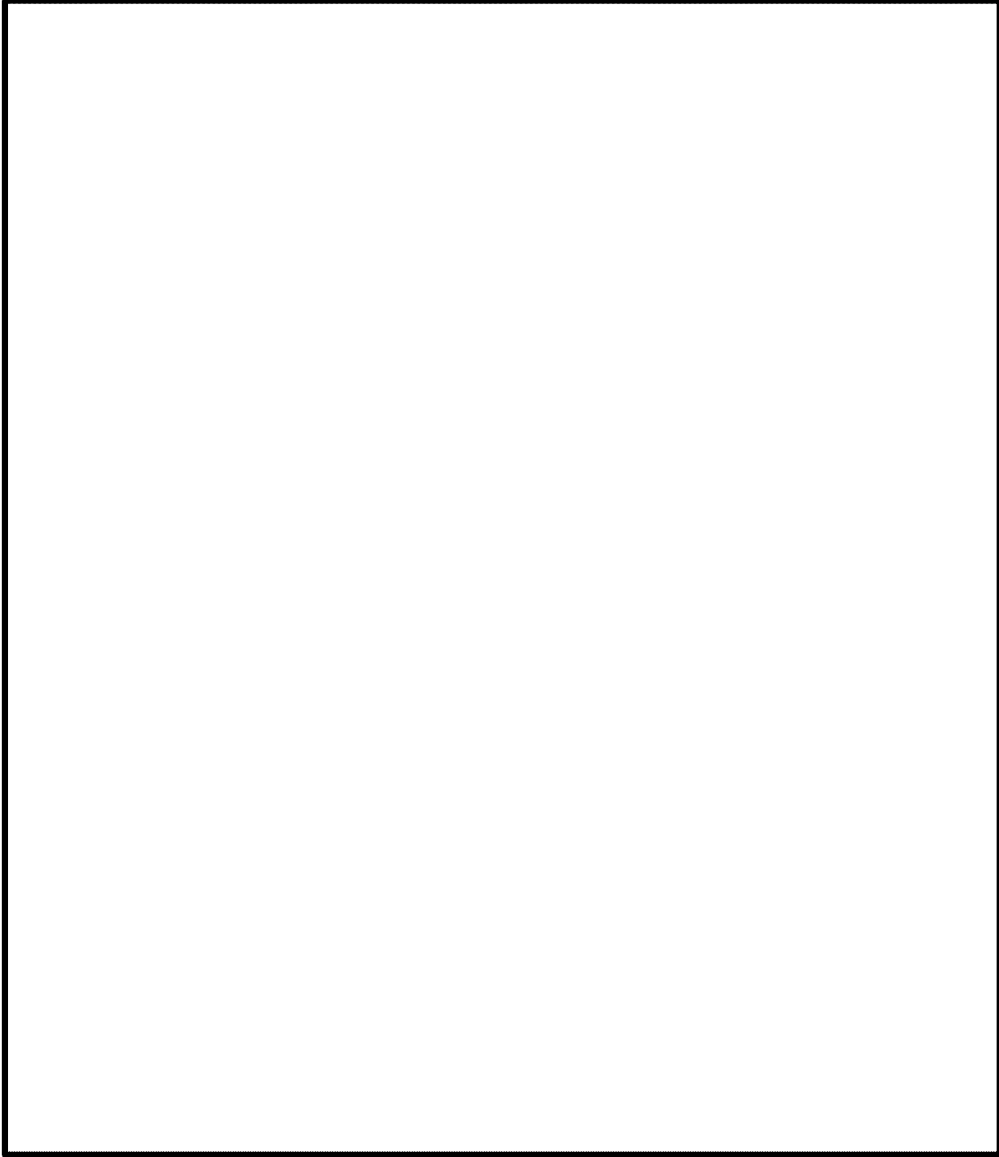
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Private Wage Surveys

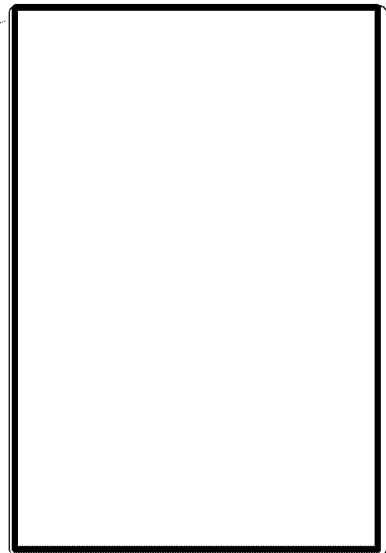


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SCOPS: Thanks, OCC.

