



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

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

MATTER OF C-E-, INC.

DATE: MAR. 28, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

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

The Director of the Vermont Service Center denied the petition. The Director concluded that the Petitioner had not sufficiently demonstrated that (1) the proffered position qualifies as a specialty occupation; and (2) the labor condition application (LCA) is certified for the actual location of intended employment.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that (1) the proffered position qualifies as a specialty occupation; and (2) the LCA is certified for the actual location of intended employment.

Upon *de novo* review, we will dismiss the appeal.

#### I. SPECIALTY OCCUPATION

We will first address the issue of whether the proffered position qualifies as a specialty occupation.

##### A. Legal Framework

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and

- (B) 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (1) A baccalaureate 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 baccalaureate or higher degree.

8 C.F.R. § 214.2(h)(4)(iii)(A). We have consistently interpreted the term "degree" to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

#### B. Proffered Position

In the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner stated that the Beneficiary will serve as a "graphic designer." The LCA submitted in support of the visa petition states that the proffered position corresponds to the Standard Occupational Classification (SOC) code and occupation title 27-1024, "Graphic Designers," at a Level II wage rate.

Asserting that the proffered position requires a minimum of a master's degree in graphic arts, fine arts, or a related field (or the equivalent) plus "visual design and management experience," the Petitioner provided the following list of job duties:

- Create designs, concepts, and layouts based on knowledge of layout principles and aesthetic design concepts.
- Determine size and arrangement of illustrative material and copy, and select style and size of type.
- Confer with clients or supervisors to discuss and determine layout design.

- Develop graphics and layouts for product illustrations, company logos, and Internet websites.
- Review final layouts and suggest improvements as needed.
- Prepare illustrations or rough sketches of material, discussing them with clients or supervisors and making necessary changes.
- Use image editing software, graphics editing software and web development tools to generate new images.
- Key information into computer equipment to create layouts for client or supervisor.
- Maintain archive of images, photos, or previous work products.
- Create promotional displays, media kit and marketing brochures.
- Prepare notes and instructions for workers who assemble and prepare final layouts for printing.

In response to the Director's request for evidence (RFE), the Petitioner stated that the proffered position requires a minimum of a bachelor's degree in graphic design "and five years of professional experience in web/application/interaction design/brand identity and exhibit excellent skill and taste in web design and information flow." The Petitioner also provided additional descriptions of the proffered position. In particular, the Petitioner stated that a graphic designer for its company needs "expertise in brand identity and information flow as well as [a] proven record of usability and accessibility in website development." The Petitioner further stated that "[a] role of this nature also needs a creative visionary who can lead a team and is specialized in building websites and marketing materials from the ground up."

The Petitioner expanded upon the duties of the proffered position, asserting that the Beneficiary will spend 50% of her time in the area of "[creating] visually rich materials for news stories across multiple platforms." The specific job duties under this area are:

- Create designs, concepts, and layouts based on knowledge of layout principles and aesthetic design concepts.
- Handle page design and layout for the website with type, font, size, color, and line length of headlines.
- Decide how images and text will go together on a webpage, including how much space each will have.
- Transform statistical data into visual graphics and diagrams, which can make complex ideas more accessible through draw and print charts, graphics, illustrations, and other artwork, using computer.
- Collaborate with editors on how articles should be arranged on the page.
- Review final layouts and suggest improvements as needed.

Additionally, the Petitioner asserted that the Beneficiary will spend 30% of her time in the area of "[developing] all marketing materials and promotional materials in the company that will communicate our brand and better position it in the marketplace." The specific job duties under this area are:

- Develop graphics and layouts for company logos, newsletters, media kit and promotional materials.
- Prepare illustrations or rough sketches of material and making necessary changes.
- Determine size and arrangement of illustrative material and copy, and select style and size of type.
- Maintain archive of images, photos, or previous work products.
- Review designs for errors before printing or publishing them.
- Prepare notes and instructions for workers who assemble and prepare final layouts for printing.

The Petitioner further asserted that the Beneficiary will spend the remaining 20% of her time in the area of “[creating] banner ads and mobile ads.” The specific job duties under this area are:

- Develop on advertising idea from scratch.
- Create storyboards, either through drawing by hand or with a computer program.
- Use image editing software, graphics editing software and web development tools to generate new ideas and infographics.
- Confer with clients to discuss and determine design.

