

Labor Condition Application

As explained in *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015), U.S. Citizenship and Immigration Services (USCIS) must determine whether the attestations and content of the ETA Form 9035(E) Labor Condition Application (LCA) correspond to and support the H-1B visa petition. Additionally, Title 20 Code of Federal Regulations (20 CFR), section 655.705(b) states in pertinent part:

For H-1B visas, the following agencies are involved: [Department of Homeland Security (DHS)] DHS accepts the employer's petition (DHS Form I-129) with the DOL-certified LCA attached. In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition...

Finally, title 8 Code of Federal Regulations (8 CFR), section 214.2(h)(4)(i)(B)(1) states:

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

Accordingly, you must establish that your petition is supported by an LCA which corresponds with the proffered position.

XXX[You did not submit any evidence for this requirement.]XXX

XXX[OR]XXX

XXX[To satisfy this requirement, you submitted:]XXX

- XXX[LIST EVIDENCE]XXX

On your LCA you have designated the proffered position as a Level I wage (the lowest of four assignable wage levels). The U.S. Department of Labor (DOL)'s Employment and Training Administration Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs, Rev. November, 2009 (DOL Policy Guidance) discusses the four wage levels and defines a Level I wage as XXX[OFFICERS: WAGE LEVEL DEFINITION INCLUDED ONLY FOR PETITIONER BACKGROUND/FOUNDATION. DO NOT REFERENCE WAGE LEVEL DEFINITION IN REASONING WHY LEVEL I WAGE IS INAPPROPRIATE]XXX:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close

supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

The DOL Policy Guidance further states:

All employer applications for a prevailing wage determination shall initially be considered an entry level or Level I wage. The employer's requirements for experience, education, training, and special skills shall be compared to those generally required for an occupation as described in the O*NET and shall be used as indicators that the job opportunity is for an experienced (Level II), qualified (Level III), or fully competent (Level IV) worker.

USCIS follows the DOL guidance, and the process set forth in the DOL Policy Guidance, to determine whether the wage level in the certified LCA submitted in support of the petition properly corresponds to the proffered position.

By designating the proffered position at a Level I wage, you indicate that the proffered position is a position of a comparatively low level relative to other positions within the occupation.

XXX[EXPLAIN WHY A LEVEL I WAGE DOES NOT CORRESPOND TO THE PARTICULAR POSITION BASED ON THE OES WORKSHEET ANALYSIS (E.G.HOW THE JOB DUTIES INDICATE THAT A SPECIAL SKILL IS REQUIRED WHEN COMPARED TO THE NORMAL DUTIES AND REQUIREMENTS FOR THAT OCCUPATION IN O*NET OR HOW THE EDUCATION OR EXPERIENCE REQUIREMENTS ARE ABOVE THOSE LISTED IN O*NET FOR THE OCCUPATION). REFER TO APPENDICES A AND B TO THE 2009 DOL POLICY GUIDANCE FOR INSTRUCTIONS ON PROPER COMPLETION OF THE OES WORKSHEET.

-AND-

Therefore, the position, as described in your petition, does not appear to be a position that should be assigned a Level I wage. As such, you have not established that the petition is supported by a certified LCA that corresponds to the petition.]XXX

XXX[OR, IF THE RECORD ESTABLISHES THE POSITION IS A SPECIALTY OCCUPATION BUT THE DUTIES AND REQUIREMENTS ARE TOO VAGUE TO EVALUATE THE WAGE LEVEL: The description of the proffered position and supporting documentation provided with your initial filing are insufficient to establish that the proffered position should be assigned a Level I wage. Further evidence which lists the tasks, knowledge, and skills of the proffered position along with the experience

and education required for the proffered position is necessary to establish that the petition is supported by a certified LCA that corresponds to the petition.]XXX

You may submit additional evidence to establish that the wage level on the LCA properly corresponds with the proffered position. Evidence may include, but is not limited to:

XXX[**DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE**]XXX

- A Prevailing Wage Determination for the proffered position issued by the U.S. Department of Labor.
- A letter explaining how the Level I wage designation LCA that you have provided corresponds to the proffered position.
- Documentation to support that the Level I wage designation on the LCA corresponds to the proffered position, such as an official position description, job offer letter, or job announcement that describes all of the experience and education requirements for the proffered position. The documentation should also detail the tasks, knowledge, and skills of the proffered position. If the position involves employment at an end-client worksite, such documentation should include the end-client's official job description, announcement, or other evidence that describes the job duties the beneficiary will perform and the end-client's education, experience, and skill requirements for that position.
- Alternatively, if you do not wish to rely on the LCA with a Level I wage but wish to instead rely on an LCA with a higher wage level, you may do so by submitting another LCA certified prior to the time of filing with a Level II, III or IV wage designation that properly corresponds to the proffered position, but does not require a corresponding change to the proffered wage on the petition in order to establish eligibility.

Private Wage Surveys

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The general analysis required when evaluating a private wage survey is essentially the same analysis required when evaluating an OES based wage level designation. The main difference here is that the OES wage is publically available and its wage level is specifically requested on the LCA, whereas the petitioner may need to provide a copy of the relevant portions of the private survey for us to know what wage level was used in support of the LCA.



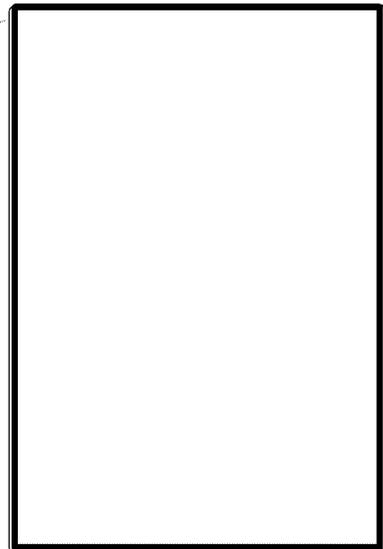
SCOPS: Thanks, OCC.

The officer should, first and foremost, look to determine if the occupational classification corresponds to the particular position. The officer should then look to see what the corresponding wage level is for that survey and identify whether the wage level identified within the private wage survey is appropriate for the position.

If the petitioner establishes that, more likely than not, the occupational classification selected sufficiently corresponds to the position, we would accept that as the proper classification without requiring more. In cases when it appears that the occupational classification doesn't correspond because the articulated duties are significantly different from the duties required for associated with the selected occupational classification, the officer may issue an RFE. The RFE may request that the petitioner submit more evidence (such as additional information from the wage survey) to establish ~~more detail from the wage survey to verify and explain~~ how the selected occupational classification is appropriate and how it relates to the position. The entire private survey and all classifications are not necessarily required for the petitioner to establish, by a preponderance of the evidence, that the selected occupational classification is sufficient.

In addition, the analysis of the private wage survey should include consideration of the area of intended employment. The area of intended employment means "the area within normal commuting distance of the worksite or physical location where the work of the H-1B nonimmigrant is or will be performed." There is no DOL requirement that the geographical divisions of a private wage survey exactly mirror the MSAs or other divisions identified in the Occupational Employment Statistics. As long as a private wage survey's geographical region covers an area within normal commuting distance of the

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In summary, the analysis should consider whether the occupational classification corresponds to the particular position, -whether the survey assigned the correct wage level according to the wage levels provided in the private survey, and whether the survey's selected geographical region corresponds to the area of intended employment.

Specialty Occupation

You must establish that the beneficiary's proffered position is a specialty occupation. A specialty occupation is one that requires the theoretical and practical application of a body of highly specialized knowledge and that 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.