(b)(5)



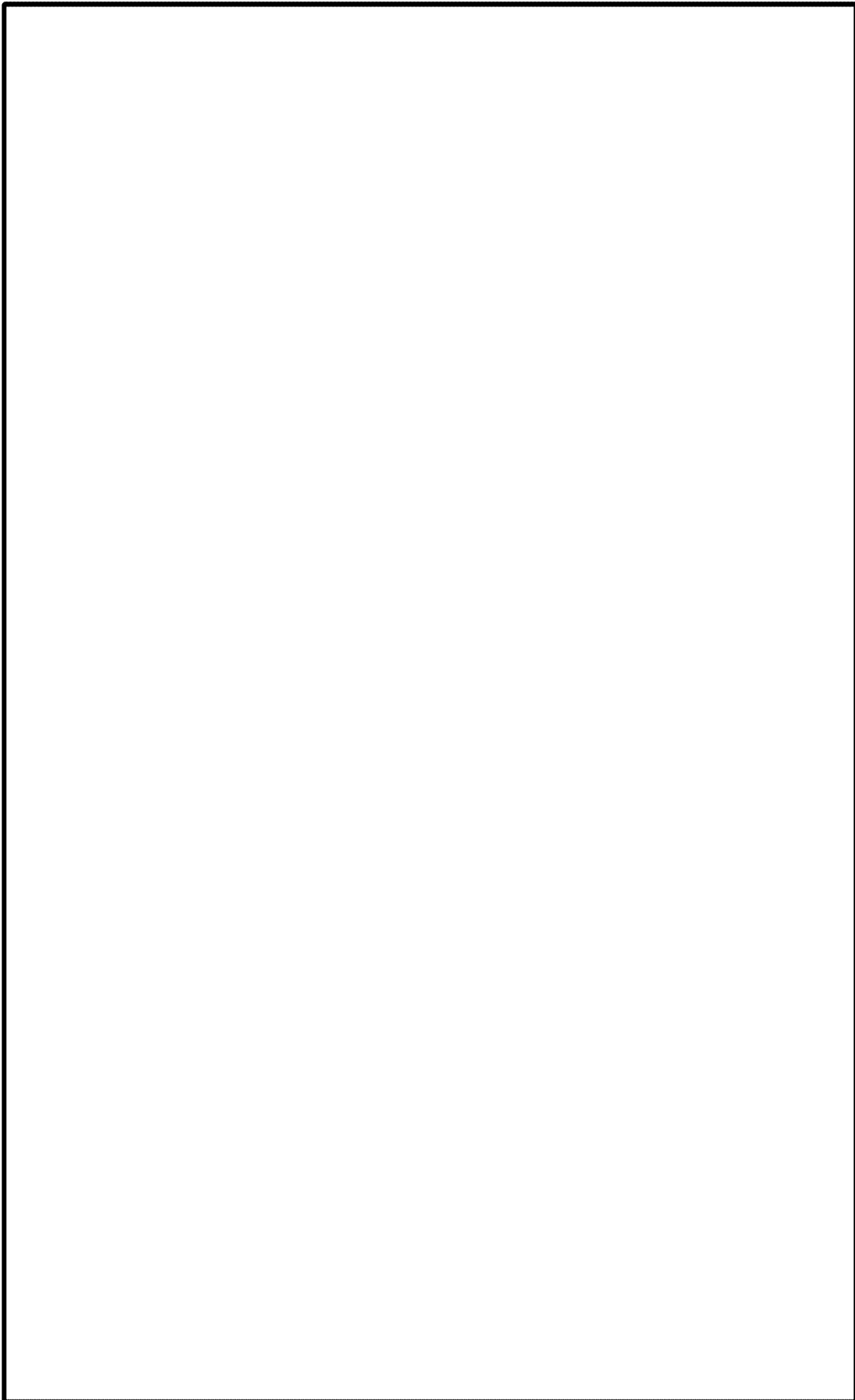
Specialty Occupation



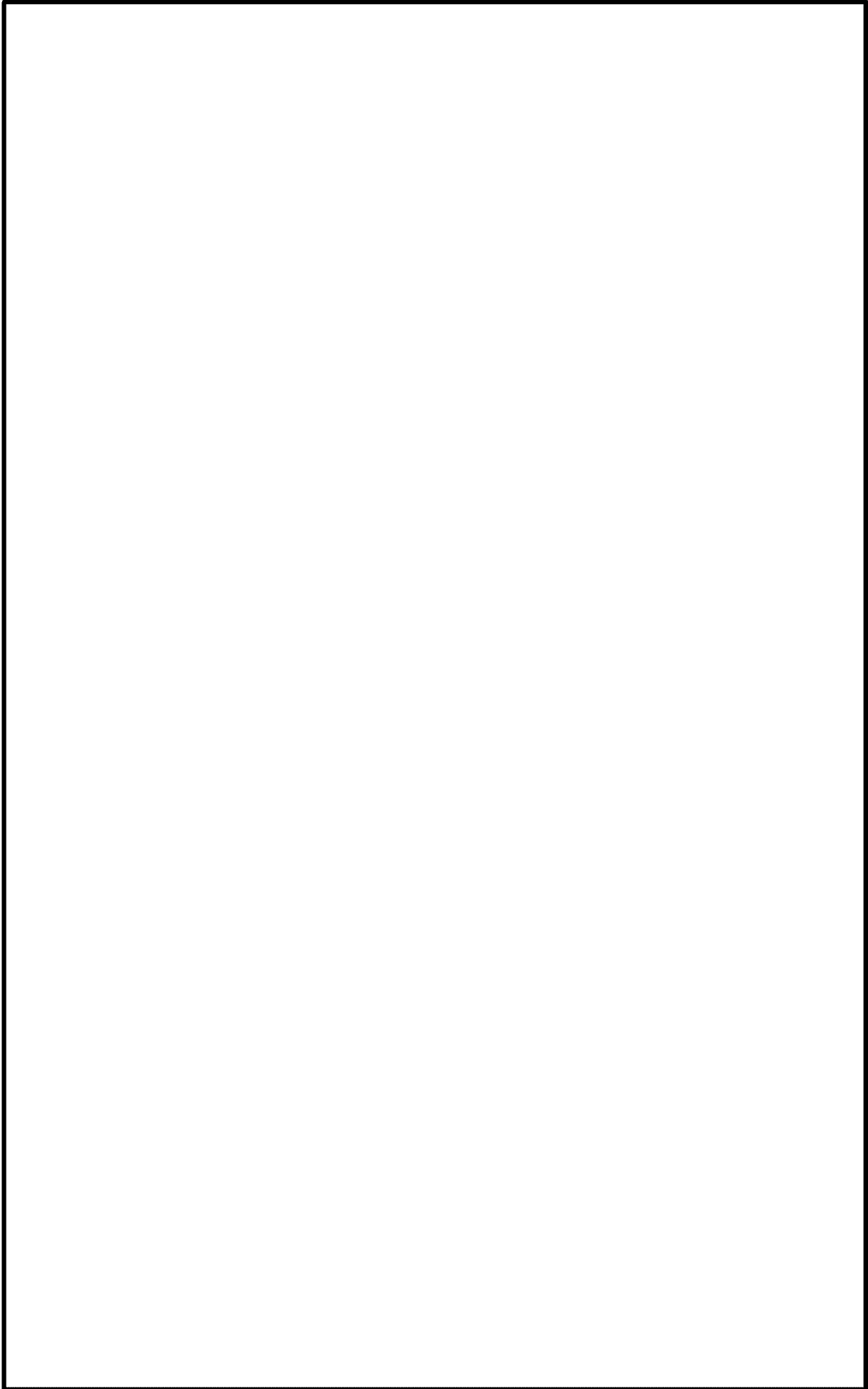
