

STRATEGY AND MECHANICS OF YOUR EMPLOYMENT BASED CASE

Petition and application preparation for an employment-based benefit requires a thorough understanding of the applicable law, as outlined in the controlling statute and implementing regulation. The steps to prepare the best petition and application are the same every time you start a new matter, and each step represents a critical part of the process.

The following provides an overview of six (6) core considerations that contribute to the development of substantive case strategy as well as resources to guide and develop the mechanics necessary for a successful petition/application.

I. TOPICS COVERED

1. Legal research to Prevent RFEs
2. Useful websites for law firm newsletters
3. List of companies that provide credentials evaluations
4. Translations
5. Corroborating evidence
6. Setting up a case

II. LEGAL RESEARCH TO PREVENT RFEs

1. Statutes and Regulations - See *Kurzban Immigration Law Sourcebook Seventeenth Edition, page 2385*
 - A. Federal Statutes
 - B. Federal Regulations
 - C. Federal Agency Rules, Manuals, and Guidance
 - D. State Statutes
2. Practice Pointers- useful nuggets and insights
 - A. Check AILA Infonet concerning recent developments
 - B. Check AILA Infonet Practice Alerts
 - C. Check AILA Infonet Practice Pointers
 - D. Check AILA Infonet Resource Center: 2019 Novel Coronavirus (COVID-19) – See https://www.aila.org/advocacy/media/issues/all/covid-19?utm_source=aila.org&utm_medium=FeaturedSearch
 - E. American Immigration Counsel Practice Advisories - <https://www.americanimmigrationcouncil.org/search/site/practice%20advisories>
 - F. US Visa news from the U.S. Department of State - <https://travel.state.gov/content/travel/en/>

[News/visas-news.html](#) (tip from Ken Harder)

- G. Review the literature on AILAlink – see <https://ailalink.aila.org/login.html> (there is an annual fee, but this is a comprehensive immigration library on the web).
- H. See AILA USCIS HQ Committee Updated RFE Toolbox AILA USCIS HQ Committee Updated RFE Toolbox, AILA Doc. No. 19080140 | Dated December 17, 2020 |
- I. Ninth Circuit H-1B slap down on USCIS' misinterpreting OOH terms "normal". See <https://cdn.ca9.uscourts.gov/datastore/opinions/2020/12/16/19-16849.pdf> and commentary at <http://blog.cyrusmehta.com/2020/12/innova-solutions-v-baran-computer-programmer-is-a-specialty-occupation-under-the-h-1b-visa.html>
- J. New regulations - Pay attention to new updates/ regulations – for example [USCIS Final Rule Creating a Wage-Based Selection Process for H-1Bs](#)

USCIS final rule creating a wage-based selection process for H-1B registrations. The regulatory text is the same as that in the Notice of Proposed Rulemaking published on 11/2/20. The rule is effective 3/9/21. (86 FR 1676, 1/8/21) AILA Doc. No. 21010732

3. Theory of the Case

- A. At the outset of the case, stop and spend time to create a macro and micro vision of the case. Align your case facts with the regulatory requirements for the benefit requested.
- B. Given the complexities of the pandemic, we often recommend the attorney prepare a strategy memo to discuss the potential issues and scenarios which may play out, and to consider the multiple remedies/ options available to present to the client(s), including the potential risks and consequences. This is important because if you skip over this step, it is possible to overlook a significant obstacle that should be addressed and brought to the client's attention at the outset of the representation.
- C. In terms of the end result, by focusing on the theory of the case, you will focus on

the case's weaknesses, strengths, and plan for the uncertain. For example, look at the passport and I-94 expiration dates, and what are the current procedures at the post where the alien will apply for his/her visa issuance/ renewal.

- D. Conduct a thorough initial client interview and be sure to request a complete copy of the paper and digital file from the alien and his/ her prior employer(s).

Practice Pointer – If you haven't already seen the latest iterations of USCIS' requests for Additional Evidence, connect with associates and colleagues so that you can review.

4. Redacted RFEs

- A. Attached are copies of representative recent RFEs to review and consider.
- B. **Practice Pointer** - You may wish to ask colleagues to share their redacted RFEs to see if your RFE is similar and what strategies and types of evidence in the past have been successful.

III. USEFUL WEBSITES FOR LAW FIRM NEWSLETTERS.

1. Klasko Immigration Law Partners LLP – <https://www.klaskolaw.com/contact-us/subscribe-updates/> ; <https://www.klaskolaw.com/news-category/client-alerts/> ; <https://www.klaskolaw.com/blog/> ; and <https://www.klaskolaw.com/site-map/>
2. Dickinson-Wright (Kathleen Walker) - <http://immigration.dickinson-wright.com/>
3. Fragomen- <https://www.fragomen.com/insights/alerts> and <https://www.fragomen.com/insights/podcasts>
4. Greenberg Traurig- <https://www.gtlaw.com/en/insights?keyword=immigration>
5. Immigration Daily - <https://www.ilw.com/immigrationdaily/>
6. Murthy Law Firm - <https://www.murthy.com/about-us/online-services/enewsletter/>
7. Maggio Kattar - <https://maggio-kattar.com/sign-up-for-news-alerts/>
8. Miller Mayer LLP (Steven Yale-Loehr practice here) - <https://millermayer.com/news-and-insights/> - go to sign up for our newsletter

9. Mintz - <https://www.mintz.com/subscribe>
10. Seyfarth (Angelo Papparelli) - <https://www.bigimmigrationlawblog.com/>
11. Shusterman - <https://www.shusterman.com/>
12. Siskind's Immigration Law Bulletin - <https://www.visalaw.com/immigration-resources/bulletin/>
13. Wolfsdorf - https://wolfsdorf.com/client_alert/ ; <https://wolfsdorf.com/blog/> ; Wolfsdorf Rosenthal LLP - YouTube
14. U.S. Embassy London - <https://uk.usembassy.gov/news-events/>
15. The Insightful Immigration Blog: <http://blog.cyrusmehta.com/>

Practice Pointer – Be thorough and cautious concerning your dependence upon that which is found on internet postings, blogs, newsletters, etc. Treat all information as a means to an end. Carefully review information as published and made available on the public domain alongside the relevant statute and regulations and utilize in the best manner that will support your claim(s). Where there is negative information that can be distinguished from your particular fact pattern, indicate the distinction as needed and lay out the manner in which your case facts are unique and should prevail.

IV. LIST OF COMPANIES THAT PROVIDE CREDENTIALS EVALUATIONS

1. Trustforte- <https://www.trustfortecorp.com/AcademicEquivalency.html> ; <https://www.trustfortecorp.com/ContactUs.html>
2. Global Education Group - <http://globaledu.com/>
3. Morningside - <https://morningsideeval.com/>
4. Park - <https://www.parkedval.com/>

Practice Pointer – Provide clear copies of education credentials, including degree and transcripts, as well as a up to date resume / C.V. and passport for the evaluators review. Carefully review the work product from the service provider to ensure correct name details/spelling and references to document provided. It is our experience that these will be swiftly corrected, and it is best to catch as soon as possible upon receipt of the translated document/project. You do not want an inconsistency in your support documents provided to call into question the reliability of the evaluation provided.

V. TRANSLATIONS

1. Trustforte-
<https://www.trustfortecorp.com/TranslationServices.html>
2. Zel Saccani – Attorney and AILA member
SLBT Legal and Business Translations
Brownsville, TX
Tel 965-465-8262
Email zel@slbt.net
3. Directum Translations -
<https://directumtranslations.com/home/> ;
<https://directumtranslations.com/contact-us/>
4. GlobalSpeak Translations-
www.globalspeaktranslations.com/

Practice Pointer – Carefully review the work product from the service provider. Upon receiving a translation, provide the translation to the employee/beneficiary for careful review to ensure accuracy in the translation. It is our experience that these will be swiftly corrected, and it is best to catch as soon as possible upon receipt of the translated document/project. You do not want an inconsistency in your support documents provided to call into question the reliability of the evaluation provided.

VI. CORROBORATING EVIDENCE

1. Trustforte-
<https://www.trustfortecorp.com/AcademicEquivalency.html> ;
<https://www.trustfortecorp.com/ContactUs.html>
2. Global Education Group -
<http://globaledu.com/>
3. Park - <https://www.parkeval.com/>
4. Ability to Pay (I-140) - Robert Alcorn -
<https://rwalcorncpa.weebly.com/>
5. Faculty members at local universities or former professors of the alien employee may be a good source.
6. Leadership at competitors willing to provide their expert opinion that represents an industry's position that will support your client's petition.

Practice Pointer – As soon as you receive the RFE, obtain permission from the client/ employer to solicit a quote and obtain permission in writing to send the person/ entity who will provide the expert testimony. An interview between the expert and the client is a good approach to minimize immigration's criticism that the expert is not sufficiently familiar with the client/employer's business practices. Be sure to provide a full copy of the RFE to the evaluator so that there is a

full understanding of the issue(s) presented.

