

AAU WAC 07 146 54196 (DHS), 2009 WL 1742242

U.S. Department of Homeland Security

U.S. Citizenship and Immigration Services

Administrative Appeals Office (AAO)

California Service Center

IN RE: Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]

Beneficiary: [IDENTIFYING INFORMATION REDACTED BY AGENCY]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)  
(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

On Behalf of Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]

File No. WAC 07 146 54196

March 4, 2009

\*1 **DISCUSSION:** The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a corporation engaged in master planning **real estate** development and property management. To employ the beneficiary in what it has designated as a **real-estate-market-analyst** position, the petitioner endeavors to classify her as a nonimmigrant worker in a **specialty occupation** pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1101(a)(15)(H)(i)(b).

The director denied the petition based upon her determination that the petitioner had failed to establish that the proffered position qualifies as a **specialty occupation** under the statutes and regulations governing the H-1B nonimmigrant classification. The director found that “the duties of the position described by the petitioner appear to reflect many of those performed by **Market Research Analysts** as listed under **Market and Survey Researchers**” in the 2006-2007 edition of the Department of Labor's *Occupational Outlook Handbook (Handbook)*, but noted, in part, that “sole reliance on a list of duties” resembling those in the *Handbook* or other publications is misplaced, as “[e]ach position must be evaluated based upon the nature and complexity of the actual job duties.” The director specified two reasons “why the record is insufficient to classify the position as that of a **market research analyst**.” The first reason is a combination of her findings (1) that, as described in the record, the proposed duties differ from the *Handbook's* information about what a **market research analyst** does; and (2) that “it does not appear that the petitioner has the organizational complexity to credibly offer a position for a **Market Research Analyst**,” because the record lacks evidence that the petitioner (a) has staff to gather market data for analysis; and (b) has conducted advertising or sales campaigns based upon its own market analysis. The second reason that the director cited for denying the petition is her finding that the petitioner's firm is not in one of the industries that the *Handbook* notes as typical employers of **market research analysts**.

On appeal, counsel contends that the record's descriptions of the proposed duties and the skills required to perform them indicate that only a person with a bachelor's degree would be qualified to perform the proffered position. Counsel also asserts that the director's analysis was defective, particularly in her focus on organizational complexity and the fact that the petitioner's type of firm is not among the industries noted by the *Handbook* as employing the largest number of **market research analysts**.

\*2 The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) and the Form I-290B, counsel's brief on appeal,

and copies of the following reports that had been previously submitted: Apple Valley **Marketing Research** Report, Biological Survey Report, Focused Sensitive Wildlife Surveys, and Preliminary Geotechnical Engineering Investigation.

The AAO will first address three aspects of the director's decision with which it disagrees, namely: (1) the director's statement that the 2006-2007 edition of the *Handbook* indicated that **market research analysts** comprise a **specialty occupation** category; (2) the finding that the petitioner's organization was not sufficiently complex for the employment of a **market research analyst**; and (3) the finding that the petitioner would not have a **market-research-analyst** work for the beneficiary because the petitioner's type of firm is not included in the *Handbook's* list of industries employing the largest number of **market research analysts**.

The AAO disagrees with, and thus withdraws, the director's statement to the effect that **market research analysts** comprise a **specialty occupation** category. Contrary to the director's view, the 2006-2007 edition of the *Handbook* does not indicate that entry into positions in that occupation normally requires at least a bachelor's degree, or the equivalent, in a specific specialty. While the 2006-2007 edition of the *Handbook* reports that a baccalaureate degree is the minimum educational requirement for many **market** and **survey research** jobs, it does not indicate that the degrees held by such workers must be in a specific specialty that is directly related to **market research**, as would be required for the occupational category to be recognized as a **specialty occupation**. This is evident in the range of qualifying degrees indicated in the Significant Points that introduces the 2006-2007 *Handbook's* chapter "**Market and Survey Researchers**," which are:

- **Market** and **survey researchers** need at least a bachelor's degree, but a master's degree may be required for employment; continuing education also is important.

- Employment is expected to grow faster than average.

- Job opportunities should be best for those with a master's or Ph.D. degree in **marketing** or a related field and strong quantitative skills.

That the 2006-2007 edition of the *Handbook* does not indicate that **market-research-analyst** positions normally require at least a bachelor's degree in a specific specialty is also evident in the following discussion in the "Training, Other Qualifications, and Advancement" section of its chapter "**Market and Survey Researchers**," which does not specify a particular major or academic concentration:

\*3 A bachelor's degree is the minimum educational requirement for many **market** and **survey research** jobs. However, a master's degree may be required, especially for technical positions, and increases opportunities for advancement to more responsible positions. Also, continuing education is important in order to keep current with the latest methods of developing, conducting, and analyzing surveys and other data. **Market** and **survey researchers** may earn advanced degrees in business administration, **marketing**, statistics, communications, or some closely related discipline. Some schools help graduate students find internships or part-time employment in government agencies, consulting firms, financial institutions, or **marketing research** firms prior to graduation.

In addition to completing courses in business, **marketing**, and consumer behavior, prospective **market** and **survey researchers** should take other liberal arts and social science courses, including economics, psychology, English, and sociology. Because of the importance of quantitative skills to **market** and **survey researchers**, courses in mathematics, statistics, sampling theory and survey design, and computer science are extremely helpful. Many corporation and government executives have a strong background in **marketing**.

Next, because it concurs with counsel that the petitioner's organizational complexity is not a decisive factor in this particular proceeding, the AAO withdraws this basis for denying the petition. The AAO also withdraws the director's finding as a basis

for denial the type of industry in which the beneficiary would be employed, as the *Handbook* states that **market research analysts** “are employed throughout the economy.” However, as will be discussed below, the AAO finds that the petitioner has not established that the proffered position is a **specialty occupation**. Accordingly, the director's decision to deny the petition shall not be disturbed.

The AAO is not persuaded by counsel's comments on *Unical Aviation, Inc. v. INS*, 248 F. Supp. 2d 931 (D.C. Cal 2002). The material facts of the present proceeding are distinguishable from those in *Unical Aviation*. In contrast to the present proceedings, *Unical Aviation* involves: a position for which there was a companion position held by a person with an MBA; a record of proceedings that included an organizational chart showing that all of the employees in the beneficiary's department held degrees; and, in the Court's words, “sufficient evidence to demonstrate that there is a requirement of specialized study for [the beneficiary's] position.” Also the proffered position and related duties in the present proceeding are different from those in *Unical Aviation*, where the beneficiary was to liaise with airline and Maintenance Repair Organization (MRO) customers in China for supply of parts and services; analyze and forecast airline and MRO demands, to generate plans to capture business; provide after-sales services to customers in China; and develop new products and services for the China market. Further, in *Unical Aviation* the Court partly relied upon *Augut, Inc. v. Tabor*, 719 F. Supp. 1158 (D.Mass. 1989), for the proposition that Immigration and Naturalization Service (INS, now USCIS), had not used an absolute degree requirement in applying the “profession” standard at 8 U.S.C. § 1101(a)(32) for determining the merits of an 8 U.S.C. § 1153(a)(3) third-preference visa petition. That proposition is not relevant here, because now the H-1B **specialty occupation** statutes and regulations, not in existence when INS denied the Augut, Inc. third-preference petition, mandate a degree, or degree-equivalent, in a specific specialty. The AAO also notes that, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

\*4 The AAO acknowledges counsel's comments on the non-precedential decision that he cites on appeal. Aside from restating that, as counsel acknowledges, the decision has no precedential value or binding effect, the AAO disagrees with counsel's interpretation that the case supports the proposition that, in counsel's words, “the petitioner has no burden of proof to establish that the service of a **market research** analysis is necessary for its business operation.” The AAO is unfamiliar with the Immigration Reporter source from which counsel retrieved a copy of the decision, but it found a copy at the Westlaw Internet service, at AAU EAC 94 214 50527, 1995 WL 1798233 (INS). On reading the decision, the AAO found no discussion about a proposed position's necessity to a petitioner's business operations, and no basis for the proposition for which counsel cites it. The AAO bases its decision on the statutory and regulatory framework below, which focuses on the nature of the work proposed for the beneficiary, rather than on the relative importance that such work may have in the overall scheme of the petitioner's business.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101 (a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a **specialty occupation**.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184 (i)(1), defines the term “**specialty occupation**” as an occupation that requires:

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

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

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a **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.”

Pursuant to 8 C.F.R. § 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;

\*5 (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

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

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of **specialty occupation**. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of **specialty occupation** would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5<sup>th</sup> Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of **specialty occupation**.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(II), United States Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner's March 26, 2007 letter filed with the Form I-129 states that the beneficiary will: “be responsible for analyzing and promoting the **real estate market** in Southern California;” “establish **research** methodology, design format for data gathering, examine, and analyze statistical data to forecast future **real estate market** trends and sales;” and “be responsible for keeping management informed of **real estate** developments, as well as providing expert insight and rational recommendations for overall business, **marketing** and development strategy.” The letter presents the following duties as “a detailed job description” of the proffered position:

\*6 • Work closely with Sales and **Marketing** Manager in developing **marketing** communication strategies and tactics, including advertising, website **marketing**, and direct **marketing**. Furthermore, generating customer incentive programs, enhancing our relationships with existing customers, and developing **marketing** programs.

- **Research market** conditions in time management industry by designing **research** format and methodology for data collection, to help identify potential sales.
- Examine and analyz[e] statistical data and reports to time management industry trends in relationship to the company's **marketing** position in terms of product **research**, development and pricing.
- Attend meetings with our network agents around the world, in order to gain first-hand time management industry-related information so as to assist with the development of new **marketing** projects for [the] Southern California **market**.

In this March 26, 2007 letter, the petitioner also asserts that, "[a]s with any **Real Estate Market Analyst** position in a time management company, the usual minimum requirement for performance of the job duties is a bachelor's degree in Economics, **Marketing**, or related disciplines." The AAO notes that the AAO accords no weight to this claim of a standard educational requirement, as the record lacks documentary evidence of its accuracy. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Counsel's letter of response to the RFE describes the petitioner as a firm specializing in **real estate** investment and development in North America; identifies five subsidiaries under the petitioner's leadership; indicates that the petitioner and its subsidiaries are actively involved in numerous **real estate** projects; and states that the petitioner is a fast-growing company managing **real-estate** investment and development. According to the letter, the proffered position "is functional for the petitioner's business development and continuous growth." This RFE-response letter also provides additional descriptions of the proffered position. It states that the **real-estate market-analyst** "will be responsible for all aspects of analysis and **research** for the firm's commercial **real estate** acquisitions, development and asset management teams," and that the job duties of the proffered position include:

- **New Business Development: Research** and analyze potential new retail and residential **real estate** projects.
- **Market Research:** Participate in the acquisition and development teams' efforts to formulate and select target investment strategies, **markets** and opportunities being pursued.
- **Due Diligence:** Work with the acquisitions and development team to obtain **market** information from appraisers, brokers, lenders and others in the industry.
- \*7 • **Financial Analysis:** Perform various financial analyses for both prospective investment opportunities as well as assets currently within the firm's portfolio. Create pro forma models for investment properties and sensitivity analyses for project cash flows and investment returns.

Counsel also asserts that the proffered position requires several skills and abilities, namely:

- 1) Ability to develop framework and execute **research** on **market** opportunities independently;
- 2) Strong ability to glean insightful knowledge from large amounts of data and draw conclusions to make recommendations;
- 3) Analyze key industry trends and maintain knowledge of competitive positioning;
- 4) Excellent written and oral communication skills; and
- 5) Excellent analytical skills to respond to evolving needs.

As evident in the duty descriptions excerpted above from the petitioner's letter of March 26, 2007 and counsel's RFE-reply letter, counsel and the petitioner have limited their descriptions of the proffered position and its duties to exclusively generic terms that relate only abstract, general functions, such as analyzing and promoting the **real estate market** in Southern California, establishing **research** methodology, designing formats for data gathering, examining and analyzing statistical data to forecast future **real estate market** developments, providing expert insight and rational recommendations, and participating in the acquisition and development teams' efforts to formulate and select target investment strategies, **markets** and opportunities being pursued. The record contains no substantive information about the on-the-job performance required to execute the generalized functions. The record's job and duty descriptions neither identify nor explain the need for any theoretical and practical applications of highly specialized knowledge. Further, the record's **Market Research** Report and PPR are not indicative of **specialty occupation** work.

