



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF N-Y-P-

DATE: NOV. 9, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a manufacturer of PVC and polyester fiber, seeks to temporarily employ the Beneficiary as a “procurement engineer” under the H-1B nonimmigrant classification for specialty occupations. Immigration and Nationality Act section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director of the Vermont Service Center denied the petition, concluding that the Petitioner did not establish, as required, that the submitted labor condition application (LCA) corresponds with the H-1B petition. More specifically, the Director found that the Petitioner’s classification of the proffered position at a Level I wage was incorrect.

On appeal, the Petitioner asserts that the Director’s finding was incorrect and contends that the petition should be approved.

Upon *de novo* review, the decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the analysis below and for the entry of a new decision.

I. ANALYSIS

The purpose of the LCA wage requirement is “to protect U.S. workers’ wages and eliminate any economic incentive or advantage in hiring temporary foreign workers.”¹ It also serves to protect H-1B workers from wage abuses. A petitioner submits the LCA to the Department of Labor (DOL) to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the area of employment or the actual wage paid by the employer to other employees with similar duties, experience, and qualifications. Section 212(n)(1) of the Act; 20

¹ See Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models; Labor Certification Process for Permanent Employment of Aliens in the United States, 65 Fed. Reg. 80,110, 80,110-11 (proposed Dec. 20, 2000) (to be codified at 20 C.F.R. pts. 655-56).

C.F.R. § 655.731(a). While DOL certifies the LCA, USCIS determines whether the LCA's content corresponds with the H-1B petition. *See* 20 C.F.R. § 655.705(b) ("DHS determines whether the petition is supported by an LCA which corresponds with the petition,...").

In arriving at her conclusion the Director compared the Petitioner-indicated duties directly with DOL's generic definition of a Level I wage. We agree with the Petitioner that in order to assess whether the wage level listed on the LCA corresponds with the proffered position, the Director should have applied DOL's guidance, which provides a five step process for determining the appropriate wage level. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009). We conclude that the LCA corresponds with the H-1B petition and will accordingly withdraw the Director's decision.

However, the record of proceedings is not currently sufficient to establish that the proffered position is a specialty occupation. As the Director did not address this issue, we will remand the matter for further development of the record on the proffered position's classification as a specialty occupation.

II. CONCLUSION

As the Petitioner was not previously accorded the opportunity to address the above, we will remand the record for further review of the specialty-occupation issue. The Director may request any additional evidence considered pertinent to the new determination.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis and for the entry of a new decision.

Cite as *Matter of N-Y-P-*, ID# 1659335 (AAO Nov. 9, 2018)