

July 12, 2019

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
P.O. Box 82521
Lincoln, NE 68501-2521



U.S. Citizenship
and Immigration
Services



LIN1915750670



RE: [REDACTED]
I-129, Petition for a Nonimmigrant Worker

REQUEST FOR EVIDENCE

IMPORTANT: THIS NOTICE CONTAINS YOUR UNIQUE NUMBER. THE ORIGINAL NOTICE MUST BE SUBMITTED WITH THE REQUESTED EVIDENCE.

You are receiving this notice because U.S. Citizenship and Immigration Services (USCIS) requires additional evidence to process your form. Please provide the evidence requested below. Include duplicate copies if you are requesting consular notification.

Your response must be received in this office by October 7, 2019.

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

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

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

Processing of your I-129 will resume upon receipt of your response. If you have not heard from USCIS within **60 days of responding**, you may contact the USCIS Contact Center at **1-800-375-5283**. If you are hearing impaired, please call the USCIS Contact Center TDD at **1-800-767-1833**.



WAGE LEVEL LCA REQUIREMENT

You must establish that your petition is supported by a Form ETA 9035(E) Labor Condition Application (LCA) which corresponds to the proffered position, and that the LCA is certified for the specialty occupation in which the beneficiary will be employed. USCIS does not use a position title alone for determining whether the position and its wage level correspond to the proffered position. The agency reviews the education and experience requirements, individual job duties and specific function, and supervisory duties, if any, of the proffered position.

As indicated in *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015), USCIS must determine whether the attestations and content of the LCA correspond to and support the H-1B visa petition. Accordingly, wage levels are relevant, and USCIS reviews the LCA to ensure that the wage level designated by the petitioner corresponds to the proffered position.

The instant petition seeks to employ the beneficiary in the position of secondary school teacher. You submitted a LCA certified on March 9, 2019 for the SOC Occupation Title 25-2031, which designates the proffered position as a Wage Level one. The wage level reflects the job requirements, including the experience, education, special skills/other requirements, and supervisory duties, see the U.S. Department of Labor Policy Guidance, *Employment and Training Administration Prevailing Wage Determination Policy Guidance Nonagricultural Immigration Programs*, Rev. November, 2009 (DOL Policy Guidance).

The DOL Policy Guidance states that all employer applications for prevailing wage determination shall initially be considered an entry level, or Level I wage. The employer's requirements for experience, education, training, special skills, and supervisory duties shall then be compared to those generally required for an occupation as described in 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 and warrants a prevailing wage determination at a higher wage level.

The DOL Policy Guidance provides several guides, such as the Wage Level definitions and *Appendix A: OES Prevailing Wage Guidance* to help employers determine appropriate wage levels (DOL Policy Guidance 7-13; Appendix A). The LCA may be certified as beginner (Level I), experienced (Level II), qualified (Level III), or fully competent (Level IV). All DOL prevailing wage determinations begin at a Level I wage (DOL Policy Guidance c8).

The following is an analysis of the "particulars of the employer's job offer to the similar (O*NET) occupations," *id.* at 7.

Step 2: Experience Section

The OES Prevailing Wage Guidance (Appendix A) states in pertinent part:

Compare the overall experience described in the O*NET Job Zone to the years of experience required by the employer on the prevailing wage determination request form...

For occupations in Job Zones 2 through 5, if the employer's experience requirement is:

- At or below the level of experience and SVP range, make no entry in the Wage Level Column.
- In the low end of the experience and SVP range, enter a 1 in the Wage Level Column.
- In the high end of the experience and SVP range, enter a 2 in the Wage Level Column.

- Greater than the experience and SVP range, enter a 3 in the Wage Level Column.

Points should be added for the amount of experience only if the required work experience is above the starting point of the O*NET job zone range. Education required for the job is addressed in Step 3 of the worksheet, and therefore the years of education required should not be considered in Step 2. However, if education is considered as an equivalent amount of experience in Step 2, it should not also be considered in Step 3.

USCIS has compared the submitted evidence to the occupation as described in O*NET. The record indicates that the experience requirement for the proffered position requires experience beyond what is generally required for the occupation associated with the wage level designated on the LCA. Therefore, it appears the wage level designation is inconsistent with the proffered position.

You must submit additional evidence to show the petition is supported by a certified LCA which corresponds to the proffered position.

Evidence to satisfy this requirement may include, but is not limited to:

- A Form ETA-9141, Application for Prevailing Wage Determination, certified by the DOL for the proffered position;
- Documentation, such as an official position description, job offer letter, or job announcement, which was used as a basis for selecting 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 wage level designation LCA that you have provided corresponds to the proffered position; and/or
- Documentation to support that the wage level designation on the LCA corresponds to the proffered position.

PLACE THIS ENTIRE LETTER ON TOP OF YOUR RESPONSE. SUBMISSION OF EVIDENCE WITHOUT THIS LETTER WILL DELAY PROCESSING OF YOUR CASE AND MAY RESULT IN A DENIAL. PLEASE USE THE ENCLOSED ENVELOPE TO MAIL THE ADDITIONAL EVIDENCE REQUESTED BACK TO THIS OFFICE.

Sincerely,



Loren K. Miller
Director
Officer: 0620