The **Marketing Research** Report does not evidence any complex or complicated methodologies in gathering or analyzing the data reported therein, and the AAO finds nothing in that report that indicates that its preparation required the theoretical and practical application of a level of knowledge attained by or usually associated with at least a bachelor's degree in a specific specialty. The report's narrative consists of fundamental concepts that are not indicative of a particular level of academic achievement in any specialty. The report's data is relatively simple and does not indicate the application of any complex analytical methodologies. The PPR consists of a summary page and a single page of dollar amounts and percentages attributed to various categories related to sales, profits, operating expenses, total expenses, and net profit before tax. The document is not accompanied by worksheets or any explanation of the methodology for arriving at the figures. As such, the AAO cannot determine the nature and level of knowledge required to produce the report.

\*8 Counsel's list of skills and abilities asserted as necessary for the proffered position are not probative. They are so generally described that they do not indicate that they are the product of any particular level of academic attainment in any specific specialty.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(7), which assigns **specialty occupation** status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The generic statements that comprise this proceeding's information about the proffered position and its duties are sufficient to align the position with the broad occupational category of **Market Research Analysts** as discussed in the *Handbook*. However, as already indicated in the discussion of the 2006-2007 *Handbook*, employers of **market research analysts** do not normally require at least a bachelor's degree, or its equivalent, in a specific specialty. This fact is also clear in the following excerpt from the "Training, Other Qualifications, and Advancement" section 2008-2009 *Handbook's* chapter "**Market and Survey Researchers**, which indicates that a major or concentration in a specific specialty is not a normal aspect of the baccalaureate threshold for entry into the **market-research-analyst** occupation:

**Training, Other Qualifications, and Advancement**

A bachelor's degree is usually sufficient for entry-level **market** and survey **research** positions. Higher degrees may be required for some positions, however. Continuing education and keeping current with the latest methods of developing, conducting, and analyzing surveys and other data also is important for advancement.

**Education and training.** A bachelor's degree is the minimum educational requirement for many **market** and survey **research** jobs. However, a master's degree may be required, especially for technical positions.

In addition to completing courses in business, **marketing**, and consumer behavior, prospective **market** and survey **researchers** should take other liberal arts and social science courses, including economics, psychology, English, and sociology. Because of the importance of quantitative skills to **market** and survey **researchers**, courses in mathematics, statistics, sampling theory and survey design, and computer science are extremely helpful. **Market** and survey **researchers** often earn advanced degrees in business administration, **marketing**, statistics, communications, or other closely related disciplines.

While in college, aspiring **market** and survey **researchers** should gain experience gathering and analyzing data, conducting interviews or surveys, and writing reports on their findings. This experience can prove invaluable later in obtaining a fulltime position in the field, because much of the initial work may center on these duties. Some schools help graduate students find internships or part-time employment in government agencies, consulting firms, financial institutions, or **marketing research** firms prior to graduation.

\*9 The AAO also notes that while the 2008-2009 *Handbook's* "Job prospects" subsection states that "the best" **market-and-survey-researcher** opportunities for bachelor's degree holder's are for those "with good quantitative skills, including a strong background in mathematics, statistics, survey design, and computer science," it does not specify any particular academic majors or types of bachelor's degree as requirements for hire in the occupation. Further, the AAO's review of the **Marketing Research Association (MRA)** Internet site ([www.mra-net.org](http://www.mra-net.org)), provided at the *Handbook's* "Sources of Additional Information" section, found no reference to a specific degree requirement for attaining the organization's Professional Researcher Certification. In fact, the Internet site's Certification Overview section indicates that a particular academic degree is not a requirement for certification, stating that "Professional **Researcher** Certification (PRC) was developed as a powerful tool for **researchers** of all levels of work experience and education."

Because the *Handbook* indicates that entry into the **market-research-analyst** occupation does not normally require a degree in a specific specialty and as the limited extent to which the evidence of record develops the proffered position and its duties does not distinguish the proffered position from the general level of **market research analysts** requiring no more than a bachelor's degree without particular specialization, the *Handbook* does not support the proffered position as being a **specialty occupation**.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong assigns **specialty occupation** status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

\*10 As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. Also, there are no submissions from professional associations, individuals, or firms in the petitioner's industry.

Contrary to the petitioner's purpose for submitting them, the record's job-vacancy advertisements are not evidence of a common degree-in-a-specific-specialty requirement in positions that are both (1) parallel to the proffered position and (2) located in organizations similar to the petitioner. The advertisements are too few to be indicative of an industry-wide practice. As they are only solicitations for hire, they are not evidence of the advertisers' actual hiring practices. There is no independent evidence of how representative these job advertisements are of the particular employers' recruiting histories for the type of job advertised. Most of the advertisements state only a bachelor's degree requirement, without specifying that the degree be in a particular specialty. The advertisements' content and the record's information about this petition's proffered position and the petitioner's business operations are too limited and generalized to establish that the advertised positions are parallel to the proffered position and that the advertising organizations are similar to the petitioner. Furthermore, the range of the degree requirements cited in the job advertisements are not inconsistent with the *Handbook's* information to the effect that a bachelor's degree in a specific specialty is not normally a requirement for **market-research-analyst** positions.

The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." The evidence of record does not refute the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for **market-research-analyst** positions, including degrees not in a specific specialty related to **market research** analysis. As evident in the earlier discussion about the generalized descriptions of the proffered position and its duties, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than **market-research-analyst** positions that can be performed by persons without a specialty degree or its equivalent.

As the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As reflected in this decision's earlier discussions of the limited information about the proffered duties, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than **market-research-analyst** positions that are not usually associated with a degree in a specific specialty.

**\*11** An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

As the petitioner has failed to establish that the proffered position qualifies as a **specialty occupation** under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed. The petition is denied.

John F. Grissom  
Acting Chief  
Administrative Appeals Office

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# H-1B Visas



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# H-1B Classification for Specialty Occupation Workers

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## H-1B

- Specialty occupation workers;
- Department of Defense (DOD) cooperative research and development project or co-production project workers; and
- Fashion models of distinguished merit and ability.



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# H-1B Classification for Specialty Occupation Workers

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## H-1B1

- Pursuant to free trade agreements, specialty occupation workers that are nationals of Chile and Singapore
- A Form I-129 is not required to be filed with USCIS
  - Individuals may apply for an H-1B1 visa directly at a consular office overseas.
  - However, employers may file Form I-129 with USCIS to request an extension of the H-1B1 beneficiary's status, or to request a change of the beneficiary's status to H-1B1, within the United States.



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# H-1B Classification Criteria

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- Petitioner is a U.S. employer or U.S. agent;
- Position qualifies as a specialty occupation; and
- Beneficiary is qualified to perform the specialty occupation position, including any state licensure requirement.



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and Immigration  
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# Specialty Occupation

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- “Specialty occupation” is broadly defined as an occupation which requires the “theoretical and practical application of a body of highly specialized knowledge.”
- To qualify as a specialty occupation, the position must meet one of the following criteria:
  - A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;



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# Specialty Occupation

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- 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;
- The employer normally requires a degree or its equivalent for the position; or
- 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.



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# General H-1B Classification Information

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- The annual H-1B cap is set at 65,000.
  - The first 20,000 H-1B petitions filed on behalf of beneficiaries with a U.S. Master's or higher degree are exempt from the annual cap.
  - Petitions by, or for employment at, certain organizations are not counted against the cap (e.g. institutions of higher education and related/affiliated non-profit entities).
  - Certain exemptions and exceptions that apply to the beneficiary might also render the petition cap-exempt.



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# General H-1B Classification Information

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- While in H-1B status, the nonimmigrant may also seek permanent residence in the United States.
- Labor Conditional Application is required for specialty occupation and fashion model H-1B petitions.
- Maximum stay of 6 years, with limited exceptions\*



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# H-1B Petition Process

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- Petitioner files a Labor Condition Application (LCA) with Department of Labor (DOL) for certification.
- The LCA contains several attestations by the petitioner, including:
  - ✓ The foreign worker will be paid the prevailing wage or the actual wage, whichever is higher.
  - ✓ Employment of the foreign worker will not adversely affect U.S. workers.



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# H-1B Petition Process

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- Once DOL certifies the LCA, the petitioner submits Form I-129 with a certified LCA to a USCIS Service Center.
- If USCIS approves the petition for a beneficiary who is outside the United States and requires a visa to enter the United States, the beneficiary will need to schedule a visa interview at a U.S. Embassy or Consulate abroad.
  - ✓ If issued an H-1B visa, the beneficiary may apply for admission to the United States with CBP.



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# H-1B Petition Process

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- If the beneficiary does not require a visa to enter the United States, he/she may apply for admission into the United States with CBP using the USCIS approval notice. This beneficiary can therefore obtain H-1B admission without prior contact or interaction with DOS.
- If the beneficiary is in the United States (in valid nonimmigrant status), the petitioner may include a request to change the beneficiary's status to H-1B or extend H-1B beneficiary's stay on the Form I-129.



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# Filing Procedures

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## Form I-129, Petition for a Nonimmigrant Worker

- Completed and properly signed forms
  - Original signatures
  - Completed/properly signed H Classification Supplement to Form I-129
  - Premium processing fee & form (Form I-907), if applicable
  - Corresponding Labor Condition Application that has been signed by DOL and signed by the petitioner
- Appropriate fees
- Petition is mailed to the California Service Center or to the Vermont Service Center, consistent with filing jurisdictions (found on <http://www.uscis.gov/i-129-addresses>)



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# AC21 Final Rule

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Among other things, DHS is amending its regulations to:

- Clarify and improve longstanding DHS policies and practices implementing sections of the American Competitiveness in the Twenty-First Century Act and the American Competitiveness and Workforce Improvement Act related to certain foreign workers, which will enhance USCIS' consistency in adjudication.

- Better enable U.S. employers to employ and retain high-skilled workers who are beneficiaries of approved employment-based immigrant visa petitions (Form I-140 petitions) while also providing stability and job flexibility to these workers. The rule increases the



# AC21 Final Rule

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- Better enable U.S. employers to employ and retain high-skilled workers who are beneficiaries of approved employment-based immigrant visa petitions (Form I-140 petitions) while also providing stability and job flexibility to these workers. The rule increases the ability of these workers to further their careers by accepting promotions, changing positions with current employers, changing employers and pursuing other employment opportunities.



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- Improve job portability for certain beneficiaries of approved Form I-140 petitions by maintaining a petition's validity under certain circumstances despite an employer's withdrawal of the approved petition or the termination of the employer's business.
- Clarify and expand when individuals may keep their priority date when applying for adjustment of status to lawful permanent residence.



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- Allow certain high-skilled individuals in the United States with E-3, H-1B, H-1B1, L-1 or O-1 nonimmigrant status, including any applicable grace period, to apply for employment authorization for a limited period if:

1. They are the principal beneficiaries of an approved Form I-140 petition,
2. An immigrant visa is not authorized for issuance for their priority date, and
3. They can demonstrate compelling circumstances exist that justify DHS issuing an employment authorization document in its discretion.



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Such employment authorization may only be renewed in limited circumstances and only in one year increments.

- Clarify various policies and procedures related to the adjudication of H-1B petitions, including, among other things, providing H-1B status beyond the six year authorized period of admission, determining cap exemptions and counting workers under the H-1B cap, H-1B portability, licensure requirements and protections for whistleblowers.



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- Establish two grace periods of up to 10 days for individuals in the E-1, E-2, E-3, L-1, and TN nonimmigrant classifications to provide a reasonable amount of time for these individuals to prepare to begin employment in the country and to depart the United States or take other actions to extend, change, or otherwise maintain lawful status.



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- Establish a grace period of up to 60 consecutive days during each authorized validity period for certain high-skilled nonimmigrant workers when their employment ends before the end of their authorized validity period, so they may more readily pursue new employment and an extension of their nonimmigrant status.
- Automatically extend the employment authorization and validity of Employment Authorization Documents (EADs or Form I-766s) for certain individuals who apply on time to renew their EADs.