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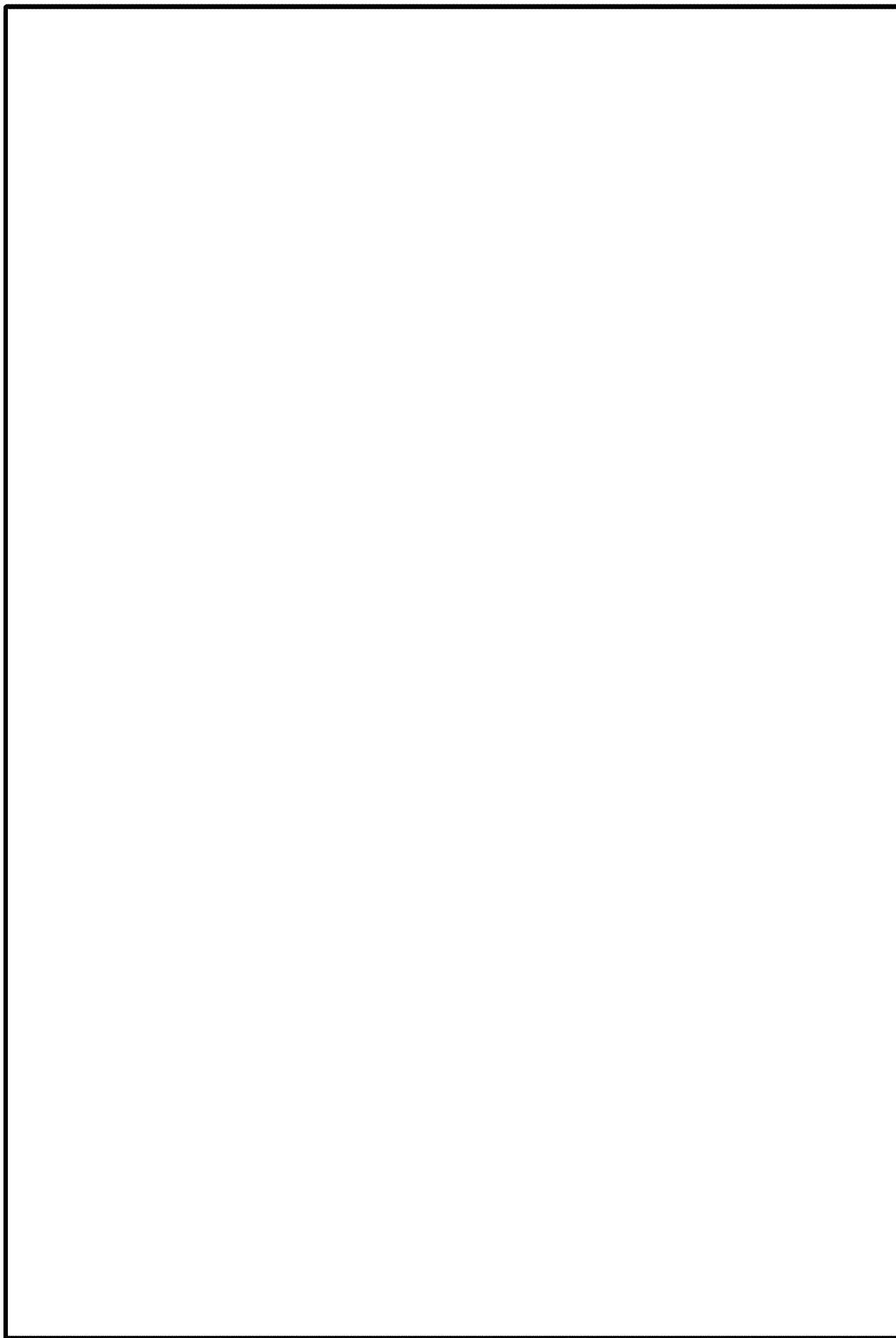


