



**National Public Engagement  
H-1B Filing Tips and Understanding Requests for Evidence (RFEs)  
Thursday, March 7, 2019  
1 to 2 p.m. Eastern**

**Welcome Remarks from Kathryn Rexrode, Associate Director for External Affairs**

- Good afternoon and good morning to those who are joining us from the West Coast!
- Thank you, Carlos, for the kind introduction.
- We welcome today's opportunity to share some H-1B filing tips and help you better understand requests for evidence, or RFEs, that may occur during the adjudication process.
- As the Associate Director of the External Affairs Directorate here at USCIS, I look forward to promoting communication and engaging with the public to ensure you have relevant updates from our agency.
- USCIS believes in transparency and equal access to the agency. To promote transparency, USCIS maintains an electronic reading room, where information on a variety of topics can be found. We also have a webpage with numerous reports on data related to agency operations. We invite everyone to visit our website at [uscis.gov](http://uscis.gov) to get additional information about our agency and its operations.
- In this spirit of transparency, on February 22nd USCIS released four years of data on Requests for Evidence issued for H-1B petitions and other non-immigrant worker classifications. We also released a table of the top 30 employers with the most initial and continuing H-1B approvals for fiscal year 2018, as well as a report that outlines the top ten most common reasons for an RFE in the H-1B context. For anyone who has not already seen this information, we invite you to go to [uscis.gov](http://uscis.gov) and search our "data and statistics" and "reports and studies" libraries.
- Ensuring the integrity of the immigration benefits system is one of this administration's guiding principles in the effort to strengthen employment-based visa programs and protect U.S. workers.
- As part of our efforts to fulfill the Buy American and Hire American executive order, USCIS has instituted a series of reforms designed to protect U.S. workers, cut down on frivolous petitions, and improve the integrity and efficiency of the immigration petition process.
- The Buy American, Hire American Executive Order also directs DHS, in coordination with other departments, to advance policies to help ensure that H-1B visas are awarded to the most-skilled or highest-paid beneficiaries. We are also working on various regulatory reforms to advance the goals

of the Buy American, Hire American Executive Order. It is our responsibility to protect the economic interests of U.S. workers by rigorously enforcing and administering our immigration laws.

- In addition to increased site visits, the agency is ensuring to the extent possible under existing law, that the petitioners seeking H-1B visas as well as their beneficiaries are eligible and that we're doing all we can to enhance integrity in the program.
  - Over the last couple of years, we have also issued H-1B policy memoranda to provide additional guidance to USCIS officers pertaining to H-1B eligibility determinations.
  - Because it is incumbent upon the petitioner, not the government, to demonstrate that a benefit requester meets the eligibility requirements under the law for a desired immigration benefit, we wanted to take this opportunity through this engagement to highlight common issues raised in H-1B RFEs and provide H-1B filing tips.
  - Again, welcome to this engagement. I will now turn it back over to Carlos.
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#### **Remarks from Subject Matter Experts: Steven Viger and Nicole Nicklaw**

USCIS evaluates each petition on a case-by-case basis and makes a determination of eligibility based on the totality of the evidence. Depending upon the particular facts of the case, there may be different types of applicable supporting evidence. Generally speaking, the petitioner should review the statute, regulations, and form instructions to determine the best evidence available to establish eligibility.

Under regulations at 8 CFR 103.2, if all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS. A request for evidence or notice of intent to deny will be communicated by regular or electronic mail and will specify the type of evidence required, and whether initial evidence or additional evidence is required, or the bases for the proposed denial sufficient to give the applicant or petitioner adequate notice and sufficient information to respond. A request for evidence will indicate the deadline for response, but will not exceed twelve weeks.

There are some issues that are frequently included in our RFEs for H-1B petitions.

**Today we will be talking about five common topics on which we send RFEs and some of the evidence we typically receive in response.** It is important to understand that the issuance of an RFE means the petition hasn't been denied by an officer. An RFE is sent because the petition as submitted does not demonstrate eligibility. As such, an RFE is an additional opportunity for the petitioner to submit evidence to establish eligibility.