U.S. Citizenship  
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# AC21 Final Rule

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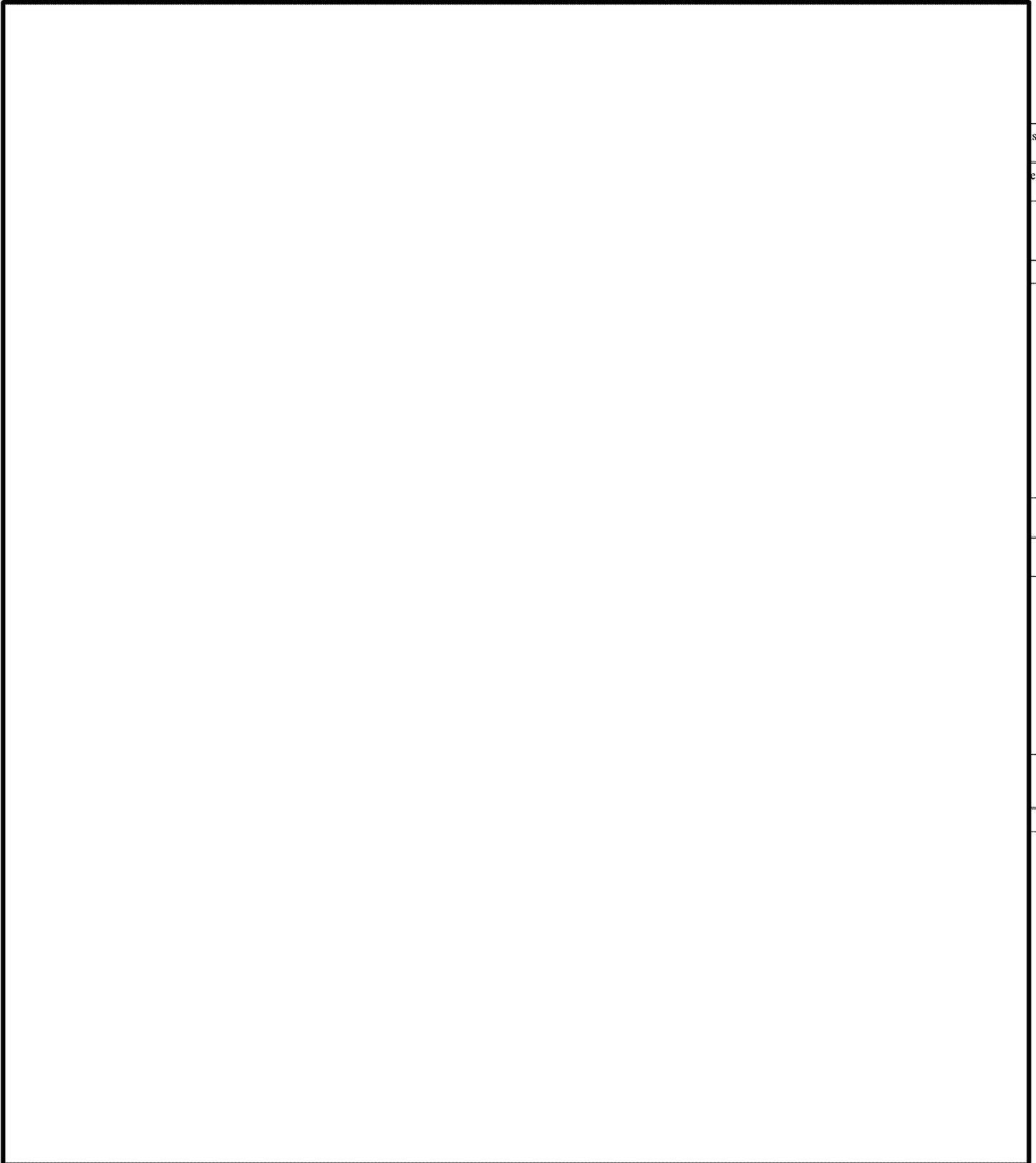
- Eliminate the regulatory provision that requires USCIS to adjudicate the Form I-765, Application for Employment Authorization, within 90 days of filing and that authorizes interim EADs in cases where such adjudications are not conducted within the 90-day timeframe.



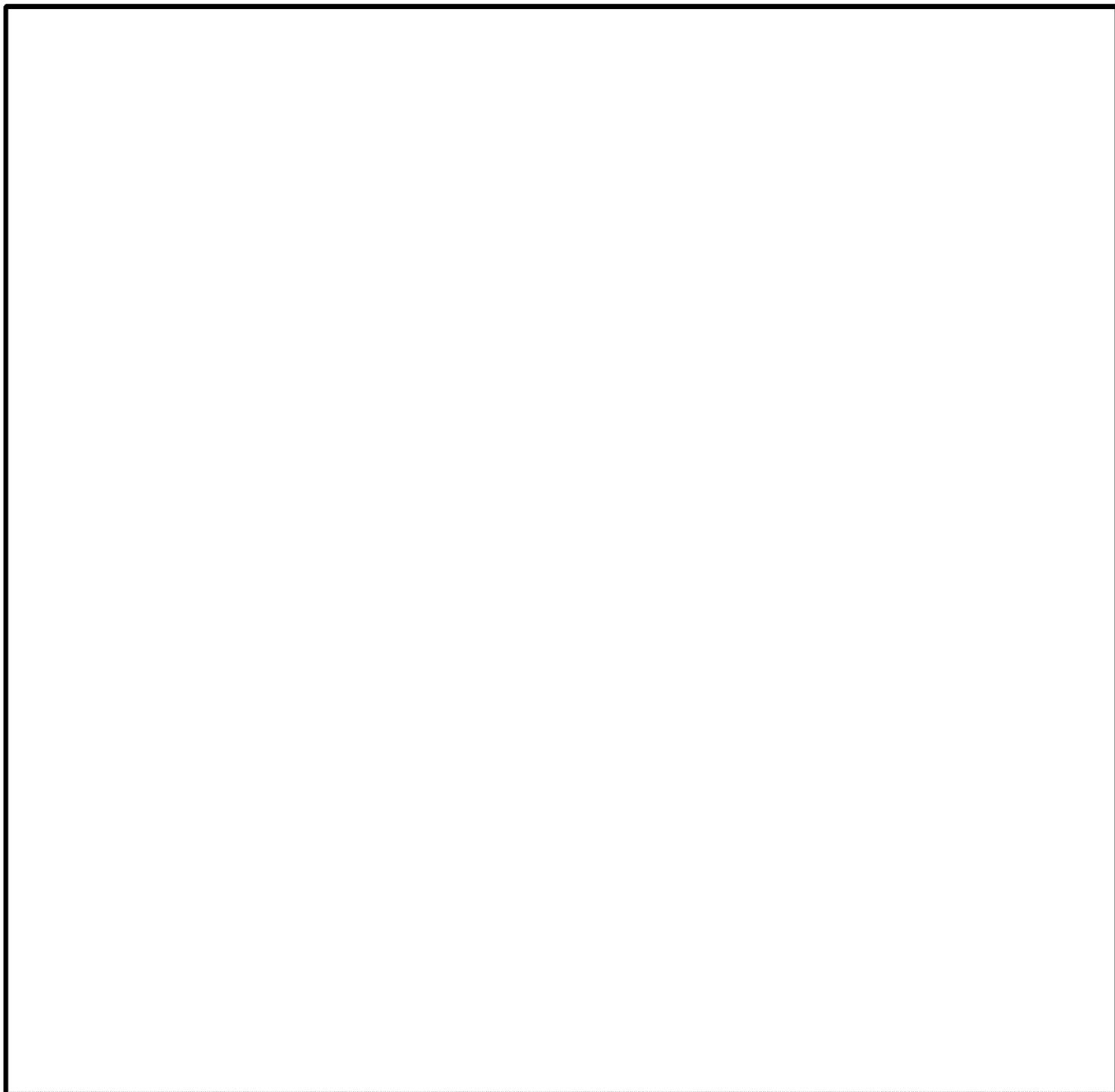
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and Immigration  
Services

(b)(5)

Services in a Specialty Occupation at Third Party Off-Site Employment



(b)(5)



**From:** [Sweeney, Shelly A](#)  
**To:** [Dalal-Dheini, Sharvari P \(Shev\)](#)  
**Subject:** FW: AILA Spring Executive Committee Meeting - Pre Brief  
**Date:** Tuesday, April 14, 2015 1:32:25 PM

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From: Rosenberg, Ronald M (Ron)  
Sent: Friday, April 10, 2015 12:10 PM  
Subject: RE: AILA Spring Executive Committee Meeting - Pre Brief

Per recommendation on the call, here is proposed text for 13a. (An exhaustion requirement, contained in our proposed rulemaking on motions/appeals, will help in this regard.)

rr--

#### H-1B Specialty Occupations

13. Several federal district courts have now rejected the common USCIS practice of determining that a position is not a "specialty occupation" for H-1B purposes if the Labor Department's Occupational Outlook Handbook (OOH) describes more than one educational path that an individual can typically take to meet the requirements for the position.[1] Specifically, the courts have stated that this approach impermissibly narrows the plain language of the statute and that the regulations do not restrict qualifying occupations to those for which there exists a single, specifically tailored and t

**From:** [Cox, Robert H](#)  
**To:** [Nakajima, Simon T](#)  
**Subject:** FW: California Service Center - I-129 H-1B Initial Training Materials with Revisions  
**Date:** Wednesday, March 22, 2017 11:48:00 AM

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I am done with the IG and PG. turning to ppt now

From: Richards, William H  
Sent: Wednesday, March 22, 2017 8:34 AM  
To: Nakajima, Simon T; ALD; Cox, Robert H  
Cc: TKM Division; Neary, Angela C; Richards, William H  
Subject: RE: California Service Center - I-129 H-1B Initial Training Materials with Revisions

Please let me know when you have finished reviewing.

From: Neary, Angela C  
Sent: Monday, March 20, 2017 5:07 PM  
To: Nakajima, Simon T  
Cc: ALD; Cox, Robert H; Richards, William H; TKM Division  
Subject: RE: California Service Center - I-129 H-1B Initial Training Materials with Revisions

Yes – that would be fine.

Thanks!

Angela Crider Neary  
Acting Chief  
Training and Knowledge Management Division  
Office of the Chief Counsel  
U.S. Citizenship & Immigration Services

(b)(6)



This communication, along with any attachments, is covered by federal and state law governing electronic communications and may conta

**From:** [Oliver, Jamie D](#)  
**To:** [#CSC Supervisors](#)  
**Cc:** [DeJulius, Robert W](#); [White, Kelly A](#); [Gionet-Gonzales, Denise R](#); [Darling, Marcus J](#)  
**Subject:** FW: H-1B Petitions for Nursing Occupations  
**Date:** Thursday, February 5, 2015 1:09:29 PM  
**Attachments:** [H1B Nurses adjudications policy memo 2014 10 22 07 06 27.pdf](#)  
[November 20 Training Roster - Nurse Memo.xlsx](#)  
[H1B Nursing Memo Training.docx](#)

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Good Afternoon Sups-

TED initially hosted training on November 20<sup>th</sup> to discuss the Nursing Occupation Memo that was issued by USCIS on July 11, 2014. Based on our records, several H1B officers were not able to attend. Attached is the record of those that attended on November 20<sup>th</sup>.

TED will be facilitating 2 additional sessions for those that weren't able to attend in November. Please forward the below information to your employee(s) that need to attend.

**Training Materials:**

Please bring 3 items with you for the training:

1. Print a copy of the Nurse RFE: [O:\\\_Adjudications\I-129\H1B1\1-RFE\Position Issues\Nurse](#)
2. Print a copy of the Nurse Memo (attached)
3. Print a copy of the Nurse Policy Memo Training Outline (attached)

**In-Person Registration:**

Please register for 1 of the 2 sessions:

[Tuesday February 17 \(8:30-10:30\) Training Room C](#)

[Thursday February 19 \(8:30-10:30\) Training Room C](#)

**Telework call in:**

Call in numb

Access Code

\*TED will facilitate roll call at the beginning of the training.

Thank you,  
Jamie Oliver  
Service Center Section Chief  
Training & Employee Development (TED)

[Redacted]

---

**From:** Fierro, Joseph  
**Sent:** Monday, October 27, 2014 9:32 AM  
**To:** CSC-H1B BROADCAST  
**Subject:** H-1B Petitions for Nursing Occupations

Hello everyone,

I wanted to provide you with a status update on the adjudication of H-1B petitions for nursing

occupations.

As you are aware, on July 11, 2014, USCIS issued a policy memorandum (PM) that provides updated guidance to adjudicators to determine whether a particular nursing position meets the definition of the H-1B specialty occupation. As a result of this memorandum, SCOPS has issued a new H-1B nursing-related RFE and denial template to reflect any changes.

Effective immediately, the SCOPS RFE and denial must be used when appropriate.

The RFE template has been posted in O:Common\\_Adjudications\I-129\H1B1\RFE\Position issues\Nurses\H-1B Nurse RFE Template. Please do not use any prior versions.

The denial template has been posted in O:Common\\_Adjudications\I-129\H1B1\Denials\I-292 Classification Templates\Position Issues\Specific Position Templates\Nurses\H-1B Nurse Specialty Occupation. Please do not use prior versions.