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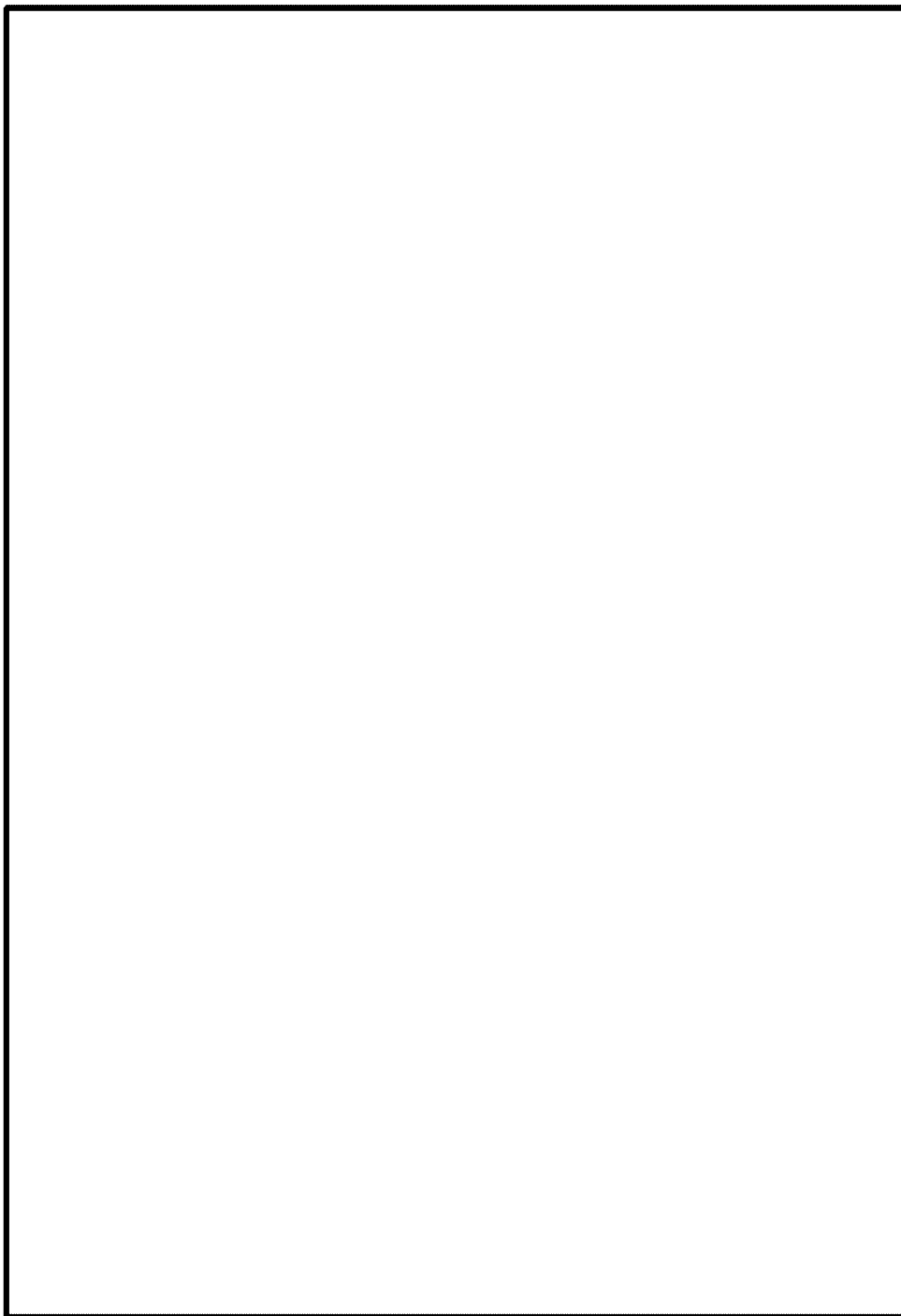
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Labor Condition Application