VII. SETTING UP A CASE

1. Prepare an organized index with accompanying supporting documents that is easy to read and provide clear citations to the applicable law and regulations.

Practice Pointer - Do not assume that the law and regulations cited in a government request is correct. Double check citations to the law and regulations, and where you find errors in a request, include copies of the law and regulations as point of reference for the reviewing officer.

Practice Pointer - Remember that government requests stem from template documents that are then tailored to a specific petition. Carefully review the request to understand the specific response that is needed.

Practice Pointer – Prepare your index as a road map that outlines your claims and arguments. Imagine if the index is the only document that the immigration officer carefully reviews. If so, then you want to make sure that your claims are sufficiently represented and, in turn, support approval of the petition.

2. Optics and Appearance - A case that is organized, clear, easy to follow and appealing to the reader will have a greater likelihood of approval. Present your documents in a manner that invites the officer's review.

Practice Pointer – Tabs are often removed in the mail room. Use color sheets to divide your submission and color code when it makes sense. If a particular document supports more than one of your eligibility claims, color coding (highlighting) can be helpful to emphasize as well as illustrate your position.

3. Prepare your case like you are going into federal court and make the record as complete as possible.
4. See the article at http://texasbar.informz.net/texasbar/data/images/Sections/2020-2021/Immigration-Natl/Fall%202020%20Bulletin/IN%20Bulletin%20Fall%2020_P6.pdf by Lisa Sotelo entitled "Employment Based Immigration: Tips for a Tough Practice Area" at page 13.

This outline of strategy and resources is certainly not an exhaustive list, but rather an outline to explore and to become familiar with (if not already). Understanding the landscape associated with initial petition/application submission, Requests for Evidence, Notices of Intent to Revoke and Decisions denying an immigration benefit

requested is key to initial petition preparation, strategy and submission.

January 5, 2021

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
75 Lower Welden St.
St. Albans, VT 05479



U.S. Citizenship
and Immigration
Services

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

REQUEST FOR EVIDENCE

IMPORTANT: THIS NOTICE CONTAINS YOUR UNIQUE RECEIPT NUMBER. THIS PAGE 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 on the attached page(s). Include duplicate copies if you are requesting consular notification.

Your response must be received in this office by April 2, 2021.

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. See Title 8 Code of Federal Regulations (8 CFR), Section 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 form or benefit request 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 (UCC) at 1-800-375-5283. If you are hearing impaired, please call the UCC TDD at 1-800-767-1833.

E38

USCIS has reviewed your Petition for a Nonimmigrant Worker (Form I-129). However, additional documentation is needed to support your petition.

H-1B Specialty Occupation Worker - Introduction

The H-1B classification applies to individuals who will perform services in a specialty occupation. A specialty occupation is one that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

You seek new employment for the beneficiary and requested that USCIS change the beneficiary's status.

You stated on the petition that you are a [REDACTED] company with [REDACTED] employees. You seek to employ the beneficiary as [REDACTED].

To process your petition and determine if you and the beneficiary are eligible, additional information is required. This request provides suggested evidence that you may submit to satisfy each eligibility criteria described below. You may:

- Submit one, some, or all of these items;
- Submit none of the suggested items and instead submit other evidence to satisfy the request;
- Explain how the evidence in the record already establishes eligibility; and/or
- Request a decision based on the record.

Note, however, that as the petitioner, you are responsible for providing evidence that demonstrates that you and the beneficiary meet all requirements. Evidence must show that all parties were eligible for the requested benefit when you filed the petition by a preponderance of the evidence.

Do not include with your response copies of documentation previously submitted.

If you are submitting evidence in response to this request, USCIS recommends that you submit:

- An index of the evidence and include corresponding tabs for each section of evidence.
- Clear and legible copies of the evidence. If legible copies are not possible, you may submit the original documents. Original documents, however, will be returned only if requested.

USCIS checks all petitions filed for this classification in its Validation Instrument for Business Enterprises (VIBE) system. VIBE uses commercially available data to validate basic information about organizations petitioning to employ foreign workers. For more information about this program, visit the USCIS website at www.uscis.gov/VIBE.

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.

To satisfy this requirement, you submitted:

- A description of the beneficiary's duties within the Petitioner Letter;

- Employee job offer Letter;
- A certified Labor Condition Application (LCA);

Duties of the Offered Position: USCIS does not use the job title, by itself, when determining whether a particular position qualifies as a specialty occupation. USCIS considers the duties of the offered position to evaluate in which occupation the beneficiary will be providing services.

You described the duties of the proffered position in generalized and abstract terms that do not provide sufficient information to assess which occupation the position is in. For example, it is not apparent what the beneficiary's role will be when they are [REDACTED]

[REDACTED] This description provides little insight into the beneficiary's role within the claimed task. In addition, the disparity between fields of study [REDACTED] is too broad to qualify for the same specialty occupation.

In addition to providing evidence relating to the specialty occupation qualifying criteria discussed below, provide evidence that describes the duties of the proffered position. Evidence may include, but is not limited to:

- A detailed statement from your company to:
 - Explain the 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.

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

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

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.

In your cover letter you indicate that you are eligible under this criterion. However, you have not

submitted evidence to support this claim or to explain how you reached this conclusion.

Without a more detailed description of the offered job duties USCIS is not able to determine the nature of the offered position or whether it requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent as a minimum entry into the position.

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:

- Relevant documentation from an informative career resource, such as the Department of Labor's Occupational Outlook Handbook (OOH), which describes 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.a. 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.

You did not submit any evidence for this criterion. Thus, you have not established eligibility under this criterion.

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to:

- 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:

- o The writer's qualifications as an expert;
- o How the writer's conclusions were reached; and
- o The basis for the writer's conclusions, supported by copies or citations of any materials used.

2.b. 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.

In your cover letter you indicate that you are eligible under this criterion. However, you have not submitted evidence to support this claim or to explain how you reached this conclusion.

As evidence that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's or higher degree in a specific specialty, or its equivalent you submitted a description of the job duties for the beneficiary's proffered position. However, the job duties, as described, do not appear to be of such complexity or uniqueness as to require the attainment of a bachelor's degree or higher degree in a specific specialty, or its equivalent. The evidence of record does not establish that the proffered position is significantly similar from other positions within the occupational category of [REDACTED]. Based on the duties as described, we are unable to determine the Beneficiary will be carrying out the duties of a [REDACTED].

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to:

- Letters from an industry-related professional association indicating that the 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 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:
 - o The writer's qualifications as an expert;
 - o The writer's knowledge of your business;
 - o How the writer's conclusions were reached; and
 - o 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 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.

You did not submit any evidence for this criterion. Thus, you have not established eligibility under this criterion.

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to:

- 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 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 that 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.

In your cover letter you indicate that you are eligible under this criterion. However, you have not submitted evidence to support this claim or to explain how you reached this conclusion.

The job duties, as described, do not appear to be of such specialization or complexity as to require at least the attainment of a bachelor's degree in a specific specialty, or its equivalent. You have not sufficiently detailed how the duties of the proffered position are more specialized and complex as compared to the duties normally associated with [REDACTED]

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to:

- 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.

PLEASE RETURN THE REQUESTED INFORMATION AND ALL SUPPORTING DOCUMENTS
WITH THIS ORIGINAL REQUEST ON TOP TO:

U.S. CITIZENSHIP AND IMMIGRATION SERVICES
75 LOWER WELDEN ST
ST ALBANS VT 05479

2020

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Texas Service Center
P.O. Box 852381
Attn: I-129 Premium Processing (RFE Returns)
Mesquite, TX 75185-2381



RE:
I-129, Petition for a Nonimmigrant Worker



U.S. Citizenship
and Immigration
Services



SRC

**PREMIUM PROCESSING
REQUEST FOR EVIDENCE (RFE)**

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 listed on the attached page(s). Include duplicate copies if you are requesting consular notification.

Your response must be received in this office by _____, 2020

Please note that you have been allotted the maximum period allowed for responding to an RFE. The time period for responding cannot be extended. 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. 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 after 15 days of responding, you may contact the Texas Service Center Premium Processing at the below email address:

For I-129H premium petitions, please contact tsc_i129hpremium@uscis.dhs.gov

For I-129L premium petitions, please contact tcpremium.I-129L@uscis.dhs.gov

On 2020, your organization, filed a Petition for a Nonimmigrant Worker (Form I-129), with U.S. Citizenship and Immigration Services (USCIS), seeking to classify (beneficiary) as a temporary worker in a specialty occupation (H-1B) under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (INA)

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 or higher degree in a specific specialty, or its equivalent, as a minimum, for entry into the occupation in the United States.

You seek new employment for the beneficiary and requested that USCIS extend the beneficiary's stay.