XXX[You did not submit any evidence for this requirement.]XXX

XXX[OR]XXX

XXX[To satisfy this requirement, you submitted:]XXX

- XXX[LIST EVIDENCE]XXX

XXX[USE THIS SECTION ONLY IF NECESSARY]XXX

Specialty Occupation Determination

You must establish that the proffered position is a specialty occupation as defined above. U.S. Citizenship and Immigration Services (USCIS) interprets "a bachelor's degree or higher in a specific specialty" as used above as "one that relates directly to the duties and responsibilities of a particular position." *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

You indicate that the minimum entry requirements for the proffered position are a wide variety of disparate fields of study, such as XXX[LIST PETITIONER'S REQUIRED DEGREE FIELDS]XXX. However, there must be a close correlation between the required "body of highly specialized knowledge" and the position. A minimum entry requirement of a bachelor's degree in disparate fields of study, would not meet the requirement that the position requires a degree "in the specific specialty (or its equivalent)," unless you establish how each field is directly related to the duties and responsibilities of the particular position.

The evidence you submitted is insufficient to establish how each field is directly related to the duties and responsibilities of the particular position, and therefore, that the position is a specialty occupation.

XXX[DISCUSS WHY THE EVIDENCE SUBMITTED IS INSUFFICIENT]XXX

XXX[USE/MODIFY IF RELEVANT: You indicate that one of the minimum entry requirements for the proffered position is a degree in XXX[GENERAL FIELD OF STUDY]XXX without further specialization or explanation. You have not explained how this generalized field is a "body of highly specialized knowledge" that is directly related to the duties and responsibilities of the proffered position and/or how each of the fields of study under this generalized heading would relate to the duties and responsibilities of the proffered position.]XXX

Accordingly, on the basis of the position's educational requirements alone, you have not established that the position is in a specialty occupation as defined above.

You may still provide evidence to meet this requirement. Evidence may include, but is not limited to:

XXX[DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE]XXX

- A letter explaining how each field of study listed as a qualifying field for the proffered position is directly related to the duties and responsibilities of the position.
- An expert opinion letter discussing how each field of study listed as a qualifying field for the proffered position is directly related to the duties and responsibilities of the position.

XXX[USE THIS SECTION ONLY IF NECESSARY]XXX

Specific Duties of the Offered Position and Nature of Business Operations

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

XXX[USE THIS INTRODUCTORY LANGUAGE ONLY IF RELEVANT: In this case, you have indicated that the beneficiary will be performing services at an end-client's worksite. Therefore, as recognized by the court in *Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000), where the work is to be performed for an entity other than the petitioner, evidence of the end-client's job requirements is critical. You must submit evidence that the proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entity(ies) using the beneficiary's services. *Id.* Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific specialty that is necessary to perform that particular work.]**XXX**

XXX[DISCUSS WHY DUTIES/DESCRIPTION OF BUSINESS IS INSUFFICIENT (I.E. VAGUE DUTIES, DUTIES DIRECTLY COPIED FROM OOH/O*NET, ETC.)XXX

In addition to providing evidence relating to the specialty occupation qualifying criteria discussed below, provide evidence that details the specific duties of the proffered position and the nature of your business operations. Evidence may include, but is not limited to:

XXX[DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE]XXX

- A detailed statement from your company or, if the beneficiary will perform services for an end-client, the end-client to:
 - Explain the actual duties the beneficiary will perform;

- Indicate the percentage of time devoted to each duty;
- State the education, experience, training, and special skills required to perform these duties; and
- Explain how the educational requirements relate to the position.
- A copy of a line-and-block organizational chart showing your hierarchy and staffing levels. The organizational chart should:
 - List all divisions in the organization;
 - Identify the proffered position in the chart;
 - Show the names and job titles for those persons, if any, whose work will come under the control of the proposed position; and
 - Indicate who will direct the beneficiary, by name and job title.
- Copies of documentary examples of work products created by current or prior employees in similar positions, such as:
 - Reports;
 - Presentations;
 - Evaluations;
 - Designs; or
 - Blueprints.
- Additional information about your organization, highlighting the nature, scope, and activity of your business enterprise, along with evidence to establish the beneficiary will be employed with the duties you have set forth, such as:
 - Business plans, reports, and presentations to describe your business;
 - Contractual agreements or work orders from each company who will utilize the beneficiary's services showing that the beneficiary will be performing specialty occupation duties;
 - Promotional materials, advertisements, articles, and/or press releases; or
 - Patents.