### C. Analysis

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, the record (1) does not describe the position’s duties with sufficient detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.<sup>1</sup>

First, most of the Petitioner’s descriptions of the proffered job duties are copied virtually verbatim from various internet sources, e.g., the U.S. Department of Labor’s (DOL) *Occupational Outlook Handbook (Handbook)* and the Occupational Information Network (O\*NET). For example, the proffered job duties of “[c]reate designs, concepts, and layouts based on knowledge of layout principles and aesthetic design concepts,” “[p]repare illustrations or rough sketches of material and making necessary changes,” and “[d]etermine size and arrangement of illustrative material and copy, and select style and size of type,” among others, are all identical or virtually identical to job duties found in the O\*NET Details Report for the “Graphic Designers” occupation (SOC code 27-1024).<sup>2</sup> Similarly, the proffered job duties of “[d]ecide how images and text will go together on a webpage, including how much space each will have,” “[t]ransform statistical data into visual graphics and

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<sup>1</sup> The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

<sup>2</sup> O\*NET Details Report for “Graphic Designers,” <https://www.onetonline.org/link/details/27-1024.00> (last visited Mar. 27, 2017).

diagrams, which can make complex ideas more accessible through draw and print charts, graphics, illustrations, and other artwork, using computer,” and “[r]eview designs for errors before printing or publishing them,” are identical or virtually identical to job duties as described in the *Handbook*’s chapter on “Graphic Designers.”<sup>3</sup>

This type of generalized description may be appropriate when defining the range of duties that may be performed within an occupational category, but it does not adequately convey the substantive work that the Beneficiary will actually perform within the Petitioner’s business operations, and thus, generally cannot be relied upon by the Petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of its business operations, in order to substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. The Petitioner has not done so here.

While the Petitioner states on appeal that its job descriptions are “true and unique to the actual position because each duty has been carefully reviewed and confirmed by the company,” the Petitioner does not provide additional details to clarify how the stated job duties will be performed within its business operations. For example, one of the proffered job duties is to “[p]repare notes and instructions for workers who assemble and prepare final layouts for printing.” But the Petitioner has not further explained and documented who these “workers” are and their roles within the Petitioner’s 13-employee organization. According to the Petitioner’s organizational chart, the proffered “graphic designer” position is a standalone position with no lateral or subordinate employees.

Second, and despite the Petitioner’s reliance on the general descriptions of the “Graphic Designers” occupation as found in O\*NET and the *Handbook*, we must question whether some of the proffered job duties are consistent with this particular occupational classification. In its RFE response, the Petitioner indicated that, in addition to graphic design duties, the Beneficiary will also perform duties involving web development. The Petitioner stated, for instance, that its graphic designer needs “excellent skill and taste in web design,” “[a] proven record of usability and accessibility in website development,” and “specializ[ation] in building websites . . . from the ground up.” However, neither O\*NET nor the *Handbook*, both of which we consider as authoritative sources on the duties of the wide variety of occupations that they address, indicates that graphic designers are normally responsible for the development of entire websites (i.e., “from the ground up”).<sup>4</sup> At most, these authoritative sources indicate that graphic designers are typically responsible for the layout and graphics which are displayed on websites.<sup>5</sup> The Petitioner has not sufficiently explained the Beneficiary’s role and responsibilities with regard to “building” the company’s website.

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<sup>3</sup> U.S. Dep’t of Labor, Bureau of Labor Statistics, 2016-17 ed., “Graphic Designers,” <https://www.bls.gov/ooh/arts-and-design/print/graphic-designers.htm> (last visited Mar. 27, 2017).

<sup>4</sup> *See id.* *See also* O\*NET Details Report for “Graphic Designers,” <https://www.onetonline.org/link/details/27-1024.00> (last visited Mar. 27, 2017).

<sup>5</sup> O\*NET states, for example, that graphic designers “[d]evelop graphics and layouts for product illustrations, company logos, and Web sites.” O\*NET Details Report for “Graphic Designers,” [https://www.onetonline.org/link/details/27-](https://www.onetonline.org/link/details/27-1024.00)

The Petitioner also indicated that a graphic designer for its company will be responsible for the company's advertising, marketing, and related functions. The Petitioner specifically stated that the Beneficiary will "[d]evelop *all* marketing materials and promotional materials in the company" (emphasis added). The Petitioner further stated the Beneficiary will build "marketing materials from the ground up." However, neither O\*NET nor the *Handbook* indicates that graphic designers are normally responsible for carrying out the actual advertising and marketing duties of a company; at most, graphic designers "often work closely with people in advertising and promotions, public relations, and marketing."<sup>6</sup> The Petitioner also has not sufficiently explained the Beneficiary's role and responsibilities with regarding to the company's marketing-related efforts.

We again refer to the Petitioner's organizational chart which depicts the proffered "graphic designer" position as a standalone position. There are no positions on the organizational chart, or on the accompanying position descriptions, which appear to be directly responsible for the company's website or marketing, advertising, and related functions.<sup>7</sup> The lack of any such personnel raises the question as to how the Petitioner will support the Beneficiary in the claimed capacity, and how it will relieve the Beneficiary from performing non-qualifying, non-H-1B caliber duties consistent with and limited to the "Graphic Designers" occupation.