You stated on the Form I-129 that you are a developer and distributor of software solutions for businesses with employees. You seek to employ the beneficiary as a Computer Programmer from 2020 to 2023.

To process your petition and determine whether your organization and the beneficiary are eligible, additional information is required. This request provides suggested evidence that you may submit to satisfy each requested item. You may:

- Submit one, some, or all of these items;
- Submit none of the suggested items and instead submit other evidence to satisfy the request;
- Explain how the evidence in the record already establishes eligibility; or
- Request a decision based on the record.

Please note that you are responsible for providing evidence showing that your organization and the beneficiary meet all requirements and are eligible for the requested benefit at the time you filed the Form I-129. Also, note that statements made in cover letters should be supported with additional documentary evidence.

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.

To satisfy this requirement, you submitted:

- Description of the beneficiary's duties and requirements dated 2020;
- A certified Labor Condition Application (LCA);
- Information about your organization's products or services;
- Copies of job postings;
- Copies of current employees degrees;
- Description of the position from the U.S. Department of Labor's *Occupational Outlook Handbook* or O*NET Online.

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.

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.

You submitted a certified Labor Condition Application (LCA) which lists an occupation title of Computer Programmer.

USCIS routinely consults the U.S. 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 Computer Programmer positions:

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

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.

- 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.a. 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.

You submitted job postings from several employers. To establish that the degree requirement is common to the industry in parallel positions among similar organizations, you must show that your organization and those employers share similar characteristics. When determining whether your organization and an advertising employer share similar characteristics, such factors may include information regarding the nature or type of organization; when pertinent, the particular scope of operations; and as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient to claim that an organization is similar and in the same industry without providing a basis for such an assertion.

Here, you did not explain or provide evidence whether the employers who placed the job postings share similar characteristics with your organization. Without such evidence, you have not shown that the degree requirement is common to the industry in parallel positions among similar organizations.

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to: X

- 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.

1.b. 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 position description you provided does not show that the particular position is so complex or unique that the position requires a bachelor's degree or higher or its equivalent in a specific specialty. Thus, you have not established eligibility under this criterion.

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to:

- 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.

The evidence you submitted is insufficient to establish eligibility under this criterion.

You did not provide submitted job postings from positions at your organization which shows the degree requirements for the job

Further, you indicate that the duties of the proffered position can be performed by an individual with a bachelor's degree or higher in engineering. The issue here is that the field of engineering is a broad category that covers numerous and various specialties, some of which are only related through the basic principles of science and mathematics, e.g., nuclear engineering and aerospace engineering. Thus, a general degree in engineering or one of its other subspecialties, such as chemical

engineering or mechanical engineering, is not closely related to computer science. Also, any and all engineering specialties are not directly related to the duties and responsibilities of the particular position proffered in this Form I-129. Therefore, the proffered position does not have a bachelor's or higher degree in a specific specialty as the normal minimum requirement for entry into the position based on your own standards. Hence, the position is not a specialty occupation.

Also, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement at INA § 214(i)(1)(B). In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in seemingly disparate fields, such as business (with no specialization), engineering or computer related fields would not meet the statutory requirement that the degree be "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 such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Here, you never explained how degrees in business administration, engineering or computer science are directly related to each other and to the duties of the proffered position.

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to:

- 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.

Here, you have not shown that the duties of the 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. Thus, you have not established eligibility under this criterion.

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to:

- An explanation of the specific duties, as they relate to your products and services, and how the nature of these 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.

Nonimmigrant Status

The record lacks sufficient evidence regarding the beneficiary's status. The following item(s) explain why the submitted evidence is deficient and request additional evidence to render a final decision.

Payroll Records Change of Employer: The record indicates that the beneficiary was previously employed as an H-1B nonimmigrant with another employer and is now attempting to extend that status with a new H-1B employer. You provided the beneficiary's pay records / stubs with the beneficiary's previous employer for the period from 2019 to 2019 and of 2019 to 1, 2019. However, this evidence does not show that the beneficiary maintained the beneficiary's nonimmigrant status at the time the Form I-129 was filed.

Submit copies of the beneficiary's pay records (leave and earnings statements, and/or pay stubs) with the beneficiary's previous employer from to , 2019 to establish that the beneficiary was in a valid nonimmigrant status at the time the present petition was filed. Also, submit copies of the beneficiary's pay records (leave and earnings statements, and pay stubs, etc.) with the beneficiary's present employer (you), if applicable.

Labor Condition Application (LCA) Requirements

You are required to submit the following with an H-1B petition involving a specialty occupation:

- A certification from the U.S. Secretary of Labor that you have filed a Labor Condition Application (LCA) with the Secretary; and
- A statement that you will comply with the terms of the LCA for the duration of the beneficiary's authorized period of stay.

The following item(s) identifies deficiencies within these requirements, please review each section and address it accordingly.

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

...For H-1B visas, the following agencies are involved: [Department of Homeland Security] 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) § 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.

You indicated on Page 3, Section F, Item a.13 of the LCA that the wage level of the proffered position is "N/A" or not applicable. You also indicated on Item a.14d that you utilized a wage survey named IT Survey

2019 to determine the prevailing wage of the proffered position in the area of employment. The record does not contain copies of this wage survey and other documents to show how you arrived at the prevailing wage. Please submit additional information regarding the LCA wage level and wage surveys that you utilized to arrive at the wage level for the proffered position. Evidence may include but is not limited to the following:

- A statement and documentation that explain whether the occupation and wage level (if any) that you selected from the private wage survey correspond to the proffered position. Also discuss and provide evidence whether the prevailing wage you selected is for the area of employment;
- Complete copies of the Survey 2019 wage survey and supporting documentation that show how you determined the prevailing wage and wage level. Please provide complete copies of this wage survey and include information regarding all occupations in the survey, a description of each occupation's duties, the requirements for entry into each occupation, the survey date, the survey area, the survey sample sizes, the survey methodologies, the median wages, the weighted average wages, any wage levels, and similar documentation; or
- Documentation to establish that the educational and experience requirements of the proffered position are commensurate to the educational and experience requirements of the wage level, such as job offers, official position descriptions, and job announcements. 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.

PLACE THE ATTACHED COVERSHEET AND THIS ENTIRE LETTER ON TOP OF YOUR RESPONSE. SUBMISSION OF EVIDENCE WITHOUT THE COVERSHEET AND THIS LETTER WILL DELAY PROCESSING OF YOUR CASE AND MAY RESULT IN A DENIAL.

Sincerely,



Gregory A. Richardson
Director, Texas Service Center
Officer.

—
—
—
—

2020

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Texas Service Center
Attn: I-129 Premium Processing RFE Returns
6046 N Beltline Rd STE 907
Irving, TX 75038-0022



U.S. Citizenship
and Immigration
Services

RE:
I-129, Petition for a Nonimmigrant Worker

SRC

**PREMIUM PROCESSING
REQUEST FOR EVIDENCE (RFE)**

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 listed on the attached page(s). Include duplicate copies if you are requesting consular notification.

Your response must be received in this office by 2020.

Please note that you have been allotted the maximum period allowed for responding to an RFE. The time period for responding cannot be extended. 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. 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 after 15 days of responding, you may contact the Texas Service Center Premium Processing at the below email address:

For I-129H premium petitions, please contact tc_i129hpremium@uscis.dhs.gov

For I-129L premium petitions, please contact tacpremium.I-129L@uscis.dhs.gov

On July 2, 2020, your organization, _____, filed a Petition for a Nonimmigrant Worker (Form I-129), with U.S. Citizenship and Immigration Services (USCIS), seeking to classify SHAH, MITTAL (beneficiary) as a temporary worker in a specialty occupation (H-1B) under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (INA).

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 or higher degree in a specific specialty, or its equivalent, as a minimum, for entry into the occupation in the United States.

You seek to amend the prior petition and requested that USCIS amend the beneficiary's stay.

You stated on the Form I-129 that you are a _____ Software Solutions for
Business's company with over _____ employees. You seek to employ the beneficiary as a _____ Programmer -
2 from _____, 2020 to _____ 2023.

To process your petition and determine whether your organization and the beneficiary are eligible, additional information is required. This request provides suggested evidence that you may submit to satisfy each requested item. You may:

- Submit one, some, or all of these items;
- Submit none of the suggested items and instead submit other evidence to satisfy the request;
- Explain how the evidence in the record already establishes eligibility; or
- Request a decision based on the record.

Please note that you are responsible for providing evidence showing that your organization and the beneficiary meet all requirements and are eligible for the requested benefit at the time you filed the Form I-129. Also, note that statements made in cover letters should be supported with additional documentary evidence.