- 1. The first common reason for an RFE is for evidence that demonstrates that the offered position qualifies as a specialty occupation.**

It is relatively common for the evidence initially submitted by the petitioner to fail to meet the petitioner's burden of proof to show that the beneficiary will be employed in a specialty occupation. The petitioner must submit evidence to establish that the position qualifies as a specialty occupation as defined in section 214(i)(1) of the Immigration and Nationality Act and 8 CFR 214.2(h)(4)(ii)(A). It must also meet at least one of the four criteria in 8 CFR 214.2(h)(4)(iii).

Note that, to be consistent with the statutory and regulatory definition of a specialty occupation, we interpret the term "degree" as used in the four criteria to mean not just any degree, but a bachelor's or higher degree in a specific specialty (or its equivalent) that is directly related to the proposed position.

To assist us in determining eligibility, petitioners should provide a list of the duties, roles, responsibilities, and specific educational and experience requirements of the offered position. The position description should convey the work that the beneficiary will perform at the place of employment and the correlation between that work and the education requirements for the position.

If the degrees listed as the educational requirements for the position are in different specialties, petitioners should describe how each specialty relates to the duties of the position (in other words, how each specialization qualifies someone to perform the work the beneficiary will actually perform).

If the degree requirement is a general term for multiple different specialties, such as "engineering" or "business administration," petitioners should explain whether any degree under that general description would suffice, or if only those with certain specialization (for example, based on a combination of education and experience) would be acceptable. Note, however, that the required degree must be in a "specific specialty" for the position to qualify as a specialty occupation.

Please note that while the Occupational Information Network, or O\*NET, is a useful resource as a general occupational reference, O\*NET information is generally not sufficient to establish that a proffered position qualifies as a specialty occupation. We frequently see petitioners attempting to establish that a position is a specialty occupation by citing to the O\*NET's educational data. However, the O\*NET does not indicate whether the relevant education must be in a specific specialty directly related to the occupation.

We will now discuss each of the four criteria in 8 CFR 214.2(h)(4)(iii)(A).

Under the First Criterion, the petitioner may demonstrate that a bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

If attempting to establish eligibility under this criterion, petitioners often provide:

- Relevant documentation from an authoritative career resource, such as the Department of Labor's Occupational Outlook Handbook (OOH), which lists the duties, work environment, education, training, skills, and other qualification requirements for the occupation. We recommend including a statement describing how the beneficiary's particular position relates to the occupation listed in the career resource and how the

information in the career resource demonstrates that a bachelor's or higher degree in a specific specialty or its equivalent is normally the minimum requirement for the occupation.

A common issue we see is that the OOH, for certain occupations, will list a wide spectrum of educational credentials, including disparate degrees or fields of study that do not seem to be closely related. In some instances, the OOH will indicate that less than a bachelor's degree is needed to qualify for the occupation. In these situations, the OOH will generally not suffice to demonstrate eligibility under the first criterion, and the petitioner will need to submit additional evidence to establish eligibility. In these cases, the petitioner should submit, additional evidence to substantiate its assertion regarding the minimum requirement for entry into the particular position.

The Second Criterion has two related parts. Under the first part, the petitioner may demonstrate that the degree requirement is common to the industry in parallel positions among similar organizations.

If attempting to establish eligibility under this criterion, petitioners often provide:

- Job postings or advertisements showing that 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.

Common issues we see are:

- 1) The postings are not from the same industry. For example, the petitioner is a healthcare provider, but all of the job postings are for IT companies.
- 2) The postings are not for parallel positions. For example, the beneficiary will be a bookkeeper, but the job postings are all for accountants.
- 3) The postings are not from organizations similar to the petitioner. For example, the petitioner is a small, new company and the job postings are from Fortune 500 industry leaders.
- Or, 4) the postings indicate that any bachelor's degree would be sufficient to qualify for the posted position, rather than a degrees in a specific specialty (or its equivalent) that is directly related to the proposed position.

Under the second part of the Second Criterion, the petitioner may demonstrate that the particular position is so complex or unique that it can be performed only by a person with a degree.

When attempting to establish eligibility under this criterion, petitioners often provide:

- Letters or affidavits from firms, professional associations, 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.