Qualifying Criteria

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

USCIS will discuss each of the qualifying criteria for specialty occupation below. With your response, identify which of the specialty occupation qualifying criteria you believe has been satisfied. If you believe the offered position satisfies multiple criteria, identify the evidence that you believe satisfies each criterion.

1. Degree is Normally Minimum Requirement

You may establish eligibility by showing that a bachelor's degree or higher in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

The evidence you submitted is insufficient to establish eligibility under this criterion. XXX[**DISCUSS WHY THE EVIDENCE SUBMITTED IS INSUFFICIENT**]XXX

You submitted a certified Labor Condition Application (LCA) which lists an Occupation Title of XXX[**OCCUPATION TITLE**]XXX.

USCIS routinely consults the Department of Labor's *Occupational Outlook Handbook (OOH)* for information about the educational requirements of particular occupations. The *OOH* states the following regarding the training and educational requirements for XXX[**OCCUPATION TITLE**]XXX positions:

XXX[**INCLUDE RELEVANT INFORMATION**]XXX

XXX[**CHOOSE EITHER THIS PARAGRAPH:** The *OOH* does not indicate that XXX[**OCCUPATION TITLE**]XXX positions normally require a minimum of a bachelor's degree in a specific specialty. XXX[**EXPLAIN WHY**]XXX A range of educational credentials, including those less than a bachelor's degree in a specific specialty may qualify an individual to perform the duties of a XXX[**OCCUPATION**]XXX.]XXX

XXX[**OR**]XXX

XXX[**THIS PARAGRAPH:** The *OOH* language indicates that these are the minimum entry requirements for this occupation generally, however, you state that your particular position requires a bachelor's degree, or the equivalent, in XXX[**LIST PETITIONER'S SPECIFIC DEGREE REQUIREMENTS**]XXX. The degree requirements for your position are substantively different from those listed in the *OOH*. XXX[**EXPLAIN WHY**]XXX Accordingly, you have not established how the *OOH* listing for XXX[**SOC OCCUPATIONAL TITLE**]XXX relates to your particular position or demonstrates that a bachelor's degree in a specific specialty is normally the minimum requirement for entry into your particular position.]XXX

XXX[**USE IF RELEVANT:** Moreover, as discussed above, you have not established how each of the qualifying fields of study that you have listed for the proffered position is directly related to the duties and responsibilities of the position. Therefore, you have not established that a bachelor's degree or higher in a *specific specialty*, or its equivalent, is normally the minimum requirement for entry into the particular position by your own educational requirements.]XXX

As such, you have not sufficiently established that a bachelor's degree or higher in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to: XXX[**DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE**]XXX

- Relevant documentation from an authoritative career resource, such as the *OOH*, which list the duties, work environment, education, training, skills, and other qualification requirements for the occupation. Include a statement describing how the particular position relates to the occupation listed in the career guide and how the information in the career guide demonstrates that a bachelor's or higher degree in a specific specialty or its equivalent is normally the minimum requirement for the particular position.
- Any evidence you believe will establish that a bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

2.1 Degree Common to the Industry

You may establish eligibility by showing that the degree requirement of a bachelor's degree or higher in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations.

The evidence you submitted is insufficient to establish eligibility under this criterion.
XXX[DISCUSS WHY THE EVIDENCE SUBMITTED IS INSUFFICIENT]XXX

XXX[USE IF RELEVANT: Moreover, as discussed above, you have not established how each of the qualifying fields of study that you have listed for the proffered position is directly related to the duties and responsibilities of the position. Accordingly, it is not apparent how a bachelor's degree or higher in a *specific specialty*, or its equivalent, is common to the industry in parallel positions among similar organizations, if it is not the requirement of your own position.]**XXX**

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to: **XXX[DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE]XXX**

- Job postings or advertisements showing a degree requirement of a bachelor's degree or higher in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations. Any job postings or advertisements should be supported by documentation of the following:
 - The date and source of the job posting or announcement;
 - A detailed description of the duties of the position and the educational, training, and experience requirements of the position;
 - The company or firm offering the position in these job postings or announcements is within your industry and is similar to your organization; and
 - The job postings or advertisements represent the industry standards for the position.