Completion of a Bachelor's or Higher Degree in a Specific Specialty

To qualify to perform services in a specialty occupation, the beneficiary must meet at least one of the following criteria:

1. Hold a United States bachelor's or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States bachelor's or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States bachelor's or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

USCIS interprets the term degree to mean not just any degree, but a degree in a field of study that is related to the position. Accordingly, you must show that the beneficiary has obtained a bachelor's or higher degree or its equivalent that is required by the specialty occupation.

To show that the beneficiary possesses a bachelor's degree or higher or its equivalent that is required by the position, you submitted:

- A copy of the beneficiary's foreign degree;
- Copies of the beneficiary's foreign school transcripts; and
- An evaluation of the beneficiary's education, training and/or experience from a foreign education credentials evaluation service.

It appears from your descriptions of the position that the beneficiary will perform the duties of a **Programmer**. You also provided a certified Labor Condition Application (LCA) for a Software Developer position. The *Occupational Outlook Handbook* indicates that many Software Developers have bachelor's degrees in Computer Science related fields. You provided an evaluation of the beneficiary's foreign education that indicates that the beneficiary possesses a foreign degree in **_____**. Therefore, it does not appear that the beneficiary has obtained a bachelor's degree or higher in the specific specialty required by the position.

You provided an evaluation of the beneficiary's education, training and experience from a foreign education credentials evaluation service. This evaluation states that the beneficiary has the equivalent to a U.S. bachelor's or higher level of education or higher in **_____** based on education, training and/or experience. However, this evaluation is insufficient because the regulations limit the scope of foreign education credentials evaluation to evaluating only education. Evaluation of training and/or experience requires the submission of other documents from other sources such as college officials, professional associations, former employers, or recognized experts. Therefore, it does not appear that the beneficiary has obtained a bachelor's degree or higher in the specific specialty required by the position.

You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to, a combination of the following or similar types of evidence:

- Documents to show that the beneficiary's knowledge and education are directly related to and required by the position.
- Documents to show the beneficiary obtained a bachelor's degree or higher or its equivalent in the specific specialty required by the position.
- Evidence that the beneficiary possesses any required state license, registration or certification to practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment.
- An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty. The evaluation from an official:
 - Must be accompanied by evidence to establish that the college or university is accredited and that it has a program for granting college-level credit based on training and/or experience. Stating in a letter that the school has such a program may not be sufficient. Also, training or experience derived from internship programs may not satisfy this requirement unless you establish that the experience or training claimed was gained through enrollment in the particular college or university's internship program; and
 - Should be on behalf of the college or university where he or she is employed. The evaluation should describe the material evaluated and establish that the areas of training and/or experience are related to the specialty. The evaluation should be accompanied by evidence that the particular official is authorized to grant college-level credit on behalf of their institution and holds a bachelor's or higher degree in the field of study or a closely related field the official is evaluating. The evaluation should also be accompanied by evidence of the number of credits the evaluator may grant for training and/or experience as part of the program.
- The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSII).
- Evidence of certification or registration for the beneficiary from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty.
- Documentary evidence showing **_____** years of specialized training, and/or progressively responsible work experience in the field related to the specialty.
- Copies of affidavits or letters from present or former employers.
- Copies of personnel records.
- Copies of any other documents that reflect promotion or achievement of progressively responsible positions directly related to the specialty that demonstrate that the beneficiary's training and/or work experience included:
 - The theoretical and practical application of specialized knowledge required by the specialty occupation;
 - That the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and
 - That the experience was progressively responsible.
- If you are claiming that the beneficiary has education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States bachelor's or higher degree in the specialty occupation; you must also show that the beneficiary has recognition of expertise in the specialty, through progressively responsible positions

directly related to the specialty. Evidence of recognition of expertise should consist of at least one of the following types of evidence:

- Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- Membership in a recognized foreign or United States association or society in the specialty occupation;
- Published material by or about the beneficiary in professional publications, trade journals, books, or major newspapers;
- Licensure or registration to practice the specialty occupation in a foreign country; or
- Achievements that a recognized authority has determined to be significant contributions to the field of the specialty occupation.

A recognized authority means a person or an organization with expertise in a particular field, and the expertise to render the type of opinion requested. Such opinion must state: the writer's qualifications as an expert; the writer's experience giving such opinions; how the conclusions were reached; and the basis for the conclusions supported by copies or citations of any research material used.

PLACE THE ATTACHED COVERSHEET AND THIS ENTIRE LETTER ON TOP OF YOUR RESPONSE. SUBMISSION OF EVIDENCE WITHOUT THE COVERSHEET AND THIS LETTER WILL DELAY PROCESSING OF YOUR CASE AND MAY RESULT IN A DENIAL.

Sincerely,



Gregory A. Richardson
Director, Texas Service Center
Officer:

August 27, 2020

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Texas Service Center
Attn: I-129 RFE Returns
6046 N Bell Line Rd STE 129
Irving, TX 75038-0013



U.S. Citizenship
and Immigration
Services

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

REQUEST FOR EVIDENCE (RFE)

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 November 23, 2020.

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 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. 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 (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833.

On August 18, 2020, your organization, [REDACTED] filed a Petition for a Nonimmigrant Worker (Form I-129), with U.S. Citizenship and Immigration Services (USCIS), seeking to classify [REDACTED] (beneficiary) as a temporary worker in a specialty occupation (H-1B) under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (INA).

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 or higher degree in a specific specialty, or its equivalent, as a minimum, for entry into the occupation in the United States.

You seek a change of employer and requested that USCIS extend the beneficiary's stay. You stated on the Form I-129 that you are a [REDACTED] with [REDACTED] employees. You seek to employ the beneficiary as a [REDACTED] from [REDACTED].

To process your petition and determine whether your organization and the beneficiary are eligible, additional information is required. This request provides suggested evidence that you may submit to satisfy each requested item. You may:

- Submit one, some, or all of these items;
- Submit none of the suggested items and instead submit other evidence to satisfy the request;
- Explain how the evidence in the record already establishes eligibility; or
- Request a decision based on the record.

Please note that you are responsible for providing evidence showing that your organization and the beneficiary meet all requirements and are eligible for the requested benefit at the time you filed the Form I-129. Also, note that statements made in cover letters should be supported with additional documentary evidence.

Nonimmigrant Status

The record lacks sufficient evidence regarding the beneficiary's status. The following item(s) explain why the submitted evidence is deficient and request additional evidence to render a final decision.

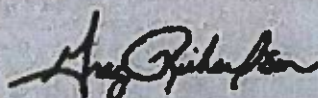
Payroll Records (Change of Employer): The record indicates that the beneficiary was previously employed as an H-1B nonimmigrant with another employer and is now attempting to extend that status with a new H-1B employer. You provided the beneficiary's pay records / stubs from [REDACTED] for the period from [REDACTED]. The pay stub for the time period of [REDACTED] shows no hours worked. This evidence does not show that the beneficiary maintained nonimmigrant status at the time the Form I-129 was filed.

You did not provide any evidence from the most recent employer of the beneficiary that the beneficiary maintained nonimmigrant status. On page 2 of the instant petition, you indicated that the most recent application/petition filed for the beneficiary is [REDACTED]. Records show that at the time of filing [REDACTED] was not the most recent application/petition filed for the beneficiary.

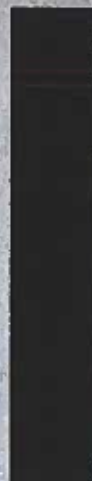
Submit copies of the beneficiary's pay records (leave and earnings statements, pay stubs, W-2 etc.) with the beneficiary's previous employer from [REDACTED] to establish that the beneficiary was in a valid nonimmigrant status at the time the present petition was filed. Also, submit copies of the beneficiary's pay records (leave and earnings statements, and pay stubs, etc.) with the beneficiary's present employer (you), if applicable.

PLACE THE ATTACHED COVERSHEET AND THIS ENTIRE LETTER ON TOP OF YOUR RESPONSE. SUBMISSION OF EVIDENCE WITHOUT THE COVERSHEET AND THIS LETTER WILL DELAY PROCESSING OF YOUR CASE AND MAY RESULT IN A DENIAL.

Sincerely,



Gregory A. Richardson
Director, Texas Service Center
Officer: 2148



=====

MAY-01-2019 14:02

US DHS CIS

P.001

May 1, 2019

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
California Service Center
Laguna Niguel, CA 92607-0990



U.S. Citizenship
and Immigration
Services

Form I-129, Petition for a Nonimmigrant Worker

PREMIUM PROCESSING**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 July 27, 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. Title 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. 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 Form 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.

MAY-01-2019 14:02

US DHS CIS

P.002

On April 26, 2019, your organization, [REDACTED] (petitioner or petitioning organization), filed a Petition for a Nonimmigrant Worker (Form I-129) with U.S. Citizenship and Immigration Services (USCIS), seeking to classify [REDACTED] (beneficiary) as a nonimmigrant intracompany transferee (L-1A).