If you are submitting such evidence, the letters or affidavits should be supported by documentation of:

- The writer's qualifications as an expert;
- The writer's knowledge of the petitioner's business;
- An explanation of how the writer's conclusions were reached; and
- The basis for the writer's conclusions, supported by copies or citations of any materials used.

Remember that the evidence must show that the position is so complex or unique that it can be performed only by a person with a bachelor's or higher degree in a specific specialty (or its equivalent) that is directly related to the proposed position.

The best evidence we see for this criterion explains how each of the duties of the proffered position relates to, and requires knowledge obtained while studying for, the particular degree or set of degrees the petitioner has listed as the requirements for their position.

Eligibility under the Third Criterion requires a showing that the employer normally requires a degree or its equivalent for the position.

If attempting to establish eligibility under this criterion, petitioners often provide:

- Present and past job postings or announcements for the proffered position showing that the petitioner requires applicants to have a minimum of a bachelor's or higher degree in a specific specialty or its equivalent. Note that if the beneficiary will be staffed to an end-client, the evidence should show that the end-client requires a minimum of a bachelor's or higher degree in a specific specialty, or its equivalent, for the position.

If attempting to establish eligibility under the Fourth Criterion, the petitioner may show that the nature of the duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree.

If attempting to establish eligibility under this criterion, petitioners often provide:

- An explanation of the specific duties as they relate to the petitioner's products and services, and how the nature of those duties is 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.

If asserting eligibility under this criterion, petitioners should provide an explanation of what differentiates the petitioner's products and services from other employers in the same industry, such that the position is more specialized and complex compared to other similar positions. Specificity and documentation supporting any explanation of specialization and complexity is often helpful.

Remember that evidence must show that the duties are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a

bachelor's or higher degree in a specific specialty (or its equivalent) that is directly related to the proposed position.

The best evidence we see for this criterion explains how each of the beneficiary's duties relates to and requires knowledge obtained while studying a particular degree or set of degrees.

This concludes our tips for avoiding RFEs related to showing that the offered position qualifies as a specialty occupation.

**2. Another common issue included in RFEs is whether the Labor Condition Application (LCA) properly corresponds to the proffered position in the petition.**

The certified LCA must properly correspond to the petition. If a petitioner submits an LCA based on the Occupational Employment Statistics wage data, the Standard Occupational Classification (SOC) title on the certified LCA must properly correspond to the position in which the beneficiary will be employed. Petitioners must also ensure that the wage level selected on the LCA properly corresponds to the proffered position. Please note that USCIS will not issue an RFE simply because a Level I wage has been selected. However, we may issue an RFE if the LCA indicates a Level I wage, but the requirements for the position indicate that the Level I wage does not correspond to the proffered position, and therefore the LCA does not properly support the petition.

If the position does not have a corresponding SOC code, and/or the position has requirements that are described in a combination of O\*NET occupations, please explain why the SOC code and the wage are appropriate for the position.

Petitioners may provide a prevailing wage determination from the Department of Labor to establish that the SOC title and wage level were correctly selected.

Petitioners should also provide a detailed description of the education, experience, and skills, as applicable, required to perform the proffered position. Evidence to support the description may also be useful, such as a job posting for the proffered position (that includes the source and date it was posted). The job posting, or other documentation, may help to show that the proffered position is a specialty occupation and/or that the wage level selected on the LCA properly corresponds to the position.

If utilizing an LCA based on a private wage survey, petitioners should include a copy of the relevant portions of that survey. This documentation should demonstrate that the job duties and position requirements correspond to the selected job title and any wage level within the private survey.

**3. We also commonly RFE for evidence of the employer-employee relationship & qualifying work.**

The petitioner must establish that an employer-employee relationship will exist between the petitioner and the beneficiary, and the petitioner must demonstrate that there are specific and non-speculative assignments in a specialty occupation for the beneficiary for the entire time requested in the petition.

Scenarios involving a third-party worksite generally make it more difficult to assess whether the petitioner has established that the beneficiary will actually be employed in a specialty occupation or that the requisite employer-employee relationship will exist.

The following tips should be helpful for these common filings.

For third-party, off-site arrangements, we recommend providing additional corroborating evidence, such as contracts, work orders, or any other evidence, to substantiate a petitioner's claim of actual work in a specialty occupation.