- Letters from an industry-related professional association indicating that similar organizations routinely employ and recruit only individuals with a bachelor’s degree or higher in a specific specialty, or its equivalent for parallel positions.
- Copies of letters or affidavits from firms or individuals in the industry attesting that similar organizations routinely employ and recruit only individuals with a bachelor’s degree or higher in a specific specialty, or its equivalent for parallel positions. Any letter or affidavit should be supported by documentation of the following:
 - The writer’s qualifications as an expert;
 - How the writer’s conclusions were reached; and
 - The basis for the writer’s conclusions, supported by copies or citations of any materials used.

2.2 Position So Complex or Unique

You may establish eligibility by showing that the particular position is so complex or unique that it can be performed only by an individual with a bachelor’s degree or higher in a specific specialty, or its equivalent.

The evidence you submitted is insufficient to establish eligibility under this criterion.
XXX[DISCUSS WHY THE EVIDENCE SUBMITTED IS INSUFFICIENT]XXX

XXX[USE IF RELEVANT: Moreover, as discussed above, you have not established how each of the qualifying fields of study that you have listed for the proffered position is directly related to the duties and responsibilities of the position. Accordingly, it is not apparent that the particular position is so complex or unique that it can be performed only by an individual with a bachelor’s degree or higher in a *specific specialty*, or its equivalent, based on your own educational requirements.]**XXX**

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to: **XXX[DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE]XXX**

- Letters from an industry-related professional association indicating that the particular position is so complex or unique that it can be performed only by an individual with a bachelor’s degree or higher in a specific specialty, or its equivalent.
- Copies of letters or affidavits from firms or individuals in the industry attesting that the particular position is so complex or unique that it can be performed only by an individual with a bachelor’s degree or higher in a specific specialty, or its equivalent. Any letter or affidavit should be supported by documentation of the following:
 - The writer’s qualifications as an expert;
 - The writer’s knowledge of your business;
 - How the writer’s conclusions were reached; and
 - The basis for the writer’s conclusions, supported by copies or citations of any materials used.

- Copies of trade publications or other articles within your industry which demonstrate and highlight the specific complex or unique functions of the particular position, which can only be performed only by an individual with a bachelor's degree or higher in a specific specialty, or its equivalent.

3. Employer Normally Requires Degree or its Equivalent

You may establish eligibility by showing that you normally require a bachelor's degree or higher in a specific specialty, or its equivalent, for the position. XXX[**USE THIS LANGUAGE ONLY IF RELEVANT:** However, in this case, you have indicated that the beneficiary will be performing services at an end-client's worksite. Consistent with *Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000), evidence of the end-client's job requirements is critical. To establish that the proffered position qualifies as a specialty occupation under this criterion, you must submit evidence that the entity(ies) using the beneficiary's services normally requires a bachelor's or higher degree in a specific specialty or its equivalent.]XXX

The evidence you submitted is insufficient to establish eligibility under this criterion. XXX[**DISCUSS WHY THE EVIDENCE SUBMITTED IS INSUFFICIENT**]XXX

XXX[**USE IF RELEVANT:** Moreover, as discussed above, you have not established how each of the qualifying fields of study that you have listed for the proffered position is directly related to the duties and responsibilities of the position. Accordingly, you have not established that you normally require a bachelor's degree or higher in a *specific specialty*, or its equivalent, based on your own educational requirements.]XXX

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to: XXX[**DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE**]XXX