Documentation submitted with your petition indicates that your organization [REDACTED] Your organization seeks to employ the beneficiary as a [REDACTED] from [REDACTED].

The L-1 classification may be granted to an individual who, within three years preceding the time of his or her application for admission into the United States:

- Has been employed abroad continuously for one year by a firm, corporation, or other legal entity or parent, branch, affiliate, or subsidiary;
- Seeks to enter the United States temporarily to render services to a branch of the same employer, or a parent, affiliate, or subsidiary; and
- Will work in a capacity that is managerial or executive, or involves specialized knowledge.

To process your petition and determine if your organization and the beneficiary are eligible, additional information is required. This request provides suggested evidence that your organization may submit to satisfy each of the eligibility criteria described below. Your organization may:

- Submit one, some, or all of these items.
- Submit none of the suggested items and instead submit other evidence to satisfy the request.
- Explain how the evidence in the record already establishes eligibility.
- Request a decision based on the record.

Please note that, as the petitioner, your organization is responsible for providing evidence which shows your organization and the beneficiary meet all requirements and are eligible for the requested benefit at the time your organization filed the Form I-129 by a preponderance of the evidence.

Please do not include copies of documentation previously submitted with your response.

USCIS checks all petitions filed for this classification in its Validation Instrument for Business Enterprises (VIBE) system. VIBE uses commercially available data to validate basic information about organizations petitioning to employ foreign workers. For more information about this program, please visit the USCIS website at www.uscis.gov/VIBE.

L-1A Beneficiary Requirements

To qualify a beneficiary for L-1A classification, your organization must show that he or she:

- Will be employed in a managerial or executive position in the United States;
- Has prior education, training, and employment that qualifies him or her to perform the intended services in the United States; and
- Has at least one continuous year of full-time employment abroad with a qualifying organization:
 - Within the three years before application for admission to the United States; and
 - In a position that was managerial or executive, or involves specialized knowledge.

Managerial, Executive, or Specialized Knowledge Position Abroad: The beneficiary must have at

MAY-01-2019 14:03

US DHS CIS

P.003

least one continuous year, within the three years prior to his or her application for admission to the United States, of full-time employment with a qualifying foreign organization. The foreign position must have been primarily managerial or executive in nature, or involved specialized knowledge. You may not combine some of the requirements for one of these position types with some of those of another. Hybrid positions that meet some, but not all of the criteria required to establish separately that the person worked primarily in a managerial, executive or specialized knowledge position, will not establish eligibility.

To satisfy this requirement, your organization submitted:

- A support letter
- Copies of the beneficiary's emails
- Copies of Press Checklists
- A presentation created by the beneficiary
- Excel spreadsheet of approved training for subordinates

The evidence your organization submitted is insufficient. You submitted evidence to illustrate the nature of the beneficiary's role abroad as the [REDACTED]. In your letter, you state the beneficiary was responsible for [REDACTED]

[REDACTED] Although the evidence was considered, you did not provide evidence that shows the beneficiary's subordinates were [REDACTED]. Statements in a letter only describe and illustrate the position abroad; however, you should submit evidence that shows the subordinates are managers or professionals. Based on the duties described in the letter, the beneficiary's role abroad was not raised to a level where he primarily operated in a managerial capacity. For example, you state he performed [REDACTED]

[REDACTED] The beneficiary's duties abroad are not indicative of the high-level duties commonly performed by a manager or executive. Although you state he oversaw professional subordinates, his duties appear to include tasks where he [REDACTED]

[REDACTED] Upon review of the emails, the beneficiary was responsible for coordinating and performing non-managerial duties for the foreign employer. As such, the beneficiary's role does not appear to be raised to a senior level where he was primarily operating in a managerial capacity on a daily basis.

Your organization may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to:

Foreign position primarily managerial:

- If the beneficiary managed a function, explain and provide documentary evidence to establish that the specific function is critical or essential to the foreign entity and that the beneficiary was in a high-level position within the foreign entity, or in a position directly related to a function necessary for the provision of an end product or service of the company. Your explanation should identify the function with specificity and describe the critical or essential nature of the function and how it relates to the provision of such end product or service. In addition, provide a detailed description of the percentage of time the beneficiary spent performing such duties to demonstrate that the beneficiary primarily managed the function rather than primarily performed the non-qualifying day-to-day duties of the function.
- If the beneficiary supervised other supervisory, managerial, or professional employees, you may, but are not required to, submit copies of performance appraisals or reviews conducted by [REDACTED]

MAY-01-2019 14:03

US DES CIS

P.004

the beneficiary for any such subordinate employees or any evidence that demonstrates the beneficiary has sufficient managerial authority over subordinate employees and is engaged in the hiring and firing of subordinates or recommends the hiring and firing of subordinates as well as other personnel actions.

Managerial or Executive Position in the United States. The proposed position in the United States must be primarily managerial or executive. Your organization must show that the position in the United States is primarily in a managerial or executive capacity.

To satisfy this requirement, your organization submitted:

- A support letter
- An organizational chart
- A copy of the [REDACTED] created by the beneficiary
- Pay records for the beneficiary

The evidence your organization submitted is insufficient. You submitted a letter and organizational chart to illustrate the beneficiary's current role as the [REDACTED] in the United States. Upon review of the duties, the beneficiary appears to perform the duties required to support the function rather than primarily manage the essential function. For example, you state the beneficiary [REDACTED]

[REDACTED] The duties described are generalized and do not include sufficient details on how the beneficiary operates as a manager on a daily basis. The beneficiary does not appear to primarily operate in a managerial capacity as he performs a service [REDACTED]

[REDACTED] You state the beneficiary operates as a functional manager as he [REDACTED]. However, you did not specify how he manages this function as opposed to performing the duties required to support the function. Likewise, you did not provide documentary evidence of the beneficiary's subordinates' employment. You should provide evidence of the beneficiary's subordinates' employment; including, evidence of employment and a detailed description of their duties. Lastly, you should submit evidence of the beneficiary's performance as a functional manager that shows how he manages the function on a daily basis.

Your organization may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to:

U. S. position primarily managerial:

- A letter from an authorized representative of the U.S. entity describing how the beneficiary will be employed in a managerial position. The letter should describe the beneficiary's typical managerial duties, and the percentage of time to be spent on each. In addition, the letter should address:
 - How the beneficiary will manage the organization, department, subdivision, function, or component of the organization.
 - How the beneficiary will supervise and control the work of other supervisory, professional, or managerial employees, or manage an essential function, department, or subdivision of the organization.
 - Whether the beneficiary will have authority to hire and fire, or recommend hiring and firing as well as other personnel actions (such as promotion and leave authorization) if other employees will be directly supervised (or if no employees will be directly supervised, how the beneficiary will function at a senior level within the organizational

MAY-01-2019 14:03

US DHS CIS

P.006

hierarchy or with respect to the managed function).

- How the beneficiary will make decisions on daily operations of the activity or function under his or her authority.
- If the beneficiary will be a first-line supervisor, submit evidence showing the supervised employees will be professionals.

Note: A professional is an individual who is a member of the professions, which includes but is not limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

- An organizational chart or diagram, showing the U.S. entity's organizational structure and staffing levels. The chart or diagram should list all employees in the beneficiary's immediate division, department, or team by name, job title, summary of duties, education level, and salary. It should also clearly identify the beneficiary's position in the chart.
- Copies of the U.S. entity's State Quarterly Wage Reports for the 1st quarter of 2019 for the state of [REDACTED]. The forms should include the names, salaries, and number of weeks worked for all employees under the beneficiary's direction.
 - **Notes:** If employees listed on the organizational chart are not listed on the State Quarterly Wage Reports, explain why. If your organization chooses to submit wage reports, they should contain sufficient information to show that the beneficiary has been or will be employed in a managerial capacity.
- Copies of the U.S. entity's payroll summary, and Forms W-2, W-3, and 1099-MISC showing wages paid to all employees under the beneficiary's direction.
- Copies of performance appraisals or reviews conducted by the beneficiary for any subordinate employees or any evidence that demonstrates the beneficiary has sufficient managerial authority over subordinate employees and is engaged in the hiring and firing of subordinates or recommends the hiring and firing of subordinates as well as other personnel actions.
- Copies of employment agreements entered into by newly hired employees who will be managed by the beneficiary.

General Reminders

General Reminders: If your organization is submitting evidence in response to this request, in order for us to properly evaluate such evidence, we recommend that you submit the following.

- An index of the evidence and include corresponding tabs for each section of evidence.
- Clear and legible copies of the evidence. If clear and legible copies are not possible, submit the original documents. These originals will be returned, if requested.
- Duplicate copy if your organization is requesting consulate notification. Your organization should provide a duplicate copy of: Form I-129 and initial evidence (if not previously provided); and any evidence submitted in response to this request. If the beneficiary is in the United States and your organization is requesting a change of status or extension, your organization may also choose to submit a duplicate copy of the Form I-129 and supporting evidence in case the beneficiary decides to seek a visa at a consular office abroad.
- Full English language translation(s) of evidence submitted to USCIS containing a foreign language. The translator must certify that the translations are accurate and complete and that he or she is competent to translate from the foreign language into English.