We also recommend providing:

- Evidence of actual work assignments, which may include technical documentation, milestone tables, marketing analysis, cost-benefit analysis, brochures, and funding documents; and/or
- Letters signed by an authorized official of each ultimate end-client company where the beneficiary will actually work. The letter should provide a detailed description of the specialized duties the beneficiary will perform, the qualifications required to perform those duties, the duration of the job, salary or wages paid, hours worked, benefits, and a detailed description of who will supervise the beneficiary.

Petitioners should ensure that any inconsistencies in the evidence, such as differing job titles, duties, requirements, or dates of employment are fully explained.

#### **4. Another common RFE reason is for evidence of the beneficiary's qualifications.**

The beneficiary must meet one of the requirements under 8 CFR 214.2(h)(4)(iii)(C) to qualify to perform services in a specialty occupation.

We recommend providing the beneficiary's complete college transcripts (including certified translations, if applicable). If the transcript provides only course codes without titles, please provide a course key. We also recommend providing a statement explaining how the beneficiary's degree relates to the offered position, even if you believe it is self-evident. For those cases where the beneficiary has a degree that doesn't seem to relate to the proffered position, please explain how it does, or clarify whether work experience is part of the qualification.

If the beneficiary's qualifications are based in part on work experience, and the petitioner is relying on a determination of equivalence by USCIS, please ensure the evidence meets the requirements of 8 CFR 214.2(h)(4)(iii)(D)(5) to establish the work experience is qualifying, and to establish expertise.

## 5. Finally, we frequently RFE for itineraries.

8 CFR 214.2(h)(2)(i)(B) requires petitioners to submit an itinerary with a petition that requires services to be performed in more than one location. Remember, an itinerary is needed whether the locations belong to the petitioner or a third party. The itinerary must include the dates and locations of services to be provided.

### Now, we would like to share a few general tips on filing H-1B petitions:

- Complete all sections of the Form I-129 petition, including the H Classification Supplement and the H-1B Data Collection and Filing Fee Exemption Supplement. You can find current versions of forms at [www.uscis.gov/forms](http://www.uscis.gov/forms).
- Make sure each form has an original signature, preferably in black ink, and be sure signatures comply with the Signatures Policy Memo which was released on February 15, 2018 and is available on the USCIS website.
- Include signed checks or money orders with the correct fee amount. A petitioner filing Form I-129 who must pay the American Competitiveness and Workforce Improvement Act (ACWIA) fee may make the payment in the form of a single check or money order for the total amount due or as two checks or money orders, one for the ACWIA fee and one for the petition fee. Please submit a separate check for any other applicable fee. We prefer that you submit a separate check for each fee because, if you only submit one check as combined payment for all applicable fees and certain fees do not apply or are incorrect, we may reject your H-1B petition.
- Submit all required documentation and evidence with the petition at the time of filing to ensure timely processing.
- Ensure that the LCA properly corresponds to the position in your petition.
- File the petition with the correct USCIS service center. To determine where you must mail your petition, see our web page [Direct Filing Addresses for Form I-129, Petition for a Nonimmigrant Worker](#).
- Please read the filing instructions very carefully. If you file your petition at the wrong location, we may reject it. Rejected petitions will not retain a filing date and will not be counted toward the H-1B numerical allocations.
- If the petitioner will be represented by an attorney or other accredited representative, submit a properly completed Form G-28, Notice of Entry of Appearance as Attorney or Representative.
- Enter the petitioner's primary office address in Part 1, question 3 of the Form I-129. Please note, if you do not use the petitioner's primary office address, it may cause processing delays. Please consult the Direct Filing Addresses for Form I-129 web page for further information.
- Ensure that the beneficiary's name is spelled properly and that his or her date of birth is displayed in the proper format (that is, month-date-year). Also, review the country of birth and citizenship and the I-94 number (if applicable) for accuracy.

- If the beneficiary is seeking an extension of stay or change of status, include with the petition evidence (such as a Form I-94 or Form I-797 approval notice and pay records, if applicable) to establish that the beneficiary has been and will be maintaining a valid nonimmigrant status through the employment start date being requested.
- Include a copy of the beneficiary's valid passport.