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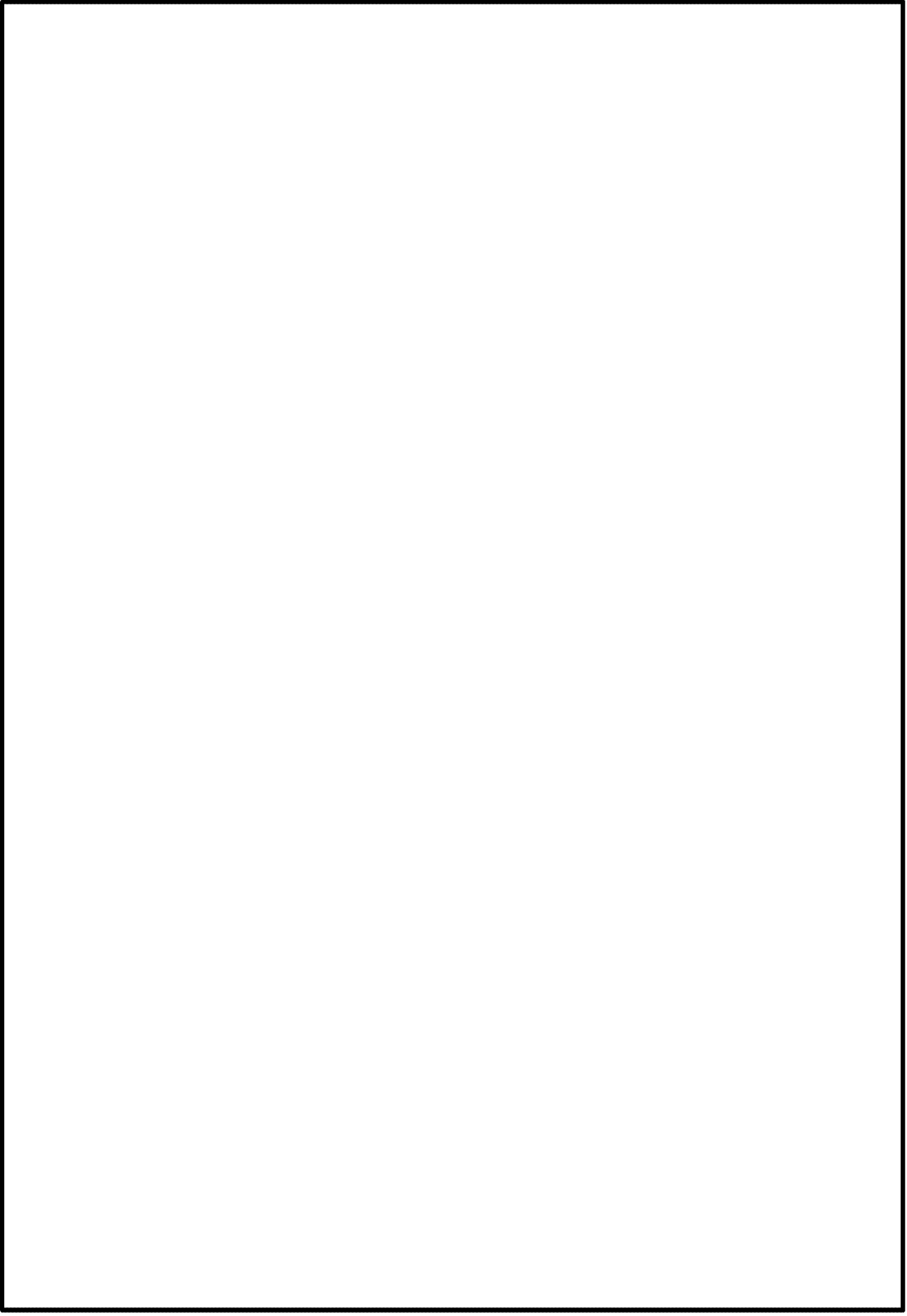