RETURN ADDRESS

If your response is more than 25 pages, please return the requested information and all supporting documents with this original request on top to:

MAY-01-2019 14:04

US DHS CIS

P.006

**U.S. CITIZENSHIP AND IMMIGRATION SERVICES
P.O. BOX 10825
LAGUNA NIGUEL, CA. 92687-0825**

If you choose to send by express delivery, the address is:

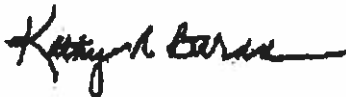
**U.S. CITIZENSHIP AND IMMIGRATION SERVICES
24000 AVILA ROAD, 2ND FLOOR, ROOM 2302
LAGUNA NIGUEL, CA. 92677**

If your response is 25 pages or less, you have the option to reply by fax:

(949) 389-3460

If you have any questions, you may contact the Premium Processing Team via e-mail at: **CSC-PREMIUM.PROCESSING@USCIS.DHS.GOV** or call our toll-free number **(866) 315-5718**.

Sincerely,



Kathy A. Baran
Director, California Service Center



U. eff

www.uscis.gov

TOTAL P. 006

February 11, 2020

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
California Service Center
Laguna Niguel, CA 92677-0190



U.S. Citizenship
and Immigration
Services

Form I-129, Petition for a Nonimmigrant Worker

PREMIUM PROCESSING

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 May 8, 2020.

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. Title 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. 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 Form 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.

**Form I-129, Petition for a Nonimmigrant Worker
L-1B Intracompany Transferee
Specialized Knowledge**

On January 31, 2020, your organization, [REDACTED] (petitioner), filed a Petition for a Nonimmigrant Worker (Form I-129) with U.S. Citizenship and Immigration Services (USCIS), seeking to classify [REDACTED] (beneficiary) as a nonimmigrant intracompany transferee (L-1).

Documentation submitted with your petition indicates that your organization [REDACTED] [REDACTED] You seek to employ the beneficiary as [REDACTED] from [REDACTED].

VALIDITY DATES

Please note that you have requested a three-year validity period for the beneficiary. However, since you are requesting an extension of the beneficiary's previously approved status, your petition may only be approved for a period not to exceed two years.

Specialized knowledge is defined as:

- special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or
- an advanced level of knowledge or expertise in the organization's processes and procedures.

Petitioning organization, as used in this request for evidence, refers to your organization and/or any qualifying organization. Qualifying organization is defined to include the petitioning employer's parent, branch, affiliate or subsidiary.

"Special" knowledge is knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets that is distinct or uncommon in comparison to that generally found in the particular industry.

"Advanced" knowledge is knowledge or expertise in the petitioning organization's specific processes and procedures that is:

- Not commonly found in the relevant industry, AND
- Greatly developed or further along in progress, complexity and understanding than that generally found within the employer.

To process your petition and determine if your organization and the beneficiary are eligible, additional information is required. This request provides suggested evidence that you may submit to satisfy each of the eligibility criteria described below. You may:

- Submit one, some, or all of these items.
- Submit none of the suggested items and instead submit other evidence to satisfy the request.
- Explain how the evidence in the record already establishes eligibility.
- Request a decision based on the record.

Please note that, as the petitioner, you are responsible for providing evidence which shows your organization and the beneficiary meet all requirements and are eligible for the requested benefit at the time you filed the Form I-129 by a preponderance of the evidence. While a petitioner's statement may

be persuasive if it is detailed, specific and credible, USCIS may, in appropriate cases, request additional evidence to support a petitioner's statement.

Please do not include copies of documentation previously submitted with your response.

USCIS checks all petitions filed for this classification in its Validation Instrument for Business Enterprises (VIBE) system. VIBE uses commercially available data to validate basic information about organizations petitioning to employ foreign workers. For more information about this program, please visit USCIS website at www.uscis.gov/VIBE

Beneficiary Requirements

To qualify a beneficiary for L-1B classification, you must show that he or she:

- Will be employed in a specialized knowledge capacity in the United States;
- Has prior education, training, and employment that qualifies him or her to perform the intended services in the United States; and
- Has at least one continuous year of full-time employment abroad with a qualifying organization:
 - Within the three years before application for admission to the United States; and
 - In a position that was managerial or executive, or involved specialized knowledge.

Managerial, Executive, or Specialized Knowledge Position Abroad. The beneficiary must have at least one continuous year, within the three years prior to his or her application for admission to the United States, of full-time employment with a qualifying foreign organization. The foreign position must have been primarily managerial or executive in nature, or involved specialized knowledge. Any combination of requirements for one of these position types may not be combined with another. Hybrid positions that combine requirements will not establish eligibility.

To satisfy this requirement, you submitted:

- Chart explaining the basis and timeframe of the beneficiary's specialized knowledge;
- Organizational chart;
- Support letter from the foreign entity's [REDACTED] dated January 23, 2020;
- Work products.

The evidence you submitted is not sufficient. While USCIS acknowledges your previous petition was approved by USCIS, you provided information with your current filing that calls into question the beneficiary's foreign employment. Your filing includes a chart that explains the beneficiary's claimed specialized knowledge and indicates it would take two years and eight months to acquire it. However, your petition and support letter indicate that the beneficiary began working for the foreign entity on November 14, 2014 in the claimed specialized knowledge position of [REDACTED] and worked in this position until June 20, 2017, which is approximately two years and seven months. USCIS notes that this is less than the time you state it would take to acquire the knowledge. Any on-the-job training required to gain specialized knowledge is not time that can be counted as time working abroad in a specialized knowledge capacity. As such, it does not appear that the beneficiary had at least one continuous year working in a specialized knowledge capacity abroad. Consequently, due to the inconsistent information, USCIS must address the beneficiary's foreign employment as a whole.

You provided a description of the beneficiary's foreign position, as well as a list of tasks the

beneficiary performed, including an approximate breakdown of time spent on each task. However, the information lacks sufficient detail and does not demonstrate how the duties involved specialized knowledge. You submitted several copies of the beneficiary's work products; however, generalized knowledge of a company's products, services, equipment, techniques, processes, and procedures is typically distinguishable from specialized knowledge of those same products, services, equipment, techniques, processes, and procedures. Although you have provided information regarding your processes and procedures, you have not sufficiently demonstrated how the knowledge involved with her duties is special or advanced. You also have not sufficiently established how these duties compare and contrast between the beneficiary and the remainder of your work force abroad. While you state it would take an individual two years and eight months to acquire the claimed specialized knowledge, you did not provide any documentation to support your claims. USCIS is unable to determine the requirements and specific training curriculum necessary to be able to perform duties such as the beneficiary, such as education, training, and experience. Aside from your letters, you have not presented USCIS with any supporting evidence that the knowledge and use of your products, services, equipment, techniques, processes, and procedures contains a level of knowledge that could not be easily transferred or taught to those with the same education, skill sets, and exposure to the same products, services, equipment, techniques, processes, and procedures. USCIS notes that statements made in support letters, while considered, should be accompanied by supporting documentation to corroborate those same statements.

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

- Copies of the beneficiary's training, pay, or other personnel records.
- An organizational chart or diagram, showing the foreign entity's organizational structure and staffing levels. Clearly identify the beneficiary's position in the chart.
- A list of all employees in the beneficiary's immediate division, department, or team, by name, job title, summary of duties, education level, and salary.
- A letter from an authorized representative of the foreign entity describing the specialized knowledge duties of the position abroad. The letter should also describe the percentage of time spent on each duty. In addition the letter should:
 - Identify which of the petitioning organization's products, services, tools, research, equipment, techniques, management, or processes and procedures involved in the beneficiary's job duties required specialized knowledge;
 - Explain how the knowledge or expertise identified was either "special" or "advanced";
 - State the minimum time required to obtain this knowledge, including training and actual experience accrued after the completion of training;
 - Explain the knowledge required to perform the duties of the foreign position and how it compares to that of similarly employed individuals within the employer and within the industry, if you are seeking to establish that the beneficiary's foreign position involved "advanced" knowledge.
- Additional documentary evidence to support the claims made in your letter and to show the knowledge involved in performing the duties of the beneficiary's foreign position was special and/or advanced.

Beneficiary's Specialized Knowledge: You must establish that the beneficiary has specialized knowledge and that the beneficiary's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

To satisfy this requirement, you submitted:

- Support letter from your U.S. entity's [REDACTED] dated January 21, 2020;
- Chart explaining the basis and timeframe of the beneficiary's specialized knowledge;
- Support letter from the foreign entity's [REDACTED] dated January 23, 2020;
- Work products;
- Email correspondence;
- Copies of the beneficiary's education documents; and
- Copy of the beneficiary's curriculum vitae.