- An organizational chart showing your hierarchy and staffing levels with corresponding educational and experience requirements for the positions. The educational requirements should include the field of study (e.g. computer science) in addition to the educational level (e.g. bachelor's degree).
- Copies of present and past job postings or announcements for the proffered position showing that you require or, if the beneficiary will perform services for an end-client, the end-client requires applicants to have a minimum of a bachelor's or higher degree in a specific specialty or its equivalent.
- Documentary evidence of your past employment practices for the position, including:
 - Documentation which lists the number of employees hired in the most recent two years for the position;
 - Copies of employment or pay records identifying past and present employees in this position;
 - Copies of degrees and/or transcripts to verify the level of education and field of study of each individual hired for this position in the last two

- years. Additionally, provide evidence to establish the duties that the individuals performed, such as official position descriptions, job offer letters, job postings, or performance reviews; and
 - An organizational chart or diagram, showing your organizational structure and staffing levels.
- Documentation which lists the educational, experience, training, and skills requirements of the offered position, such as official position descriptions, job offer letters, or job postings.

4. Nature of Specific Duties So Specialized and Complex

You may establish eligibility by demonstrating that the nature of the specific duties of the offered position are so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent.

The evidence you submitted is insufficient to establish eligibility under this criterion.
XXX[DISCUSS WHY THE EVIDENCE SUBMITTED IS INSUFFICIENT]XXX

XXX[USE IF RELEVANT: Moreover, as discussed above, you have not established how each of the qualifying fields of study that you have listed for the proffered position is directly related to the duties and responsibilities of the position. Accordingly, it is not apparent that the nature of the specific duties of the offered position are so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a bachelor's degree or higher in a *specific specialty*, or its equivalent, based on your own educational requirements.]**XXX**

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to: **XXX[DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE]XXX**

- An explanation of the specific duties, as they relate to your products and services, and how the nature of those duties of the offered position are so specialized and complex, that they are usually associated with the attainment of a bachelor's degree or higher in a specific field of study; provide an explanation of what differentiates your products and services from other employers in the same industry. Be specific and provide documentation to support any explanation of specialization and complexity.
- Copies of letters or affidavits from firms, individuals, professional associations, or customers attesting that the nature of your products and services are so specialized and complex that a bachelor's level of education, or higher, in a specific field of study is a prerequisite for entry into the offered position. Any letter or affidavit should be supported by documentation of the following:
 - The writer's qualifications as an expert;

- How the writer's conclusions were reached; and
 - The basis for the writer's conclusions, supported by copies or citations of any materials used.
- Copies of trade publications or other articles about your company that highlights the nature of your products and services and demonstrates that the specific duties of the offered position are so specialized and complex that a bachelor's level of education, or higher, in a specific field of study is a prerequisite for entry into the position.

Labor Condition Application

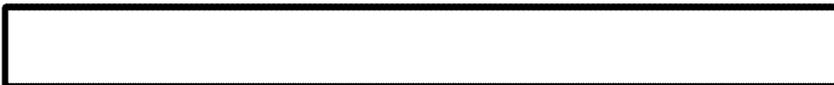
You must establish that your petition is supported by an ETA Form 9035(E) Labor Condition Application (LCA) which corresponds with the proffered position.

You have provided an LCA certified for the occupational classification of **XXXa/an LCA SOC OCCUPATION TITLEXXX** and have designated the prevailing wage source for the occupation as the **XXXSOURCE YEAR AND NAME FROM BOXES 11A. AND 11B, e.g. 2016 Towers Watson Data Services Acctg & Fin Compensation SurveyXXX**. The prevailing wage source listed above appears to be an independent authoritative source; however, the evidence of the record is insufficient to establish that the occupation listed in the independent authoritative source is comparable to the proffered position. As such, you have not demonstrated that your petition is supported by an LCA which corresponds with the proffered position.