Labor Condition Application

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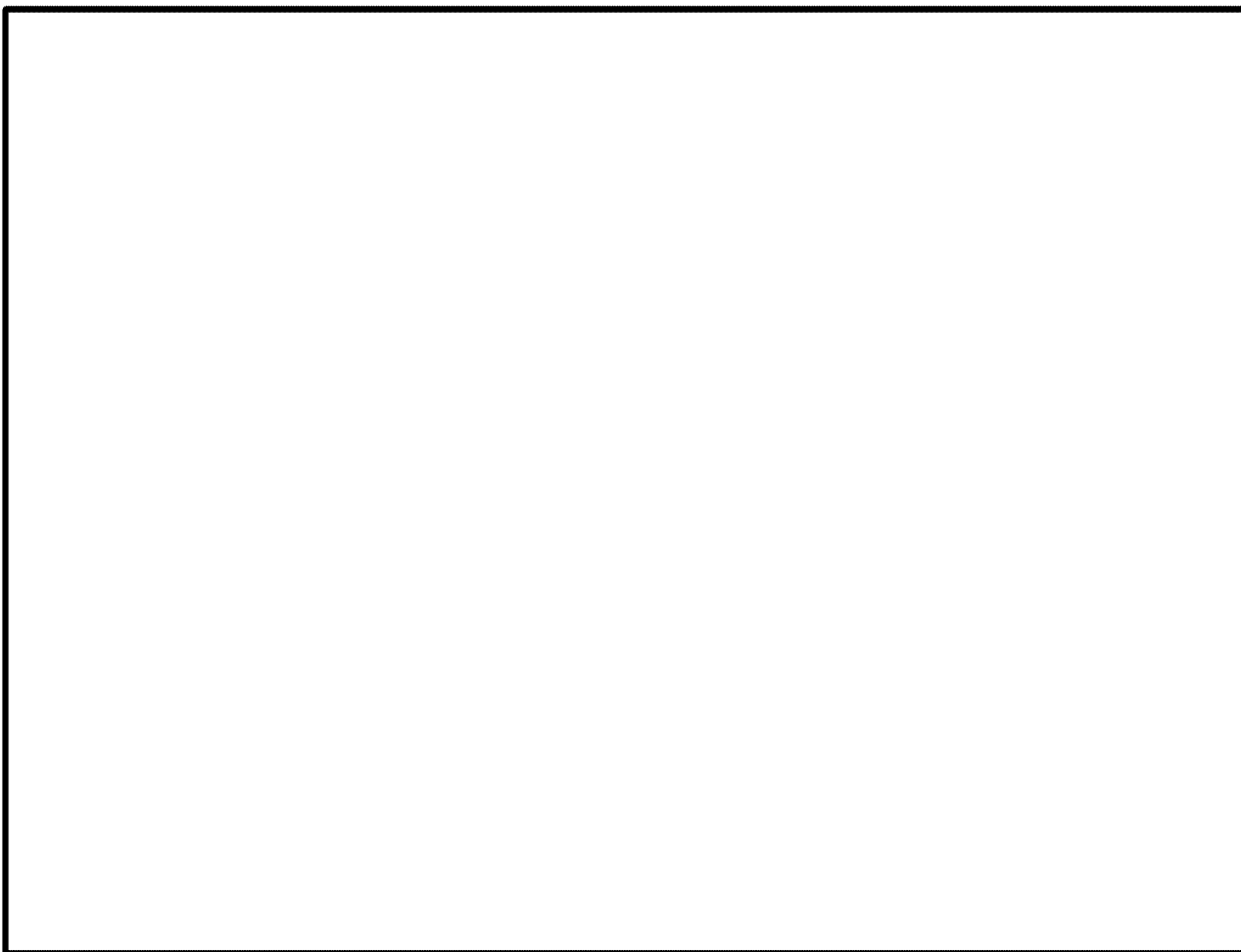