The memorandum can be found in O:Common\\_Adjudications \I-129\H1B1\3-Reference Materials\Position Issues\Specific Positions\Nurses\Procedural Guidance\

There will be training in November to provide guidance on how to apply and use the new memorandum and templates. TED will send out more information regarding training.

If you have any questions in the meantime, please see a senior or supervisor for guidance.

Thank you.

Joe

Joseph Fierro  
Service Center Section Chief  
Employment Branch 1  
USCIS | California Service Center

(b)(6)

## Policy Memorandum, July 11, 2014 – Review

### **TED Division**

#### **Subject: Adjudications of H1B Petitions for Nursing Occupations**

**Class Discussion: February 17 and 19, 2015, 8:30 – 10:30 AM.**

This is a review and analysis of the Memo. We will discuss the changes from the 2002 Johnny Williams Memorandum on nurses. We will also discuss the overall adjudication points of analyzing the evidence for the nursing profession and the requirements for the position and beneficiary to qualify for an H1B Specialty Occupation.

#### **Agenda**

1. Review the recent H1B nursing occupation memo
2. Discuss the points of applying the evidence for determining eligibility of nursing positions.
3. Question and answer session with the SMEs.

Preponderance of evidence is assumed for all scenarios.

- I. H1B Nonimmigrant statute and regulations.
  - A. INA 101 (a)(15)(H)(i)(b)
  - B. 8 CFR 214.2(h)(4)(ii)
  - C. 8 CFR 214.2(h)(4)(iii)(A)
- II. The H1B position defined
  - A. Specialty Occupation: A theoretical and practical application of a body of highly specialized knowledge....
  - B. Attainment of a bachelor's degree or higher in the specific specialty
- III. 8 CFR 214.2(h)(4)(iii)(A) – The position must meet one of 4 prongs
  - A. A baccalaureate or higher degree or its equivalent normally the minimum requirement for entry into the position.
  - B. The degree requirement is common to the industry in parallel position among similar organizations or an employer may show that the position is so complex or unique that it can be performed only by an individual with a degree.
  - C. The employer normally requires a degree for the position.
  - D. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with attainment of a degree.
- IV. Registered Nurses (RNs) generally do not qualify as a specialty occupation.
  - A. Three paths to attain an RN degree.
    1. A Bachelor of Science Degree in Nursing (BSN). 3-4 years
    2. An Associates Degree in Nursing (ADN) 2-3 years
    3. An approved nursing program. 2-4 years.

- B. RNs can continue education after graduating to attain a BSN or masters degree.
  - C. Health care facilities can pass testing by programs like the magnet program to show their facility has achieved excellence in nursing personnel.
  - D. Advanced Practice Registered Nurse (APRN) positions denote an attainment of a higher level of education.
    - 1. CNM - Certified Mid-wife Nurse
    - 2. CNS - Certified Clinical Nurse Specialist
    - 3. CNP – Certified Nurse Practitioner
    - 4. CRNA - Certified Registered Nurse Anesthetist
- V. Registered Nursing Job Descriptions
- A. Addiction RNs
  - B. Cardiovascular RNs
  - C. Critical Care RNs
  - D. Many more.
- VI. Licensure – besides position and beneficiary qualifications, licensure requirements must also be examined. Requirements are applies in all 50 states.
- A. Must graduate from an approved nursing program.
  - B. Must Pass the National Council Licensure Examination - NCLEX
  - C. It should be noted that licensure requirements do not include having a BS degree.
  - D. Licensure endorsements and for multi-state qualification is available in some states.
- VII. The three determining factors for H1B nursing requirements.
- A. Bachelors of Science degree (BS)
  - B. Position qualifies as a specialty occupation
  - C. Licensure.
- VIII. Examining the evidence.
- A. Making the determination of the position and the beneficiary’s qualifications.
  - B. Applying the evidence
- IX. Beneficiary’s degree
- A. It must be clearly shown that the beneficiary’s education and/or work experience shows that the achievement of a bachelor’s degree has been completed, as is normally done in all H1B occupations, and documentation must be included. (Diploma, transcripts, etc.)
  - B. Registered Nurses who have received an associate’s degree may be working towards a bachelor’s degree but have not yet achieved it.
  - C. Bachelor’s degree level experienced can be used as equivalence to a degree but must be documented and proven (very difficult)
  - D. Foreign Equivalence must be proven.
  - E. The degree must relate directly to the position.
  - F. A bachelor’s degree is not in and of itself enough to warrant approval. The position must be considered.

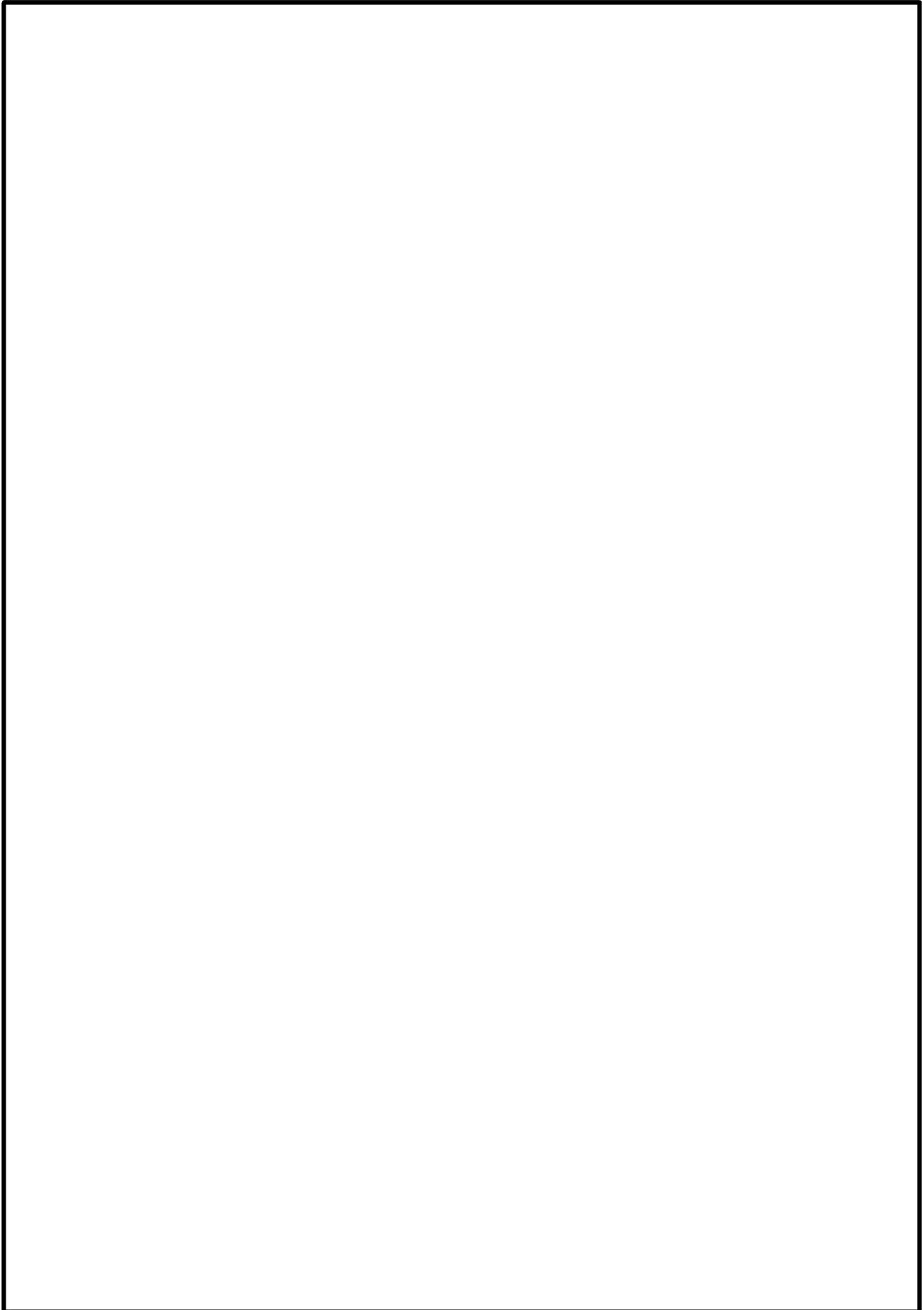
- X. The position must satisfy one of the four prongs in 8 CFR 214.2(h)(4)(iii)(A).
  - A. Prong 1 – A bachelors or higher degree is normally the minimum requirement for entry into the position.
    - 1. The Occupational Outlook Handbook (OOH). Can lead to helping determine if a degree is normally a minimum requirement.
    - 2. Other evidence to show a need by the position for formal education leading to a bachelor’s degree as minimally necessary to attain such knowledge to perform the duties.
    - 3. Description of educational credentials normally required for the position by the petitioner.
  - B. Prong 2 – The degree requirement is common to the industry in parallel positions in similar organization or is so complex or unique that it can only be performed by an individual with a degree.
    - a. Submissions from professional associations
    - b. Submissions from individuals or similar firms in the petitioner’s industry attesting that personnel in parallel positions normally require a degree.
    - c. Description of duties specifically identifying any tasks that are so complex or unique that only a degreed individual could perform them.
    - d. Evidence showing the consistent need for the position employees to receive advanced training or classes to perform their tasks.
  - C. Prong 3 – The employer normally requires a degree or its equivalent for the position.
    - a. Past hiring ads and hiring records for the position.
    - b. Current roster of employees in the position with education and experience listed.
  - D. Prong 4 – The nature of the duties are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate degree.
    - a. The duties are shown to be more specialized and complex as compared with duties of parallel positions that do not normally require a degree.
    - b. Past history of employees in the position possessing a degree.

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## H-1B Wage Leveling: Issue Guide

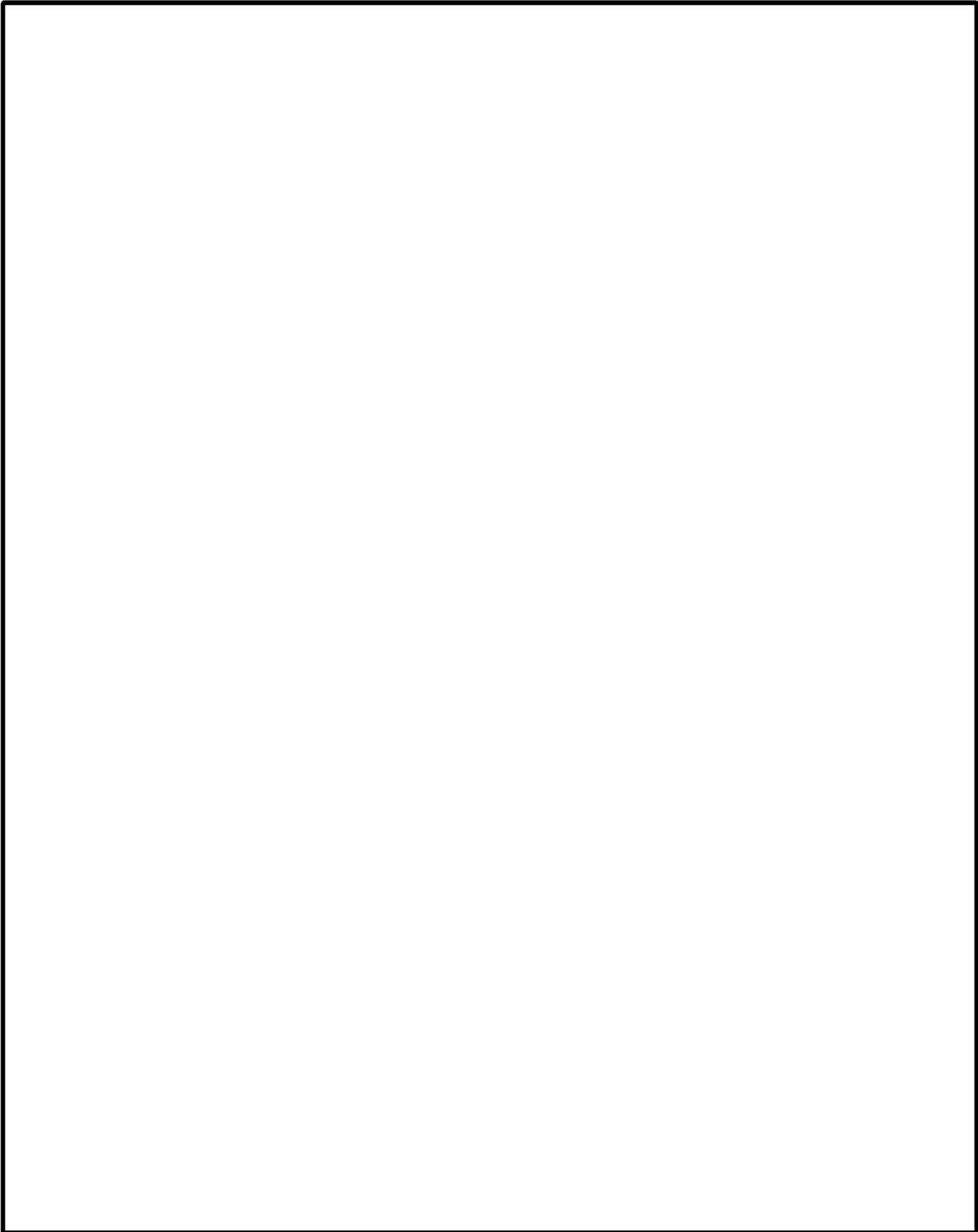


# H-1B Wage Leveling: Issue Guide



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# H-1B Wage Leveling: Issue Guide



(b)(5)



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

**July 11, 2014**

**PM-602-0104**

## Policy Memorandum

**SUBJECT:** Adjudication of H-1B Petitions for Nursing Occupations

### **Purpose**

This policy memorandum (PM) provides guidance on the adjudication of H-1B petitions for nursing positions. Specifically, this PM assists U.S. Citizenship and Immigration Services (USCIS) officers in determining whether or not a nursing position meets the definition of a specialty occupation. This PM supersedes any prior guidance on the subject.