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

- A copy of the prevailing wage survey for the occupation published by the authoritative source covering the area of intended employment. The prevailing wage survey must provide an explanation of the occupational classification system and the wage data must have been collected across industries that employ workers in the occupation;
- Documentation, such as an official position description, job offer letter, or job announcement, which factored into the selection of the occupation certified on the LCA and details the duties and responsibilities of the proffered position and describes the skills and qualifications required to perform those duties;
- Documentation published by the independent authoritative source, which shows that the survey’s job description matches the job description for the proffered position. This documentation should also list details of the occupation certified on the LCA, such as the duties, position qualification requirements, work supervision requirements, or any other details which factored into the selection of the occupation certified on the LCA;
- If available for the survey used, copies of the prevailing wage survey(s) for all lower and/or higher level positions within the occupation certified on the LCA, such as “entry,” “senior,” “lead,” or “supervisory” positions. In the alternative, provide evidence, as published by the independent authoritative source, to establish that no lower and/or higher level positions exist within the occupation certified on the LCA; and/or

(b)(5)



Labor Condition Application

You must establish that your petition is supported by an ETA Form 9035(E) Labor Condition Application (LCA) which corresponds with the proffered position.

You have provided an LCA certified for the occupational classification of **XXXa/an LCA SOC OCCUPATION TITLEXXX** and have designated the prevailing wage source for the occupation as the **XXXSOURCE YEAR AND NAME FROM BOXES 11A. AND 11B, e.g. 2016 Towers Watson Data Services Acctg & Fin Compensation SurveyXXX**. The prevailing wage source listed above appears to be an independent authoritative source; however, the evidence of the record is insufficient to establish that the occupation listed in the independent authoritative source is comparable to the proffered position. As such, you have not demonstrated that LCA corresponds with the proffered position.

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

- A copy of the prevailing wage survey for the occupation, as published by the authoritative source, covering the area of intended employment. The prevailing wage survey must provide an explanation of the occupational taxonomy and must represent the occupation across the entire industry;
- Documentation, such as an official position description, job offer letter, or job announcement, which factored into the selection of the occupation certified on the LCA and details the duties and responsibilities of the proffered position and describes the skills and qualifications required to perform those duties;
- Documentation, as published by the independent authoritative source, which lists details such as the duties, position qualification requirements, and work supervision requirements of the occupation certified on the LCA, or any other details which factored into the selection of the occupation certified on the LCA;
- If available for the survey used, copies of the prevailing wage survey(s) for all lower and/or higher level positions within the occupation certified on the LCA, such as “entry,” “senior,” “lead,” or “supervisory” positions. In the alternative, provide evidence, as published by the independent authoritative source, to establish that no lower and/or higher level positions exist within the occupation certified on the LCA; and/or
- Any other documentation which establishes that the LCA corresponds with the proffered position.

XXXDO NOT USE IN CONJUNCTION WITH 2120 WHEN ADDRESSING SPECIALTY OCCPATION, USE 2126XXX

Labor Condition Application

You must establish that your petition is supported by an ETA Form 9035(E) Labor Condition Application (LCA) which corresponds with the proffered position.

On your LCA you have designated the proffered position as a Level I wage (the lowest of four assignable wage levels).

By designating the proffered position at a Level I wage, you indicate that the proffered position is an entry level position within the occupation.

XXXLIST AND PROVIDE ANALYSIS OF THE ROLES AND RESPONSIBILITIES WHICH INDICATE A HIGHER LEVEL POSITION, SUCH AS “SENIOR,” “LEAD,” “SUPERVISORY,” “MENTORING,” ETC. AND CLEARLY CONTRADICT WITH A LOWER LEVEL POSITION WITHIN THE OCCUPATION.