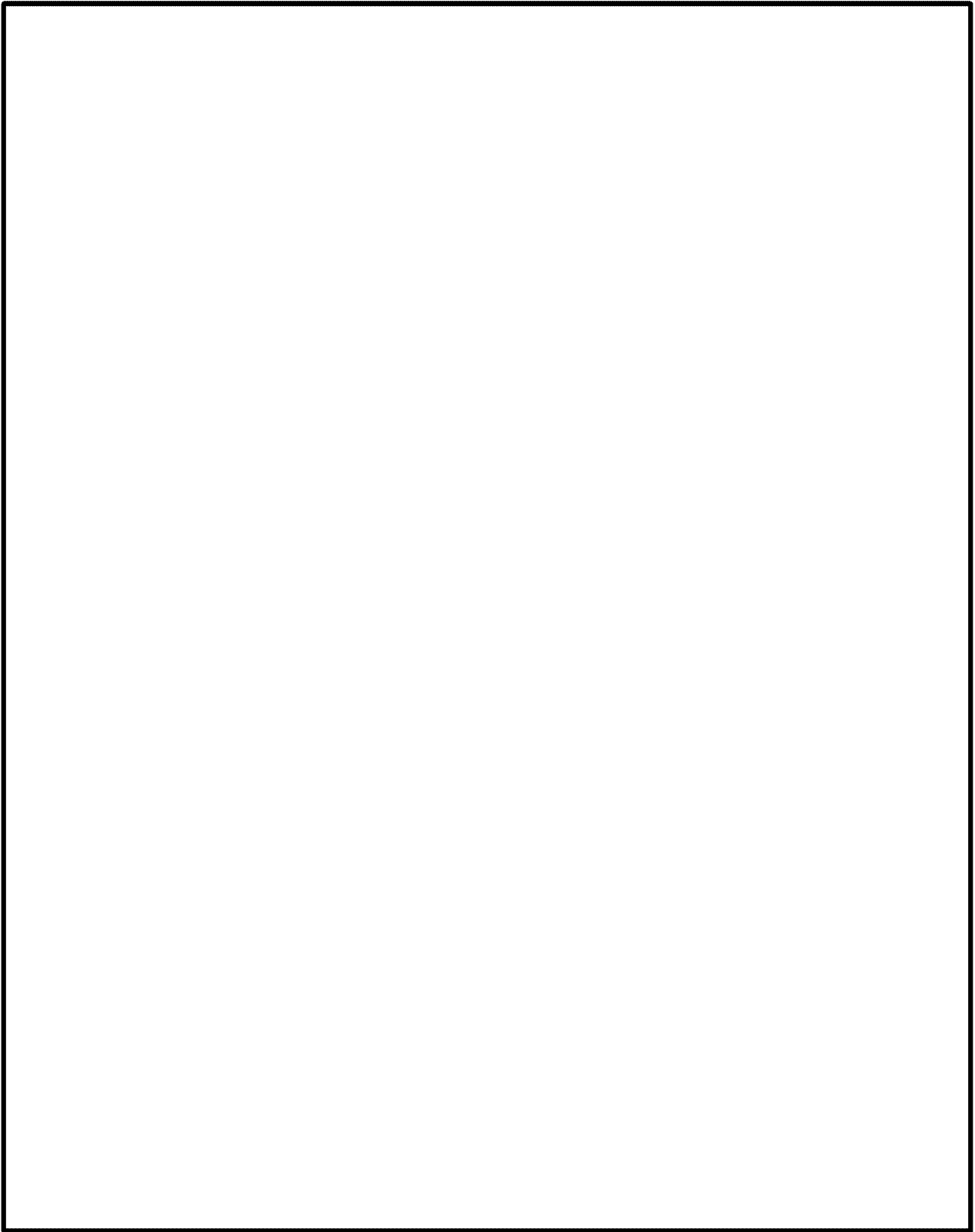
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Specialty Occupation & Related Degrees Guidance

To qualify as a specialty occupation, the position must satisfy the statutory definition at section 214(i)(1) of the Act of 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.

The regulation at 8 CFR 214.2(h)(4)(ii) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor:

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in 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 [(2)] 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.

In addition, the proffered position must also meet at least one of the following criteria at 8 CFR 214.2(h)(4)(iii)(A):

- A bachelor or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- 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 a person with a degree;
- The employer normally requires a degree or its equivalent for the position; or
- The nature of the 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.

To be consistent with the statute at 214(i)(1) and the regulatory definition at 8 CFR 214.2(h)(4)(ii), we construe the term “degree” in the criteria above to mean not just any degree, but a bachelor’s or higher degree in a specific specialty (or its equivalent) that is directly related to the proposed position.

Analyzing “Specific Specialty”

While the statutory “the” and the regulatory “a” are both interpreted to denote a singular “specialty,” this should not be misconstrued with necessarily requiring a singular academic major or field of study.

In general, provided the required fields of study are closely related, e.g., electrical engineering and electronics engineering for the position of an electrical engineer, a minimum of a bachelor's or higher degree in more than one field of study is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Each academic major is in a “specific specialty” directly related to the position.

In addition, a minimum entry requirement of a bachelor’s or higher degree in multiple disparate fields of study does not automatically disqualify a position from being a specialty occupation. For example, a petitioner may be able to establish that a bachelor’s degree in either education or chemistry (each a body of highly specialized knowledge) is directly related to the duties and responsibilities of a chemistry teacher.

Application

In cases where the petitioner lists multiple disparate fields of study as the minimum entry requirement for a position, the petitioner must establish how each field of study is in a “specific specialty” that is directly related to the duties and responsibilities of the particular position (i.e., the applied body or bodies of highly specialized knowledge) in order to establish eligibility under the statutory and regulatory definitions and under one of the four criteria at 8 CFR 214.2(h)(4)(iii)(A).

However, if the *Occupational Outlook Handbook (OOH)* lists disparate fields of study as sufficient to qualify for the occupation, some of which do not relate to a body of highly specialized knowledge required to be applied by the occupation, the petitioner will generally not be able to demonstrate eligibility under the first criterion based on the *OOH*. This holds true even if the petitioner demonstrates that each of the disparate fields of study listed in the *OOH* is directly related to the position. This is because the position would still not be “...one that by its nature demands a bachelor's degree or its equivalent in a specific specialty.” See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007). However, the petitioner may still be able to demonstrate eligibility under the first criterion by providing evidence from another authoritative source that

demonstrates that it is more likely so than not that, based on a review of typical requirements for similar positions in the same occupation, the particular position requires a bachelor's or higher degree in a specific specialty (or its equivalent) as a minimum for entry into that position.