### **Scope**

This PM applies to and is binding on all USCIS employees, unless specifically exempted.

### **Authorities**

- INA 101(a)(15)(H)(i)(b) – H-1B nonimmigrant defined
- INA 214(i) – Specialty occupation defined
- 8 C.F.R. Part 214.2(h) – H regulations

### **Background**

The H-1B visa classification allows a U.S. employer to petition for a temporary worker in a specialty occupation. Most registered nurse (RN) positions do not qualify as a specialty occupation because they do not normally require a U.S. bachelor's or higher degree in nursing (or its equivalent) as the minimum for entry into those particular positions. There are some situations, however, where the petitioner may be able to show that a nursing position qualifies as a specialty occupation. For example, certain advanced practice registered nurse (APRN) positions normally require a U.S. bachelor's or higher degree in a specific specialty as the minimum for entry into these particular positions.

Approximately twelve years have passed since USCIS issued guidance on determining whether or not a nursing position is a specialty occupation.<sup>1</sup> Because of changes in the nursing industry,

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<sup>1</sup> The former Immigration and Naturalization Service issued a memorandum from Johnny N. Williams, Executive Associate Commissioner, INS Office of Field Operations, *Guidance on Adjudication of H-1B Petitions filed on Behalf of Nurses*, HQISD 70/6.2.8-P (November 27, 2002).

USCIS is issuing this PM to provide updated guidance on the adjudication of H-1B petitions for nurses.

## Guidance

### I. Requirements for H-1B Classification in a Specialty Occupation

The H-1B visa classification allows U.S. employers (petitioners) to petition to hire employees (beneficiaries) to work in specialty occupations. The term “specialty occupation” means an occupation that requires: (1) theoretical and practical application of a body of highly specialized knowledge; and, (2) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum requirement for entry into the occupation in the United States.<sup>2</sup>

To qualify as a specialty occupation, the regulations require that the petitioner demonstrate that the position meets at least one of the following criteria:<sup>3</sup>

- A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;<sup>4</sup>
- 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;
- 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 baccalaureate or higher degree.

For an H-1B petition to be approved, the petitioner must establish that the offered position meets all of the applicable statutory and regulatory provisions.

### II. Registered Nurses

Registered nurses generally do not qualify for H-1B classification.<sup>5</sup> This is because most RN positions do not normally require a U.S. bachelor’s or higher degree in nursing (or its equivalent) as the minimum for entry into these particular positions and thus are unable to qualify as specialty occupations. According to the U.S. Department of Labor’s *Occupational Outlook Handbook* (OOH), RNs usually take one of three education paths: a bachelor’s of science degree

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<sup>2</sup> INA 214(i)(1) and 8 C.F.R. 214.2(h)(4)(ii).

<sup>3</sup> 8 C.F.R. 214.2(h)(4)(iii)(A).

<sup>4</sup> 8 C.F.R. 214.2(h)(4)(iii)(A)(1). The degree must be in the specific specialty that is directly related to the H-1B position, unless the petitioner demonstrates that an alternative, closely related specialty degree applies to the position.

<sup>5</sup> According to the National Council of State Boards of Nursing (NCSBN) an RN is an individual who has graduated from a state-approved school of nursing, passed the NCLEX-RN Examination and is licensed by a state board of nursing to provide patient care. See NCSBN’s website at <https://www.ncsbn.org/2731.htm>. Standard RN positions provide and coordinate patient care, educate patients and the public about various health conditions, and provide advice and emotional support to patients and their family members. See the online version of Department of Labor’s *Occupational Outlook Handbook* (OOH) at <http://www.bls.gov/ooh/healthcare/registered-nurses.htm>.

in nursing (BSN), an associate's degree in nursing (ADN), or a diploma from an approved nursing program.<sup>6</sup> Generally, licensed graduates of any of the three types of education programs (bachelor's, associate's, or diploma) qualify for entry-level RN positions. Although the ADN is still the most common degree people pursue to become an RN, nursing candidates are increasingly pursuing BSN degrees.<sup>7</sup> In addition, RNs with an ADN or diploma may return to school to earn a bachelor's degree through an ADN-to-BSN program. There are also master's degree programs in nursing, combined bachelor's and master's programs, and programs for those who wish to enter the nursing profession but hold a bachelor's degree in another field.<sup>8</sup>

The private sector is increasingly showing a preference for more highly educated nurses. The American Nurses Credentialing Center (ANCC) Magnet Recognition Program recognizes health care organizations that advance nursing excellence and leadership. In this regard, achieving Magnet status indicates that the nursing workforce within an institution has attained a number of high standards relating to quality and standards of nursing practice.<sup>9</sup>

Registered nurses' duties and titles often depend on where they work and the patients with whom they work. Their work can focus on specific areas, including the following examples:<sup>10</sup>

<b>Position</b>	<b>Duties</b>
<i>Addiction nurses</i>	Care for patients who need help to overcome addictions to alcohol, drugs, tobacco, and other substances.
<i>Cardiovascular nurses</i>	Care for patients with heart disease and people who have had heart surgery.
<i>Critical care nurses</i>	Work in intensive care units (ICU) in hospitals, providing care to patients with serious, complex, and acute illnesses and injuries that need very close monitoring and treatment.
<i>Emergency room nurses</i>	Work as part of a team with physicians, other nurses and healthcare

<sup>6</sup> For more information on registered nurses, see the online version of Department of Labor's *Occupational Outlook Handbook* (OOH) at <http://www.bls.gov/ooh/healthcare/registered-nurses.htm>. USCIS recognizes the OOH as an authoritative source on the duties and educational requirements of the occupations that it addresses.

<sup>7</sup> Institute of Medicine. *The Future of Nursing: Leading Change, Advancing Health*. Washington, DC: The National Academies Press (2011) at [http://www.nap.edu/catalog.php?record\\_id=12956](http://www.nap.edu/catalog.php?record_id=12956).

<sup>8</sup> See <http://www.bls.gov/ooh/healthcare/registered-nurses.htm#tab-4> (last visited March 24, 2014).

<sup>9</sup> For example, as of January 1, 2013, 100% of nurse managers of individual units/wards/clinics must have at least a baccalaureate degree in nursing upon submission of the Magnet application. Additionally, to apply for Magnet designation, the organization must show what plans are in place to achieve the recommendation of having an 80% baccalaureate prepared registered nurse workforce by 2020. See ANCC (American Nurses Credentialing Center) *Magnet Recognition Program® FAQ: Data and Expected Outcomes* at <http://www.nursecredentialing.org/FunctionalCategory/FAQs/DEO-FAQ.html>.

<sup>10</sup> See Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, 2014-15 Edition, Registered Nurses*, <http://www.bls.gov/ooh/healthcare/registered-nurses.htm> (last visited April 21, 2014).

	professionals to provide care, monitor health conditions, plan long-term care needs, administer medicine, use medical equipment, perform minor medical operations, and advise patients and their families on illness, care and continued care after a hospital stay.
<i>Genetics nurses</i>	Provide screening, counseling, and treatment of patients with genetic disorders, such as cystic fibrosis.
<i>Neonatology nurses</i>	Take care of newborn babies.
<i>Nephrology nurses</i>	Care for patients who have kidney-related health issues stemming from diabetes, high blood pressure, substance abuse, or other causes.
<i>Oncology nurses</i>	Combine their scientific knowledge, technical skills, and caring to help people living with cancer and their families throughout the cancer journey -- from diagnosis and treatment to survivorship and end-of-life care.
<i>Pediatric nurses</i>	Work with patients from infancy to young adulthood, giving developmental screenings, immunizations, and treating common illnesses.
<i>Peri-Operative (Operating Room) nurses</i>	Have a hands-on role, directly assisting surgeons during a procedure. For instance, they may help to suction the incision site or suture a wound.
<i>Rehabilitation nurses</i>	Care for patients with temporary or permanent disabilities.
<i>Other nurses</i>	Have jobs in which they do not work directly with patients, but must still have an active registered nurse license.

Depending on the facts of the case, some of these RN positions may qualify as specialty occupations.

### III. Advanced Practice Registered Nurses

Advanced practice registered nurse defines a level of nursing practice that utilizes extended and expanded skills, experience and knowledge in assessment, planning, implementation, diagnosis and evaluation of the care required.<sup>11</sup> Positions that require nurses who are certified APRNs will

<sup>11</sup> APRNs provide and coordinate patient care and they may provide primary and specialty health care. APRNs who work with patients typically perform many of the same duties as RNs, gathering information about a patient's

generally be specialty occupations due to the advanced level of education and training required for certification.

However, having a degree is not, by itself, sufficient for the position to qualify for H-1B classification. A critical factor remains whether a baccalaureate or higher degree in a specific specialty (or its equivalent) is normally required for these particular positions. It must be noted that a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. USCIS is required to follow long-standing legal standards and determine whether the proffered position qualifies as a specialty occupation, and whether a beneficiary is qualified for the position at the time the nonimmigrant visa petition is filed.<sup>12</sup>

Each state legislature and Board of Nursing decides on the title it will use for APRNs and regulates licensure, scope, and standards of practice. While the burden is on the petitioner to establish eligibility for the benefit sought, generally, the following is a non-exhaustive list of APRN occupations that may satisfy the requirements for a specialty occupation:<sup>13</sup>

- Certified Nurse-Midwife (CNM);
- Certified Clinical Nurse Specialist (CNS);
- Certified Nurse Practitioner (CNP); and
- Certified Registered Nurse Anesthetist (CRNA).

#### **IV. State Licensing Requirements and the Nurse Licensure Compact**

The nursing profession is regulated at the state level. In all states, the District of Columbia, and U.S. territories, RNs must have a nursing license. To become licensed, RNs must graduate from an approved nursing program and pass the National Council Licensure Examination (NCLEX). Other requirements for licensing vary from state to state.

If a state requires at least a bachelor's degree in nursing to obtain a nursing license, an RN position in that state would generally be considered a specialty occupation. At this time, no state requires a bachelor's degree in nursing for licensure. However, state licensure requirements are subject to change.

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condition and taking action to treat or manage the patient's health. However, APRNs are also trained to perform many additional functions, including ordering and evaluating test results, referring patients to specialists, and diagnosing and treating ailments. APRNs focus on patient-centered care, which means understanding a patient's concerns and lifestyle before choosing a course of action. <http://www.bls.gov/ooh/healthcare/nurse-anesthetists-nurse-midwives-and-nurse-practitioners.htm#tab-2> (visited April 16, 2014).

<sup>12</sup> Cf. *Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].").

<sup>13</sup> Examples of APRN duties are available on the OOH in the chapter entitled "Nurse Anesthetists, Nurse Midwives, and Nurse Practitioners." See <http://www.bls.gov/ooh/healthcare/nurse-anesthetists-nurse-midwives-and-nurse-practitioners.htm> (visited March 24, 2014). Advanced Practice Psychiatric Nurses (APPN) is an example of how different states or employer may use the same title for different positions. For example, in New Jersey, APPNs with CNS or NP credentials in psychiatric mental health nurse are called nurse practitioners by the state. See <http://www.apna.org/i4a/pages/index.cfm?pageid=3866>.