The evidence you submitted is not sufficient. Your letter indicates that the beneficiary has acquired specialized knowledge of your organization's products, services, equipment, techniques, processes, and procedures. However, you did not provide any information or supporting evidence that she has completed any training that would amount to said level. Further, you have not provided sufficient information on the requirements to obtain the claimed specialized knowledge, such as what training is involved, the length of training and how many and what kinds of employees can and have received the training, etc. Your description of the beneficiary's knowledge and employment does not sufficiently establish how the knowledge possessed by the beneficiary, if "special," is uncommon or distinct in comparison to that generally found in the industry; or, if "advanced," is highly developed or complex. Lastly, while you provided email correspondence that shows the beneficiary is a knowledgeable and valuable employee, the evidence is insufficient when unsupported by comparisons between the beneficiary and other employees or similarly employed workers who are successfully performing the duties required of their positions.

You may still submit evidence to satisfy this requirement. Please submit:

- Evidence of the beneficiary's prior education, training, and employment and an explanation how that relates to the claimed specialized knowledge.
- A description of the beneficiary's knowledge or expertise and why it is specialized. Please identify the beneficiary's knowledge as either "special" and/or "advanced."
- A comparison of the beneficiary's knowledge to that of other employees and workers in the same field.

Other evidence you may submit includes, but is not limited to:

- Documentation of training, work experience, or education establishing the number of years the individual has been using or developing the claimed specialized knowledge as an employee of the petitioning organization or in the industry;
- Evidence of the impact, if any, the transfer of the individual would have on the petitioning organization's U.S. operations;
- Evidence that the alien is qualified to contribute to the U.S. operation's knowledge of foreign operating conditions as a result of knowledge not generally found in the petitioning organization's U.S. operations;
- Contracts, statements of work, or other documentation that shows that the beneficiary possesses knowledge that is particularly beneficial to the petitioning organization's competitiveness in the marketplace;
- Evidence, such as correspondence or reports, establishing that the beneficiary has been employed abroad in a capacity involving assignments that have significantly enhanced the petitioning organization's productivity, competitiveness, image, or financial position;
- Personnel or in-house training records that establish that the beneficiary's claimed specialized knowledge normally can be gained only through prior experience or training with the petitioning organization;

- Curricula and training manuals for internal training courses, financial documents, or other evidence that may demonstrate that the beneficiary possesses knowledge of a product or process that cannot be transferred or taught to another individual without significant economic cost or inconvenience;
- Evidence of patents, trademarks, licenses, or contracts awarded to the petitioning organization based on the beneficiary's work, or similar evidence that the beneficiary has knowledge of a process or a product that either is sophisticated or complex, or of a highly technical nature, although not necessarily proprietary or unique to the petitioning organization;
- Payroll documents, federal or state wage statements, documentation of other forms of compensation, resumes, organizational charts, or similar evidence documenting the positions held and the compensation provided to the beneficiary and parallel employees in the petitioning organization; and
- Any other evidence that shows the beneficiary has specialized knowledge.

USCIS will review the entire record to determine whether the petitioner has established by a preponderance of the evidence that the beneficiary has specialized knowledge under the totality of the circumstances.

Evidence of Specialized Knowledge Position in the United States: You must show that the position in the United States involves specialized knowledge.

To satisfy this requirement, you submitted:

- Support letter from your U.S. entity's [REDACTED] dated January 21, 2020;
- Support letter from the foreign entity's [REDACTED] dated January 23, 2020;
- Work products;
- Organizational chart;
- Copies of the beneficiary's pay statements;
- U.S. employment offer letter.

The evidence you submitted is not sufficient. You provided a description of the beneficiary's U.S. position, as well as a list of tasks the beneficiary performs, including an approximate breakdown of time spent on each task. However, the information lacks sufficient detail and does not demonstrate how the duties involve specialized knowledge. You submitted several copies of the beneficiary's work products; however, generalized knowledge of a company's products, services, equipment, techniques, processes, and procedures is typically distinguishable from specialized knowledge of those same products, services, equipment, techniques, processes, and procedures. Although you have provided information regarding your processes and procedures, you have not sufficiently demonstrated how the knowledge involved with her duties is special or advanced. You also have not sufficiently established how these duties compare and contrast between the beneficiary and the remainder of your work force in the United States. While you state it would take an individual two years and eight months to acquire the claimed specialized knowledge, you did not provide any documentation to support your claims. USCIS is unable to determine the requirements and specific training curriculum necessary to be able to perform duties such as the beneficiary, such as education, training, and experience. Aside from your letters, you have not presented USCIS with any supporting evidence that the knowledge and use of your products, services, equipment, techniques, processes, and procedures contains a level of knowledge that could not be easily transferred or taught to those with the same education, skill sets, and exposure to the same products, services, equipment, techniques, processes, and procedures. USCIS notes that statements made in support letters, while considered, should be accompanied by supporting documentation to corroborate those same statements.

You may still submit evidence to satisfy this requirement. Please submit:

- A detailed description of the services to be performed which may include information regarding:
 - the specific nature of the industry or field involved,
 - the nature of the petitioning organization's products or services,
 - the nature of the specialized knowledge required to perform the beneficiary's duties, and
 - the need for the beneficiary's specialized knowledge.

The letter may also include:

- The percentage of time spent on each duty.
- The products, services, tools, research, equipment, techniques, management, or processes and procedures of the petitioning organization of which the beneficiary has specialized knowledge;
- An explanation of how the knowledge or expertise identified is "special" and/or "advanced";
- The minimum time required to obtain this knowledge, including training and actual experience accrued after the completion of training;
- An explanation of the knowledge required to perform the duties of the U.S. position and how it compares to that of similarly employed individuals within the employer and within the industry, if you are seeking to establish that the beneficiary's U.S. position involves "advanced" knowledge.

You may also submit additional documentary evidence to support the claims made in your letter and to show the knowledge involved in performing the duties of the beneficiary's U.S. position is special and/or advanced.

General Reminders: If your organization is submitting evidence in response to this request, in order for us to properly evaluate such evidence, we recommend that you submit the following:

- An index of the evidence and include corresponding tabs for each section of evidence.
- Clear and legible copies of the evidence. If clear and legible copies are not possible, submit the original documents. These originals will be returned, if requested.
- Duplicate copy if your organization is requesting consulate notification. Your organization should provide a duplicate copy of: Form I-129 and initial evidence (if not previously provided); and any evidence submitted in response to this request. If the beneficiary is in the United States and your organization is requesting a change of status or extension, your organization may also choose to submit a duplicate copy of the Form I-129 and supporting evidence in case the beneficiary decides to seek a visa at a consular office abroad.
- Full English language translation(s) of evidence submitted to USCIS containing a foreign language. The translator must certify that the translations are accurate and complete and that he or she is competent to translate from the foreign language into English.

RETURN ADDRESS

If your response is more than 25 pages, please return the requested information and all supporting documents with this original request on top to:

**U.S. CITIZENSHIP AND IMMIGRATION SERVICES
P.O. BOX 10825
LAGUNA NIGUEL, CA. 92607-0825**

If you choose to send by express delivery, the address is:

**U.S. CITIZENSHIP AND IMMIGRATION SERVICES
24000 AVILA ROAD, 2ND FLOOR, ROOM 2302
LAGUNA NIGUEL, CA. 92677**

If your response is 25 pages or less, you have the option to reply by fax:

(949) 389-3460

If you have any questions, you may contact the Premium Processing Team via e-mail at: **CSC-PREMIUM.PROCESSING@USCIS.DHS.GOV** or call our toll-free number (866) 315-5718.

Sincerely,



Kathy A. Baran
Director, California Service Center



October 1, 2019

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Texas Service Center
PO BOX 952391
Minneapolis, TX 75103-2391



U.S. Citizenship
and Immigration
Services

RE: [REDACTED]
I-140, Immigrant Petition for Alien Worker

REQUEST FOR EVIDENCE (RFE)

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 December 27, 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 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. 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-140 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 (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833.

Your organization, [REDACTED] (petitioner), filed an Immigrant Petition for Alien Worker (Form I-140), on March 1, 2019, with U.S. Citizenship and Immigration Services (USCIS), seeking to classify [REDACTED] (beneficiary) as a [REDACTED] (E13).

The Form I-140 indicates the beneficiary will work as [REDACTED]

The E13 immigrant classification applies to individuals who worked in a managerial or executive capacity abroad for at least one year for a firm, corporation, other legal entity, or its parent, subsidiary or affiliate. In addition, E13 immigrants must seek to continue rendering services to the same employer, or its parent, subsidiary or affiliate, in a managerial or executive capacity. If the beneficiary is outside the United States, then the one year of qualifying employment must be within the three years prior to filing the petition. If the beneficiary is already in the United States working for the same employer, or a subsidiary or affiliate of the firm or corporation or other legal entity for which the beneficiary worked abroad, then the one year of qualifying employment must be within the three years prior to the beneficiary's entry as a nonimmigrant.