Summary

The statutory and regulatory language does not require that the specific specialty be limited to the attainment of a degree in a single, sole field of study or academic major.

Requiring a degree in more than one field of study does not automatically disqualify a position from being a specialty occupation.

The petitioner must demonstrate that each field of study they list as a qualifying field of study for the position is directly related to the duties and responsibilities of the position by the preponderance of the evidence standard. This is true when the petitioner lists only one field of study, multiple related fields of study, or multiple disparate fields of study.

If the *OOH* lists disparate fields of study as sufficient to qualify for the occupation, the petitioner will generally not be able to demonstrate eligibility under the first criterion.

H-1B/HSC/E-3 Wage Leveling Chart



The LCA is certified with a wage level of...

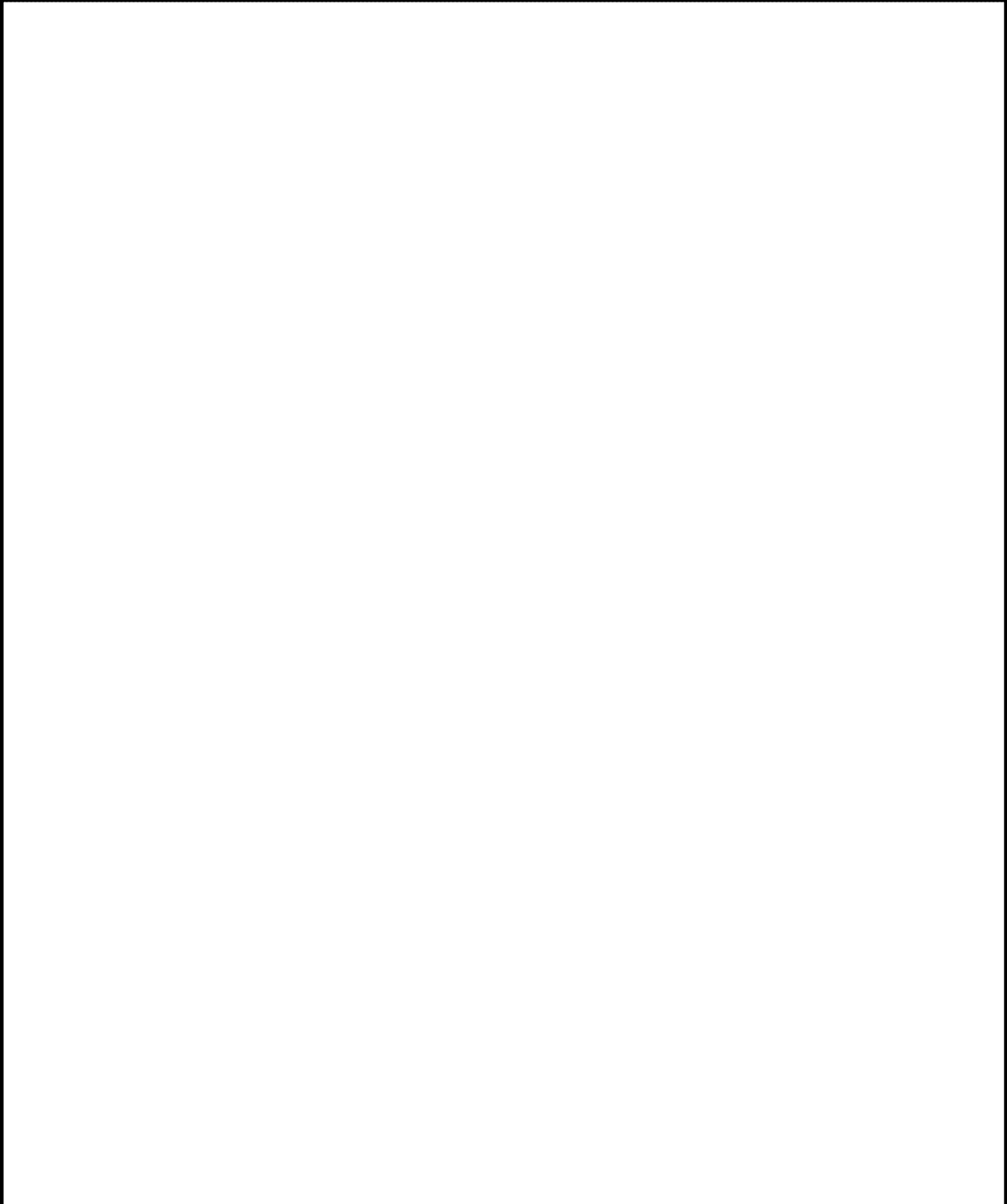
And the proffered position...

You will...

(b)(5)

1*

1*



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| The LCA is certified with a wage level of... | And the proffered position... | You will... |
|---|--------------------------------------|--------------------|
| 1* | | |
| 1* | | |
| N/A | | |

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