Additionally, states allow for licensure by endorsement which means that once a nurse is granted a valid license in his or her home state, he or she can apply and pay applicable fees in any other state and be granted a license in the new state. There are several publically available databases where state requirements and nurse licensures can be verified, including the National Council of State Boards of Nursing (NCSBN), Nursys Licensure Quick Confirm, and Nursys Licensure Verification.<sup>14</sup>

Many states also participate in a licensure compact, which enables multistate licensure for nurses. The Nurse Licensure Compact (NLC) allows an RN and licensed practical/vocational nurse (LPN/VN) to have one multi-state license in a primary state of residency (the home state) and to practice in other compact states (remote states), while subject to each state's practice laws and discipline.<sup>15</sup> Under the NLC, foreign nurses applying for licensure in a compact state may declare either the country of origin or the compact state as the primary state of residency.<sup>16</sup> If the foreign country is declared the primary state of residency, a single-state license will be issued by the compact state.<sup>17</sup> To date, APRNs are not included in this compact. Therefore, APRNs must apply in each state in which they practice, unless exempted when employed in a federal facility.

## **V. Evidence to Establish a Position Qualifies as a Specialty Occupation**

When submitting an H-1B petition, the petitioner must show by a preponderance of the evidence that the proffered position qualifies as a specialty occupation. As in other visa classifications administered by USCIS, the preponderance of the evidence standard requires that a petitioner show that what it claims is more likely the case than not. This is a lower standard of proof than both the standard of "clear and convincing evidence," as well as the "beyond a reasonable doubt" standard that applies to criminal cases.<sup>18</sup>

In determining whether a petitioner meets the preponderance of the evidence standard, adjudicators will consider all of the evidence in the record of proceeding. Such documentation submitted by petitioners often includes evidence regarding:

- The nature of the petitioner's business;
- Industry practices;

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<sup>14</sup> Currently, approximately 24 states participate in the Nurse Licensure Compact (NLC), allowing for mutual recognition of a nurse's license. The remaining 26 noncompact states allow for reciprocity, but a nurse must have a license specific to practice in any noncompact state. This will require an application for licensure by endorsement and completion of any of the new state board's regulations and provision of all of the requested documentation. The NCSBN website provides a map of which states require a master's or higher degree to practice in an advanced role. See <https://www.ncsbn.org/2567.htm>. Nursys Licensure Quick Confirm provides online nursing reports for employers, nurses and the general public at <https://www.nursys.com/LOC/LOCSearch.aspx>. Nursys License Verification hosts online verification for nurses requesting to practice in another state at <https://www.nursys.com/NLV/NLVSearch.aspx>.

<sup>15</sup> For illustrative examples and additional information, see the National Council of State Boards of Nursing website at <https://www.ncsbn.org/nlc.htm#moving>. Additionally, individual state licensing boards provide information about individual licensees as a public service.

<sup>16</sup> A compact state is any state that has adopted the NLC.

<sup>17</sup> Applying for reciprocity is not the same as applying for a license. Nurses need to have a valid license in their current state before applying for transfer to another.

<sup>18</sup> See *Matter of Chawathe*, 25 I&N Dec. 369, 375, 376 (AAO 2010).

- A detailed description of the duties to be performed within the petitioner's business operations;
- Advanced certification requirements;<sup>19</sup>
- ANCC Magnet Recognized status;
- Clinical experience requirements;
- Training in the specialty requirements; and
- Wage rate relative to others within the occupation.

Officers must review each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence to determine whether the proffered position more likely than not qualifies as a specialty occupation. The duties of the position should be evaluated against the four regulatory criteria listed in 8 C.F.R. 214.2(h)(4)(iii)(A) with the understanding, again, that the required degree must be one in a specific specialty. While USCIS recognizes the OOH as one authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses, the OOH is not always determinative. Other authoritative and/or persuasive sources provided by the petitioner will also be considered.

### **Use**

This PM is intended solely for the training and guidance of USCIS personnel in performing their duties relative to the adjudication of petitions. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

### **Contact Information**

Questions or suggestions regarding this PM should be addressed through appropriate channels to the Office of Policy and Strategy, Business and Foreign Workers Division.

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<sup>19</sup> There are many advanced certifications available to nurses, including certifications for Critical Care Registered Nurse, Progressive Care Certified Nurse, Critical Care Registered Nurse e-ICU, Critical Care Clinical Nurse Specialist, Acute Care Nurse Practitioner, Certified Nurse Manager and Leader, Cardiac Medicine Sub-Specialty Nurse, and Cardiac Surgery Sub-Specialty Nurse.





(b)(5)













(b)(5)

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(b)(5)



(b)(5)

(b)(5)



(b)(5)

(b)(5)

**Worley, Jordan P**

---

**From:** Love, Lucinda A  
**Sent:** Wednesday, February 22, 2017 4:50 PM  
**To:** Plastrik, Steven T; Hanehan, Brendan J; Young, Blanton R (Roy); Austin, Stephanie H  
**Subject:** FW: New USCIS Report

fyi

---

**From:** U.S. Citizenship and Immigration Services [mailto:uscis@public.govdelivery.com]  
**Sent:** Wednesday, February 22, 2017 5:30 PM  
**To:** Love, Lucinda A  
**Subject:** New USCIS Report

The following USCIS report is now available on the [Reports and Studies](#) section of the USCIS website:

Characteristics of Specialty Occupation Workers (H-1B): Fiscal Year 2015

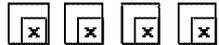
For more immigration tools and resources pl information, visit <https://www.uscis.gov/tools>

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U.S. Citizenship and Immigration Services sending to [lucinda.love@dhs.gov](mailto:lucinda.love@dhs.gov) 20 Massachusetts Ave NW, Washington DC 20529 · 1-800-375-5283



















(b)(5)

(b)(5)





**From:** [Cox, Robert H](#)  
**To:** [Nakajima, Simon T](#)  
**Subject:** RE: CSC H-1B Training Materials-Request for Clearance  
**Date:** Tuesday, November 29, 2016 4:27:00 PM

---

From: Cox, Robert H  
Sent: Tuesday, November 29, 2016 4:27 PM  
To: Nakajima, Simon T  
Subject: RE: CSC H-1B Training Materials-Request for Clearance

I have finished my review.

From: Nakajima, Simon T  
Sent: Monday, September 26, 2016 11:00 AM  
To: Cox, Robert H  
Subject: RE: CSC H-1B Training Materials-Request for Clearance

Ok, so I uploaded the docs on our ECN. They are quite large, so don't be alarmed if it takes forever to open. Also, it might not work the first time or so. You might have to try a few times. The links below should automatically open the doc for you. Let me know if it doesn't.

From what I've seen, the instructor's guide has elements of the participant guide and the PPT slides with instructor's notes on the right hand side. You can't make edits to the participant and PPT elements in the instructor guide since those have been incorporated as pictures. Edits will have to be made on the participant guides and PPT slide

(b)(5)

**From:** [Cox, Robert H](#)  
**To:** [Nakajima, Simon T](#)  
**Cc:** [Choi, Heesun S \(Sunny\)](#)  
**Subject:** RE: H-1B - cites t Matter of [REDACTED]  
**Date:** Thursday, February 11, 2016 1:15:00 PM

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It also says that [REDACTED]

Ok, if that is all there is, then I think we can go ahead and respond to Steve. I will send him an email with our thoughts (unless either of you objects).

From: Nakajima, Simon T  
Sent: Thursday, February 11, 2016 1:12 PM  
To: Cox, Robert H  
Cc: Choi, Heesun S (Sunny)  
Subject: RE: H-1B - cites t Matter of [REDACTED]

Okay. I don't think it's too much of a problem either, but interesting that it is in there .

For fun here is the entire substantive part found below in the AFM.

(g) Adjudicative Issues .

(1) Deciding If the Proposed Employment Is a Specialty Occupation .

Although the definition of specialty occupation is included in the statute itself and the regulations are specific regarding the criteria for determining what qualifies as a specialty occupation, approval or denial often comes down to a judgment call by the adjudicating officer. Th

**From:** [Cox, Robert H](#)  
**To:** [Nakajima, Simon T](#)  
**Cc:** [Choi, Heesun S \(Sunny\)](#)  
**Subject:** RE: H-1B - cites t Matter of [REDACTED]  
**Date:** Thursday, February 11, 2016 1:08:00 PM

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Wow, good find. Hmm.

(b)(5)

From: Nakajima, Simon T  
Sent: Thursday, February 11, 2016 12:48 PM  
To: Cox, Robert H  
Cc: Choi, Heesun S (Sunny)  
Subject: RE: H-1B - cites t Matter of [REDACTED]

Actually hold on. It does say this

(1) Specialty Occupation .

The term "specialty occupation" is defined in section 214(i)  
(1) <<http://connect.uscis.dhs.gov/workingresources/Source/docView/SLB/HTML/SLB/0-0-0-1/0-0->

**From:** [Cox, Robert H](#)  
**To:** [Nakajima, Simon T](#)  
**Cc:** [Choi, Heesun S \(Sunny\)](#)  
**Subject:** RE: H-1B - cites t Matter [REDACTED]  
**Date:** Thursday, February 11, 2016 12:29:00 PM

---

Doubt it says anything on point, but better check before we respond. Let me know, and if there is nothing I will go ahead and respond to Steve.

From: Nakajima, Simon T  
Sent: Thursday, February 11, 2016 12:19 PM  
To: Cox, Robert H  
Cc: Choi, Heesun S (Sunny)  
Subject: RE: H-1B - cites t Matter of [REDACTED]

Good idea. I don't think I have checked the AFM.

From: Cox, Robert H  
Sent: Thursday, February 11, 2016 12:12 PM  
To: Nakajima, Simon T  
Cc: Choi, Heesun S (Sunny)  
Subject: RE: H-1B - cites t Matter of [REDACTED]

Ok, since you claim to be ignorant, can you check the AFM to see what it says, if

(b)(5)

[REDACTED]

Sent with Good ([www.good.com](http://www.good.com))

---

From: Nakajima, Simon T  
Sent: Thursday, February 11, 2016 12:06:18 PM  
To: Cox, Robert H  
Cc: Choi, Heesun S (Sunn

(b)(5)

**From:** [Cox, Robert H](#)  
**To:** [Nakajima, Simon T](#)  
**Cc:** [Choi, Heesun S \(Sunny\)](#) [redacted]  
**Subject:** RE: H-1B - cites t Matter of [redacted]  
**Date:** Thursday, February 11, 2016 12:11:59 PM

---

Ok, since you claim to be ignorant, can you check the AFM to see what it says, if

[redacted]

Sent with Good ([www.good.com](http://www.good.com))

---

**From:** Nakajima, Simon T  
**Sent:** Thursday, February 11, 2016 12:06:18 PM  
**To:** Cox, Robert H  
**Cc:** Choi, Heesun S (Sunny)  
**Subject:** RE: H-1B - cites t Matter of [redacted]

I have no problems with using that cite as well, mostly because of my ignorance on these matters.

