



IMPORTANT NOTICE:

LABOR CERTIFICATION WAGE LEVELS AND SPECIALTY OCCUPATION IMPLICATIONS

20 CFR 655.731 requires that an H-1B employer pay the H-1B nonimmigrant the required wage rate, which is the higher of the prevailing wage and the actual wage, pursuant to the certified Labor Condition Application (LCA) that accompanies each H-1B petition.

Please note that the LCA is certified for a certain wage level, based on the beneficiary's qualifications. A breakdown of the wage levels is provided below:

Wage Level I: (Entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment.

Examples: Research fellow, apprenticeship, internships, or worker in training positions.

Wage Level II: (Qualified) wage rates are assigned to job offers for qualified people who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment.

Examples: Positions that require a certain number of years of experience and/or level of education.

Wage Level III: (Experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff.

Examples: Positions that require a number of years of experience or education degrees that are the higher ranked indicated in the O*NET Job Zones.

Wage Level IV: (Fully Competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations.

Examples: Positions that have management and/or supervisory responsibilities.



Please note that LCAS filed as Wage Level I create a risk of H-1B denial, as Wage Level I indicates an entry-level job offer which does not qualify as a specialty occupation.

In accordance with 8 CFR § 214.2 (h)(B)(ii), a specialty occupation is defined as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which 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.

Therefore, in order to be considered a specialty occupation, a position must meet one of the following criteria in line with 8 CFR §214.2 (h)(4)(iii)(A):

- (1) A baccalaureate or higher degree of equivalence is normally the minimum requirement for entry into the particular position;
- (2) Degree requirement is common in industry in parallel positions among similar organizations or alternatively that the particular position is so complex or unique that a degree is required;
- (3) Employer normally requires a degree or equivalent; or
- (4) Nature of specific duties so specialized and complex that knowledge required performing the duties is usually associated with attainment of degree.**

USCIS has repeatedly held that H-1B petitions accompanied by an LCA with Wage Level I are not Specialty Occupations, as the nature of the job duties cannot be specialized and complex if they fall under Wage Level I.

The AAO has upheld these decisions by USCIS, holding this year that a “petitioner’s designation of the proffered position as a [Wage] Level I position indicates that it is a low, entry-level position compared to other positions within the occupational category.” In that particular decision, the AAO held that due to the entry-level nature of the position indicated by the Wage Level on the LCA, the position did not qualify as a Specialty Occupation.

As such, please be advised that if an H-1B petition is filed with an LCA certified as Wage Level I, in order to proceed with a lower salary for the position, the petition may be subject to an adverse decision on the basis it does not qualify as a specialty occupation.

Please further note that if an LCA is certified as Wage Level I, but complex, specialized job duties are submitted to prove a Specialty Occupation exists, the LCA will be contradicted by the job duties, which is a violation of the LCA requirements. This can also lead to an adverse decision.