Additionally, your organization (the petitioner) must be multinational to qualify for the E13 immigrant classification. "Multinational" means that the qualifying entity, or its parent, affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.

NOTE: If you are submitting evidence in response to this request, please also submit the following:

- An index of the evidence and include corresponding tabs for each section of evidence.
- Clear and legible copies of the evidence. If clear and legible copies are not possible, submit the original documents. These originals will be returned, if requested.

Proposed Employment. You must show the beneficiary will be employed in a primarily managerial or executive capacity.

- You did not submit any evidence to establish that the petitioner meets this requirement.

You may still submit evidence to satisfy this requirement. Please submit:

- A statement from an authorized official of your organization which indicates that you will employ the beneficiary in the United States in a primarily managerial or executive capacity. Your statement must clearly describe the beneficiary's proposed job duties.
- Documentary evidence to establish that the beneficiary will be employed in a primarily managerial or executive capacity. Evidence may include, but is not limited to:
 - An explanation of the specific daily tasks that are involved with the completion of each of the beneficiary's proposed duties and the percentage of time to be spent on each. Individual tasks should not be grouped together.
 - A list of employees (and individual contractors) in the beneficiary's immediate division, department, or team. Include a summary of their job duties, educational level, salary, and whether they work full or part-time; and/or
 - A description of your products and services, including the exact productive and administrative tasks necessary to produce the products and services. Explain who performs those tasks, and tasks related to goal-setting, policy-making, and discretionary decision-making.
- An organizational chart or diagram which:
 - Shows your structure and staffing levels;
 - Identifies the beneficiary's position; and/or
 - Lists all employees and contractors in the beneficiary's immediate division, department, or team by name and job title.
- Copies of the following relating to the beneficiary and his or her proposed subordinates, when applicable:
 - Payroll summary;

- Form W-2, Wage and Tax Statement;
- Form W-3, Transmittal of Wage and Tax Statements;
- Form 1099-MISC, Miscellaneous Income; and/or
- Form 941, Employer's Quarterly Federal Tax Return for the four quarters before you filed the petition.

You may redact the employees' addresses and all but the last four digits of their social security numbers.

Beneficiary's Employment Abroad. You must show the beneficiary was employed abroad in a primarily managerial or executive capacity for at least one year in the relevant three-year period:

- If the beneficiary is abroad, then the one year of qualifying employment must be within the three years prior to the filing of this petition; or
- If the beneficiary is already in the United States and working for the same employer or a parent, subsidiary or affiliate of the firm or corporation or other legal entity for which the beneficiary was employed abroad, then the one year of qualifying employment must be within the three years prior to the beneficiary's admission as a nonimmigrant.
- You did not submit any evidence to establish that the petitioner meets this requirement.

You may still submit evidence to satisfy this requirement.

- The record shows that the beneficiary is already in the U.S. working for the same employer or a parent, subsidiary or affiliate of the firm or corporation or other legal entity that employed the beneficiary overseas. Therefore, please submit a statement from an authorized official of your organization which demonstrates that the beneficiary worked abroad in a primarily managerial or executive capacity for your organization, your parent company, your affiliate, or your subsidiary for at least one year in the three years preceding the beneficiary's admission as a nonimmigrant.

Additionally, please submit documentary evidence to establish that the beneficiary was employed in a primarily managerial or executive capacity with the qualifying foreign employer. Evidence may include, but is not limited to:

- An explanation of the specific daily tasks that were involved with the completion of each duty and the percentage of time spent on each duty. Individual tasks should not be grouped together.
- A list of employees (and individual contractors) in the beneficiary's immediate division, department, or team. Include a summary of their job duties, educational level, salary, and whether they worked full or part-time.
- A description of your products and services, including the exact productive and administrative tasks necessary to produce the products and services. Explain who performed those tasks, and tasks related to goal-setting, policy-making, and discretionary decision-making.
- An organizational chart or diagram that corresponds with the beneficiary's employment abroad, which shows the foreign organization's structure and staffing levels and identifies the beneficiary's position relative to all subordinate employees.
- Copies of the payroll summary for the beneficiary and his or her subordinates.

Ability to Pay Wage: You must show you have the ability to pay the beneficiary's offered wage of [REDACTED] from the priority date of March 01, 2019, and continue to have the ability to pay the beneficiary's offered wage until the beneficiary obtains lawful permanent residence.

You submitted Form 1120 U.S. Corporation Income Tax Return with Tax ID number [REDACTED]. The Tax ID number for the Form 1-140 and the Form 1120 do not match with petitioner's Tax ID number, which renders the evidence as holding little evidentiary weight and leads USCIS to believe that the Petitioner may not have the ability to pay the preferred wage.

You may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to one of the following types of required initial evidence:

- A complete copy of your 2018 annual reports;
- A complete copy of your 2018 audited financial statements; or
- A complete copy of your 2018 [REDACTED] U.S. federal income tax returns, with all accompanying schedules.

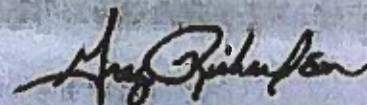
In addition to the above, you may submit any other additional evidence which includes, but is not limited to:

- Documentary evidence which shows you have paid the beneficiary the offered wage from the priority date onwards if you currently employ the beneficiary. (Please note that you may submit evidence of the wages you have paid to the beneficiary, even if the wages were/are below the offered wage if you would like that evidence to be considered along with your other financial evidence for the relevant time period.) Evidence of wages paid to the beneficiary may include:
 - The beneficiary's Form W-2, Wage and Tax Statements;
 - The beneficiary's Form 1099-MISC, Miscellaneous Income;
 - The beneficiary's pay vouchers, which specify the length of the pay periods and show the beneficiary's gross or net pay, year-to-date income, income tax deductions, and tax withheld; and
 - Your Form 941, Employers Quarterly Federal Tax Form, and your state's unemployment compensation report form for fourth quarter 2018. Also submit the accompanying supplement that identifies all employees by name and social security number. Your organization may redact the employees' addresses and all but the last four digits of their social security numbers.
- Your profit/loss statements;
- Your bank account records;
- Your personnel records.

Note: You may not submit additional evidence in place of initial evidence unless you demonstrate that initial evidence does not exist or that you cannot obtain it.

PLACE THE ATTACHED COVERSHEET AND THIS ENTIRE LETTER ON TOP OF YOUR RESPONSE. SUBMISSION OF EVIDENCE WITHOUT THE COVERSHEET AND THIS LETTER WILL DELAY PROCESSING OF YOUR CASE AND MAY RESULT IN A DENIAL.

Sincerely,



Gregory A. Richardson
Director, Texas Service Center
Office: XM1475

02/28/2020 8:28:26 AM -0500 USCIS

PAGE 2 OF 5

February 28, 2020

U.S. Department of Homeland Security

U.S. Citizenship and Immigration Services

Vermont Service Center

30 Houghton St (VSC Premium Processing)

St. Albans, VT 05478-2199

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

Beneficiary: [REDACTED]

I-129, Petition for a Nonimmigrant Worker

PREMIUM PROCESSING**IMPORTANT: THIS NOTICE CONTAINS YOUR UNIQUE RECEIPT NUMBER. THIS PAGE 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 on the attached page(s). Include duplicate copies if you are requesting consular notification.

Your response must be received in this office by May 25, 2020.

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. See Title 8 Code of Federal Regulations (8 CFR), Section 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 form or benefit request 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 (UCC) at 1-800-375-5283. If you are hearing impaired, please call the UCC TDD at 1-800-767-1833.

U.S. Citizenship and Immigration Services (USCIS) has reviewed your petition/application and supporting

02/28/2020 8:28:25 AM -0500 USCIS

PAGE 3 OF 5

evidence. You did not submit sufficient evidence to establish that the beneficiary has a valid passport. Therefore, additional evidence is needed.

The beneficiary's passport is expired. While you contend that the beneficiary has a pending passport, this contention is not sufficient. Submit evidence of the beneficiary's Mexican citizenship (i.e., birth certificate, passport, etc.).

Please return the requested information and all supporting documents with this original request on top. Responses for Premium Processing cases may be faxed to (802)-860-6900 or mailed to:

U.S. CITIZENSHIP AND IMMIGRATION SERVICES
VERMONT SERVICE CENTER
30 HOUGHTON ST
ST ALBANS VT 05479

The Premium Processing e-mail address (vsc-premium.processing@uscis.dhs.gov) may only be used for inquiries. Do not send responses to the e-mail address.