**From:** Cox, Robert H  
**Sent:** Thursday, February 11, 2016 11:57 AM  
**To:** Nakajima, Simon T  
**Cc:** Choi, Heesun S (Sunny)  
**Subject:** RE: H-1B - cites t Matter of [redacted]

I do think it is ok to cite to [redacted]  
[redacted]

(b)(5)

**From:** [Cox, Robert H](#)  
**To:** [Nakajima, Simon T](#)  
**Cc:** [Choi, Heesun S \(Sunny\)](#)  
**Subject:** RE: H-1B - cites t Matter of   
**Date:** Thursday, February 11, 2016 11:56:00 AM

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I do think it is ok to cite to the

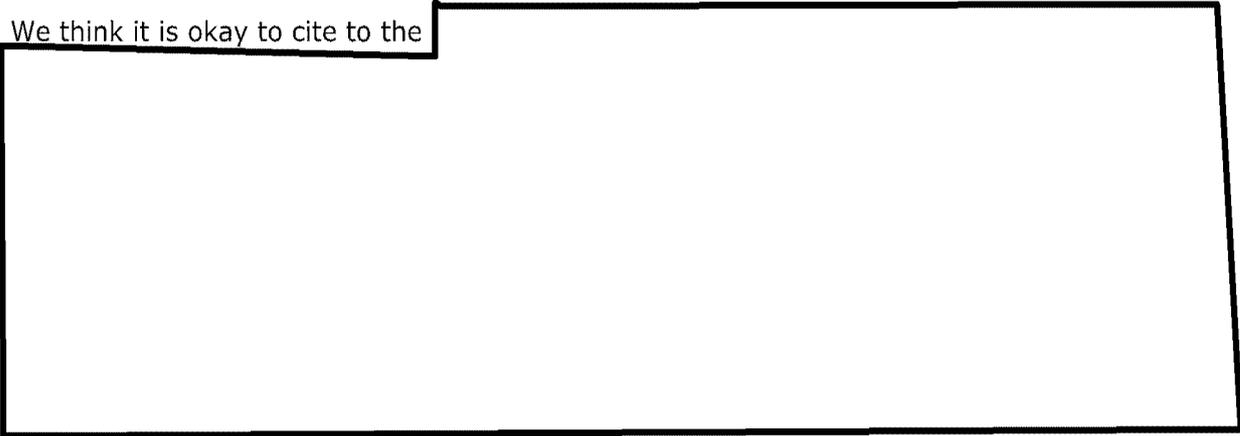
(b)(5)

**From:** [Cox, Robert H](#)  
**To:** [Plastrik, Steven T](#); [Nakajima, Simon T](#)  
**Cc:** [Choi, Heesun S \(Sunny\)](#)  
**Subject:** RE: H-1B - cites t Matter of [redacted]  
**Date:** Thursday, February 11, 2016 2:42:00 PM

---

Hi Steve,

We think it is okay to cite to the [redacted]

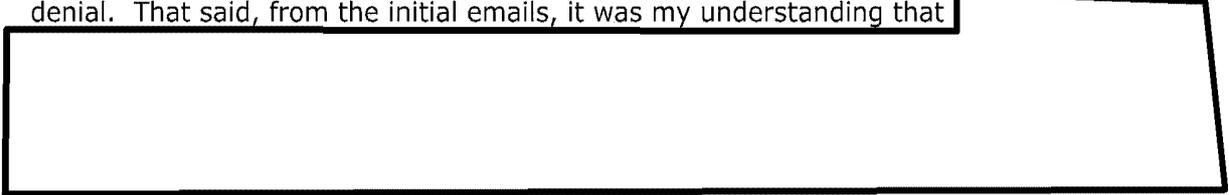


(b)(5)

**From:** [Cox, Robert H](#)  
**To:** [Nakajima, Simon T](#)  
**Subject:** RE: H-1B analyst special occupation case  
**Date:** Monday, November 23, 2015 11:19:00 AM

---

We were just looped into the case following the litigation, so I have not seen the denial. That said, from the initial emails, it was my understanding that



I'll send an email back to Sandra so they can re-work the NOID and send it back for further review.

From: Nakajima, Simon T  
Sent: Friday, November 20, 2015 12:44 PM  
To: Cox, Robert H  
Subject: RE: H-1B analyst special occupation case

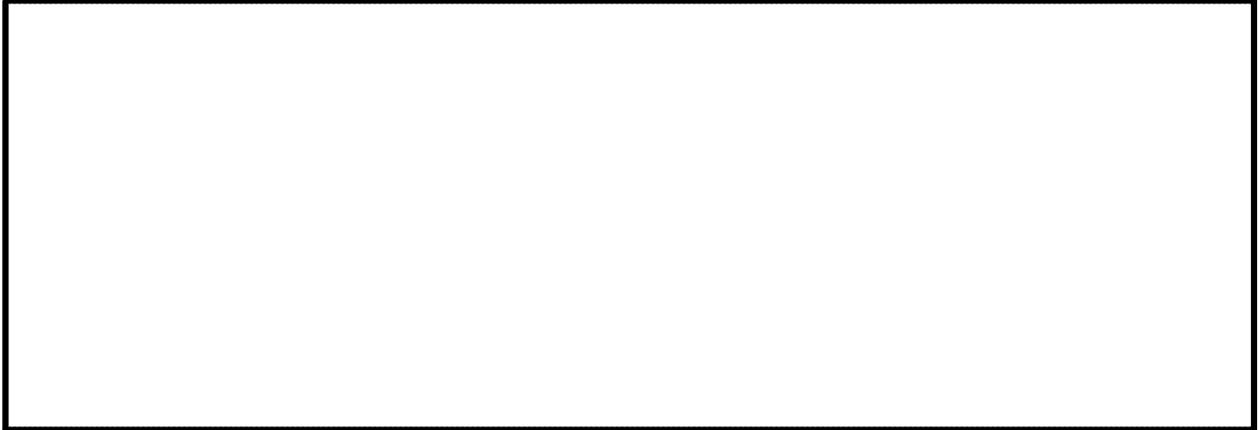


**From:** [Cox, Robert H](#)  
**To:** [Bump, Micah N](#); [Shin, Sandra H](#)  
**Cc:** [Choi, Heesun S \(Sunny\)](#); [Schmalz, Peter N](#)  
**Subject:** RE: H-1B analyst special occupation case  
**Date:** Friday, November 06, 2015 5:32:00 PM

---

(b)(5)

Hi Sandra,



This is a tough case to have as your first H-1B case, especially since the attorney tried to drown us with a 154 page RFE response! Brutal.

Thanks,

**From:** [Cox, Robert H](#)  
**To:** [Nakajima, Simon T](#)  
**Subject:** RE: H-1B analyst special occupation case  
**Date:** Monday, November 23, 2015 11:22:00 AM

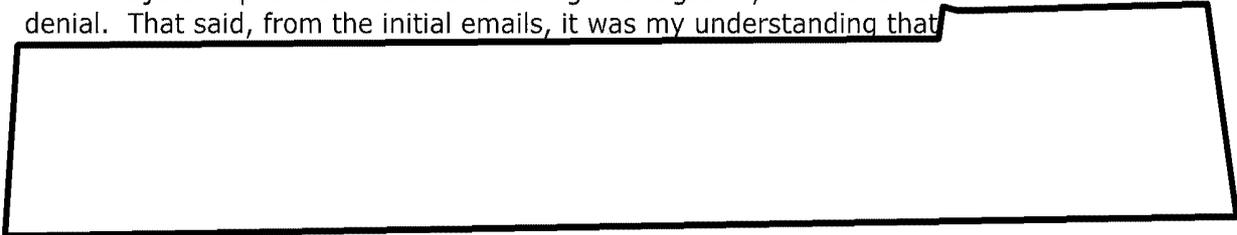
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(b)(5)

Never mind. Don't know what I am talking about. I did see the denial in this case. Hold on, let me see if I can find it and forward it.

From: Cox, Robert H  
Sent: Monday, November 23, 2015 11:20 AM  
To: Nakajima, Simon T  
Subject: RE: H-1B analyst special occupation case

We were just looped into the case following the litigation, so I have not seen the denial. That said, from the initial emails, it was my understanding that



I'll send an email back to Sandra so they can re-work the NOID and send it back for further review.

From: Nakajima, Simon T  
Sent: Friday, November 20, 2015 12:44 PM  
To: Cox, Robert H  
Subject: RE: H-

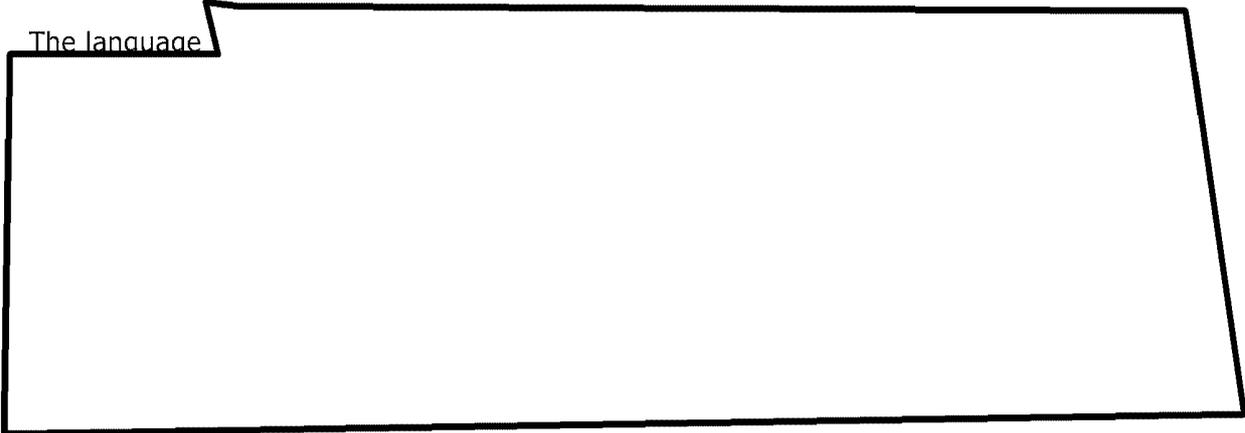
(b)(5)

**From:** Symons, Craig M  
**To:** Angustia, Kathleen M; Parascandola, Ciro A  
**Cc:** Cummings, Kevin J; Bailey, Morgan; Dalal-Dheini, Sharvari P; Nakajima, Simon T; Cox, Robert H; Benbow, Andrew; Choi, Hae-Jin  
**Subject:** RE: H1-B Catch 22 situation  
**Date:** Tuesday, March 15, 2016 12:38:05 PM

---

Hi Kate,

The language



**From:** Bump, Micah N  
**To:** Morse, Miriam A; Dalal-Dheini, Sharvari P  
**Subject:** RE: Y'all should look at AAO055 (currently that number on page 72)  
**Date:** Thursday, August 13, 2015 10:32:56 AM

---

Thanks Miriam. This is for third party beneficiaries and the requirement that they perform 50% or more of their duties at the qualifying institution.

(b)(5)



From: Morse, Miriam A  
Sent: Thursday, August 13, 2015 10:11 AM  
To: Bump, Micah N; Dalal-Dheini, Sharvari P  
Subject: RE: Y'all should look at AAO055 (currently that number on page 72)

Sorry, AAO054 on p. 66.

From: Morse, Miriam A  
Sent: Thursday, August 13, 2015 10:11 AM  
To: Bump, Micah N; Dalal-Dheini, Sharvari P  
Subject: RE: Y'all should look at AAO055 (currently th

**From:** [Burford, Mary H](#)  
**To:** [Ammerman, Michael J](#); [Vinet, Richard G](#); [Luna, Maria P \(Pilar\)](#); [Fisher, Sheila C](#)  
**Subject:** RE: Samples of revised EE and Specialty Occupation  
**Date:** Friday, May 8, 2015 2:25:45 PM  
**Attachments:** [EE - Specialty Occupation samples for Joe \(MJA + mhb comments\).docx](#)

---

I added a few more edits and a couple of comments that basically echo yours. I didn't see anything else bothersome besides what you already identified. Thanks!

Mary

---

**From:** Ammerman, Michael J  
**Sent:** Thursday, May 07, 2015 11:26 AM  
**To:** [Vinet, Richard G](#); [Burford, Mary H](#); [Luna, Maria P \(Pilar\)](#); [Fisher, Sheila C](#)  
**Subject:** FW: Samples of revised EE and Specialty Occupation

Hello,

I got this template from Joe Fierro for review. I was told that it's a change from the standard template that was already reviewed and signed off on by someone higher up so I wanted to get everyone's opinion on it.

Thanks,  
Michael

---

**From:** Fierro, Joseph  
**Sent:** Thursday, May 07, 2015 6:52 AM  
**To:** Ammerman, Michael J  
**Subject:** FW: Samples of revised EE and Specialty Occupation

Hi Michael:

This is not the one we talked about but I would like your thoughts on this.

Thanks,

Joe

---

**From:** Chung, Jae M  
**Sent:** Wednesday, May 06, 2015 9:16:07 AM  
**To:** Fierro, Joseph  
**Cc:** Baltaretu, Cristina G  
**Subject:** Samples of revised EE and Specialty Occupation

Hi Joe,

Attached are 2 proposed samples to address the availability of specialty occupation.

(b)(5)



(b)(5)



Please let me know what you think.

Jae M. Chung  
Supervisory Immigration Services Officer  
EB2 Section

(b)(6)





U.S. Citizenship  
and Immigration  
Services

May 20, 2009

## Memorandum

TO: Service Center Directors

FROM: Barbara Q Velarde /s/  
Chief, Service Center Operations

SUBJECT: Requirements for H-1B Beneficiaries Seeking to Practice in a Health Care Occupation.<sup>1</sup>

### Purpose

This memorandum clarifies the standards for adjudicating H-1B petitions filed on behalf of beneficiaries seeking employment in a health care specialty occupation.