Therefore, the position, as described in your petition, does not appear to be an entry level position within the occupation. As such, you have not sufficiently established that the petition is supported by a certified LCA that corresponds to the petition.XXX

XXXOR, IF THE RECORD ESTABLISHES A SPECIALTY OCCUPATION BUT THE DUTIES AND REQUIREMENTS ARE TOO VAGUE TO EVALUATE THE WAGE LEVEL. The description of the proffered position and supporting documentation provided with your initial filing are insufficient to establish that the proffered position is an entry level position within the occupation. Further evidence which lists the tasks, knowledge, and skills of the proffered position along with the experience, education, and level of supervision required for the proffered position is required to establish that the petition is supported by a certified LCA that corresponds to the petition.XXX

You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to: **XXXDELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLEXXX**

- A Form ETA-9141, Application for Prevailing Wage Determination, completed by the U.S. Department of Labor for the proffered position.
- Documentation, such as an official position description, job offer letter, or job announcement, which factored into the selection of the occupation and wage level certified on the LCA. The documentation should detail the tasks, knowledge, and skills of the proffered position. Additionally, the documentation should describe the experience and education requirements for the proffered position.
- A letter explaining how the Level I wage designation LCA that you have provided corresponds to the proffered specialty occupation position.

- Documentation to support that the Level I wage designation on the LCA corresponds to the proffered position.

XXXINSERT AS SPECIALTY OCC SNIPPET INTO 2120XXX

USCIS routinely consults the Department of Labor's *Occupational Outlook Handbook (OOH)* for information about the duties and educational requirements of particular occupations. You have petitioned and provided a Labor Condition Application (LCA) for the position of **XXXPOSITIONXXX**. The *OOH* states the following regarding the training and educational requirements for a **XXXPOSITIONXXX**:

XXXINCLUDE RELEVANT INFORMATION FROM THE OOHXXX

Accordingly, a range of educational credentials **XXX**, including those less than a bachelor's degree in a specific specialty,**XXX** may qualify an individual to perform the duties of a **XXXPOSITIONXXX**. On your LCA, you have designated the proffered position as a Level I wage (the lowest of four assignable wage levels).

By designating the proffered position at a Level I wage, you indicate that the proffered position is an entry level position within the occupation. Given the *OOH's* guidance that some positions within this occupational category do not normally require a bachelor's or higher degree in a specific specialty as a minimum requirement, the record does not establish that an entry level position within the occupation would have such a requirement.

XXX INSERT OTHER DISCUSSION AND SNIPPETS TO ADDRESS OTHER PRONGSXXX

XXXINSERT AT THE END OF 2120 IF NEEDEDXXX

Labor Condition Application

You must establish that your petition is supported by an ETA Form 9035(E) Labor Condition Application which corresponds with the proffered position..

XXXYou did not submit any evidence for this requirement.XXX

XXXORXXX

XXXTo satisfy this requirement, you submitted:XXX

- **XXXOFFICER TEXTXXX**

As discussed above, you have not demonstrated that the proffered position is a specialty occupation. Further, USCIS requires additional evidence to establish that the LCA you have provided, with a Level I wage designation, properly corresponds to the proffered position. **XXXIF RELEVANT PROVIDE DISCUSSION OF ROLES AND RESPONSIBILITIES WHICH INDICATE A HIGHER LEVEL POSITION, SUCH AS “SENIOR,” “LEAD,” “SUPERVISORY,” “MENTORING,” ETC. AND CLEARLY CONTRADICT WITH A LOWER LEVEL POSITION WITHIN THE OCCUPATIONXXX**

You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to: **XXXDELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLEXXX**

- A Form ETA-9141, Application for Prevailing Wage Determination completed by the U.S. Department of Labor for the proffered position.
- Documentation, such as an official position description, job offer letter, or job announcement, which factored into the selection of the occupation and wage level certified on the LCA. The documentation should detail the tasks, knowledge, and skills of the proffered position. Additionally, the documentation should describe the experience and education requirements for the proffered position.
- A letter explaining how the Level I wage designation LCA that you have provided corresponds to the proffered position.
- Documentation to support that the Level I wage designation on the LCA corresponds to the proffered position.

Specialty Occupation & Related Degrees Guidance

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

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

Analyzing “Specific Specialty”

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

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

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

Application

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

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

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

Summary

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

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

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

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