Adjudicators, as a starting point, can consult the U.S. Bureau of Labor Statistics' Occupational Outlook Handbook (OOH) to determine whether the position being offered qualifies as a specialty occupation as defined by Section 214(i)(1) of the Immigration and Nationality Act (INA or Act), consistent with the requirements found in INA 214(i)(2). Adjudicators should be mindful, however, that in certain instances, other authoritative sources exist that indicate whether the position in question qualifies as a specialty occupation (e.g., State licensing board standards). Thus, the OOH is not determinative in all cases. Whenever more than one authoritative source exists, an adjudicator should consider all of the evidence presented to determine whether a beneficiary qualifies to perform in a specialty occupation. Specific guidance on health care occupation standards is included below.

### Guidance for Petitions in Which the Beneficiary Is in Possession of a License<sup>2</sup>

This guidance applies to H-1B beneficiaries in possession of either an unrestricted or a restricted license to practice a health care occupation in the state of intended employment. If the petitioner provides documentary evidence that the beneficiary has a valid license to practice a health care

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<sup>1</sup> For purposes of this memorandum, "health care occupation" refers to those professions enumerated under 8 CFR 212.15(c) and meet the definition of specialty occupation, as defined at 8 CFR 214.2(h)(4)(ii)(4).

<sup>2</sup> If the beneficiary has a license to practice the health care occupation in a state *other* than the state in which he/she will be working, the adjudicator should refer to the section of this memorandum entitled "Guidance for Petitions in Which the Beneficiary Is Not in Possession of a License".

occupation in the state in which the beneficiary will be employed, the adjudicator should not look beyond the license. The beneficiary will be considered to meet the qualifications to perform services in a specialty occupation as outlined in 8 CFR 214.2(h)(4)(iii)(C)(3). However, the petitioner will still need to provide evidence that the beneficiary is admissible under Section 212(a)(5)(C) of the Act.<sup>3</sup>

This guidance applies regardless of whether the beneficiary is in possession of a bachelor's degree, master's degree, or doctoral degree in the health care occupation.

If the beneficiary is in possession of an *unrestricted* license, and the petition is otherwise approvable, an adjudicator should approve the petition for the full H-1B period requested -- up to three years -- but may not approve the petition beyond the validity of the labor condition application (LCA). Please be advised most states require a license to be renewed periodically. If the beneficiary is in possession of an unrestricted license, the renewal date should not be considered when determining the validity period of the approval.

If the beneficiary is in possession of a *restricted* license (e.g., license approved except for mandatory supervised practice), and the petition is otherwise approvable, an adjudicator should approve the petition for a period of one year, or the duration of the restricted license, whichever is longer.<sup>4</sup>

### **Guidance for Petitions in Which the Beneficiary Is Not in Possession of a License**

In order to perform in a health care occupation, the beneficiary must obtain a license from the state in which he/she will be working. As such, the beneficiary must meet the licensure provisions for H classifications.<sup>5</sup> If the petitioner states that the beneficiary cannot obtain a license to practice the health care occupation in the state in which the beneficiary will be employed due to the fact that the state's statutes mandate possession of a social security card<sup>6</sup> and/or a valid immigration document as evidence of employment authorization,<sup>7</sup> the adjudicator must ascertain the requirements for licensure (including educational degree requirements) in the health care occupation in that state to determine whether the beneficiary is qualified to perform

---

<sup>3</sup> All aliens who wish to enter the United States to practice in a health care occupation other than as a physician must be found to be admissible under Section 212(a)(5)(C) of the Act. If the petitioner fails to provide evidence that the beneficiary received a certificate from a recognized credentialing organization as outlined in 212(a)(5)(C) of the Act, the beneficiary may still qualify for classification as an H-1B non-immigrant. If the beneficiary is seeking to extend status or change status, and the petitioner fails to provide the requisite credentialing evidence, the request for extension or change of status should be denied as the beneficiary is inadmissible under Section 212(a)(5)(C) of the Act. If the beneficiary is seeking a non-immigrant visa at a consulate, Department of State (DOS) must be informed of the potential inadmissibility issue.

<sup>4</sup> See 8 CFR 214.2(h)(4)(v)(E).

<sup>5</sup> See 8 CFR 214.2(h)(4)(v).

<sup>6</sup> See Memorandum From Thomas E. Cook, Acting Assistant Commissioner, Office of Adjudications, INS, "Social Security Cards and the Adjudication of H-1B Petitions," HQ 70/6.2.8 (November 20, 2001).

<sup>7</sup> See Memorandum From Donald Neufeld, Deputy Associate Director, Domestic Operations, USCIS "Adjudicator's Field Manual Update: Chapter 31: Accepting and Adjudicating H-1B Petitions When a Required License is not Available Due to State Licensing Requirements Mandating Possession of a Valid Immigrant Document as Evidence of Employment Authorization," HQ 70/6.2.8 (March 21, 2008).

the specialty occupation as outlined in 214(i)(2) of the INA; 8 CFR 214.2(h)(4)(iii)(C). If after conducting research the adjudicator is unable to determine the state's requirements for licensure, the adjudicator may send the petitioner a request for evidence (RFE) asking the petitioner to provide documentary evidence of the state's requirements.

Furthermore, the petitioner will need to provide evidence that the beneficiary:

- Has filed an application for a license in accordance with state or local rules and procedures; and
- Cannot obtain a full unrestricted license in the state in which he/she will practice due to the requirement for possession of a social security card, valid immigration document, and/or physical presence in the United States in the form of a letter from the State Board.

Assuming a petition is approvable under the above standards, the validity period should be one year. The approval of any such H-1B petition shall not constitute approval by USCIS for the alien beneficiary to engage in any activity requiring possession of such State or local license. It is merely a means to facilitate the state or local licensing authority's issuance of such a license to the alien, provided all other requirements are satisfied.

If the petitioner later requests an extension of stay on behalf of the beneficiary, the petitioner must demonstrate that the beneficiary has been granted a valid unrestricted license to practice the health care occupation in the state in which he/she will be working. If the beneficiary does not have the valid unrestricted license at the time the extension of stay petition is filed, the petition will be denied.

## **Use**

This memorandum is intended solely for the instruction and guidance of USCIS personnel in performing their duties relative to adjudications. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner. In addition, the instructions and guidance in this memorandum are in no way intended to and do not prohibit enforcement of the immigration laws of the United States.

Questions regarding this guidance should be directed through appropriate channels to the Office of Service Center Operations.

## **Worley, Jordan P**

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**From:** Parascando, Bridgette H  
**Sent:** Saturday, March 11, 2017 9:11 PM  
**To:** Ammerman, Michael J; Austin, Stephanie H; Bailey, Jamie M; Barnard, Cindy L; Blumeyer-Martinez, Kristy L; Burford, Mary H; Butler, Juliana L; Civic, Amanda M; Clancy, Sean D; Estes, Marvin E; Garza, Lianne; Hanehan, Brendan J; Hubbard, Kathleen A; Kenny, Allen (Allen); Leonard, Kane C; Love, Lucinda A; Luna, Maria P (Pilar); Mahmoudi, Sheila C; Martinez, Christian; Morales, Diana E; Muklewicz, Jeremy P; Plastrik, Steven T; Posont, Elizabeth R; Roles, Rebecca J; Schmalz, Peter N; Sorocco, Joan T; Wilder, Charlotte P; Young, Blanton R (Roy); Zervic, Christopher M  
**Subject:** FW: Irish Help at Home v. Melville, 15-15830 (9th Cir.) Feb. 17, 2017 hearing recap

All,

Sharing a win in one of Pilar's cases involving an H1-B and the issue of specialty occupation in the 9<sup>th</sup> Circuit. Congrats Pilar!

**Bridgette**

---

**From:** Kenny, Allen (Allen)  
**Sent:** Saturday, March 11, 2017 11:05 AM  
**To:** Luna, Maria P (Pilar); Mahmoudi, Sheila C; Parascando, Bridgette H; Burford, Mary H; Leonard, Kane C; Michael Ammerman; Wilder, Charlotte P; Pascual, Vincent I  
**Subject:** RE: Irish Help at Home v. Melville, 15-15830 (9th Cir.) Feb. 17, 2017 hearing recap

Great. Thanks for sending it and congratulations.

---

**From:** Luna, Maria P (Pilar)  
**Sent:** Saturday, March 11, 2017 9:36 AM  
**To:** Mahmoudi, Sheila C; Kenny, Allen (Allen); Parascando, Bridgette H; Burford, Mary H; Leonard, Kane C; Michael Ammerman; Wilder, Charlotte P; Pascual, Vincent I  
**Subject:** FW: Irish Help at Home v. Melville, 15-15830 (9th Cir.) Feb. 17, 2017 hearing recap

Dear Colleagues

Attached is a recent favorable 9th Circuit decision in one of my litigation cases. This case challenged the denial of an H-1B petition on the basis that the position did not qualify as a specialty occupation because the range of degrees required for entry into the field included a "generalist degree", i.e., a B.A in business administration.

Charlotte Kane and I sat in on the moot court and I got to play judge. I will let the client know separately.

Thanks

Pilar

## **Worley, Jordan P**

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**From:** Schmalz, Peter N  
**Sent:** Monday, March 13, 2017 7:18 AM  
**To:** Parascando, Bridgette H; Ammerman, Michael J; Austin, Stephanie H; Bailey, Jamie M; Barnard, Cindy L; Blumeyer-Martinez, Kristy L; Burford, Mary H; Butler, Juliana L; Civic, Amanda M; Clancy, Sean D; Estes, Marvin E; Garza, Lianne; Hanehan, Brendan J; Hubbard, Kathleen A; Kenny, Allen (Allen); Leonard, Kane C; Love, Lucinda A; Luna, Maria P (Pilar); Mahmoudi, Sheila C; Martinez, Christian; Morales, Diana E; Muklewicz, Jeremy P; Plastrik, Steven T; Posont, Elizabeth R; Roles, Rebecca J; Sorocco, Joan T; Wilder, Charlotte P; Young, Blanton R (Roy); Zervic, Christopher M  
**Subject:** RE: Irish Help at Home v. Melville, 15-15830 (9th Cir.) Feb. 17, 2017 hearing recap

Great work, Pilar!

*PETE*

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**From:** Parascando, Bridgette H  
**Sent:** Saturday, March 11, 2017 10:11 PM  
**To:** Ammerman, Michael J; Austin, Stephanie H; Bailey, Jamie M; Barnard, Cindy L; Blumeyer-Martinez, Kristy L; Burford, Mary H; Butler, Juliana L; Civic, Amanda M; Clancy, Sean D; Estes, Marvin E; Garza, Lianne; Hanehan, Brendan J; Hubbard, Kathleen A; Kenny, Allen (Allen); Leonard, Kane C; Love, Lucinda A; Luna, Maria P (Pilar); Mahmoudi, Sheila C; Martinez, Christian; Morales, Diana E; Muklewicz, Jeremy P; Plastrik, Steven T; Posont, Elizabeth R; Roles, Rebecca J; Schmalz, Peter N; Sorocco, Joan T; Wilder, Charlotte P; Young, Blanton R (Roy); Zervic, Christopher M  
**Subject:** FW: Irish Help at Home v. Melville, 15-15830 (9th Cir.) Feb. 17, 2017 hearing recap

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**Bridgette**

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**To:** Luna, Maria P (Pilar); Mahmoudi, Sheila C; Parascando, Bridgette H; Burford, Mary H; Leonard, Kane C; Michael Ammerman; Wilder, Charlotte P; Pascual, Vincent I  
**Subject:** RE: Irish Help at Home v. Melville, 15-15830 (9th Cir.) Feb. 17, 2017 hearing recap

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**From:** Luna, Maria P (Pilar)  
**Sent:** Saturday, March 11, 2017 9:36 AM  
**To:** Mahmoudi, Sheila C; Kenny, Allen (Allen); Parascando, Bridgette H; Burford, Mary H; Leonard, Kane C; Michael Ammerman; Wilder, Charlotte P; Pascual, Vincent I  
**Subject:** FW: Irish Help at Home v. Melville, 15-15830 (9th Cir.) Feb. 17, 2017 hearing recap

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Charlotte Kane and I sat in on the moot court and I got to play judge. I will let the client know separately.

Thanks

Pilar

(b)(5)

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**From:** Chen, Hans H. (CIV)

**Sent:** Friday, March 10, 2017 9:59:27 AM

**To:** Luna, Maria P (Pilar)

**Cc:** Robins, Jeffrey (CIV); Perez, Luis (CIV); Girdharry, Glenn M (CIV); Peachey, William (CIV)