In addition, the Petitioner's descriptions of the proffered position, including its minimum educational requirement, appear to have changed. Initially the Petitioner's description of the proffered position consisted of a list of 11 job duties, all related to graphic design. But in response to the Director's RFE, the Petitioner expanded upon the job description with duties apparently involving web development and marketing, as discussed above. It is important to note that the Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to legal requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Even the claimed educational requirement for the proffered position appears to have changed. The Petitioner initially asserted that the proffered position requires a minimum of a *master's* degree in graphic arts, fine arts, or a related field (or the equivalent) plus management experience. Later, in its RFE response, the Petitioner revised the position requirements to a *bachelor's* degree plus five years of related experience. The Petitioner has not reconciled these apparently different requirements. Again, the Petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1). The

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1024.00 (last visited Mar. 27, 2017). The *Handbook* states, for example, that "[g]raphic designers combine art and technology to communicate ideas through images and the layout of websites and printed pages." U.S. Dep't of Labor, Bureau of Labor Statistics, 2016-17 ed., "What Graphic Designers Do," <https://www.bls.gov/ooh/arts-and-design/graphic-designers.htm#tab-2> (last visited Mar. 27, 2017).

<sup>6</sup> *Id.*

<sup>7</sup> The position descriptions for the Petitioner's editorial director and the operations and editorial manager specifically reference a marketing and/or sales staff. But again, the Petitioner's organizational chart does not depict any marketing or sales positions.

Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

We observe that the Petitioner designated the proffered position on the LCA at a Level II wage level. According to DOL guidance, this wage level indicates that the proffered position is a position for a “qualified” employee who has a good understanding of the occupation but who will only perform moderately complex tasks that require limited judgment.<sup>8</sup> The Petitioner’s statements that the Beneficiary may “lead a team” or needs to have “management experience” (plus a master’s degree) do not appear consistent with the Level II wage level selected here.<sup>9</sup> Further, it is not clear how these leadership or management-level job descriptions relate to the Petitioner’s actual business operations, considering the organizational chart’s depiction of the proffered position as a standalone position with no lateral or subordinate employees.

For all of the above reasons, we find that the Petitioner has not described the position’s duties and educational requirement with sufficient detail and consistency. Without more, we cannot determine the substantive nature of the proffered position, and consequently, whether it requires an educational background, or its equivalent, commensurate with a specialty occupation.

As the Petitioner has not established the substantive nature of the work to be performed by the Beneficiary, we are precluded from finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for entry into the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. Since the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation.

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<sup>8</sup> See U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

<sup>9</sup> Additionally, a Level II wage level indicates that the proffered position’s educational requirement (years of formal education and/or equivalent experience) should be generally similar to those described in the O\*NET Job Zones for that occupation. *Id.* Based on the “Graphic Designers” occupational classification’s Job Zone Four rating for positions which mostly require a four-year bachelor’s degree, but some do not, the Petitioner’s initially stated requirement of a master’s degree plus management experience also does not comport with the O\*NET Job Zones. See O\*NET Details Report for “Graphic Designers,” <https://www.onetonline.org/link/details/27-1024.00> (last visited Mar. 27, 2017).

D. Position Evaluation

The Petitioner submitted a position evaluation by [REDACTED] an associate professor of transmedia at the [REDACTED]. This evaluation concludes that a graphic designer position “with the specific duties” of the proffered position requires a minimum of a bachelor’s degree in graphic design, or the equivalent. However, we decline to regard the letter from [REDACTED] as sufficiently probative evidence under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

First, we do not find that the evaluator’s opinion is based upon sufficient information about the actual position proposed here. [REDACTED] simply reiterates the Petitioner’s initial list of job duties which were copied virtually verbatim from O\*NET and/or the *Handbook*. As previously discussed, however, this type of generic job description that is not specific to the Petitioner and the Beneficiary is insufficient to demonstrate the substantive nature of the proffered position. There is no indication that [REDACTED] possesses additional, in-depth knowledge of the proffered position or the Petitioner’s operations beyond the limited information provided by the Petitioner.

Notably, [REDACTED] states that “this type of position is a typical job placement for students completing a Bachelor’s Degree at [his] school. Employers with openings for Graphic Designers and similar professional positions have recruited at our campus, always seeking graduates with a minimum of a Bachelor’s Degree.” His statement is at odds with the Petitioner’s initially-stated requirement of a *master’s degree plus* management experience. His statement is also at odds with the Petitioner’s alternative requirement of a *bachelor’s degree plus* five years of additional work experience. Accordingly, the Petitioner has not sufficiently demonstrated that [REDACTED] possesses a sound factual basis for his conclusions about the proffered position, including the position and associated duties’ complexity and specialization, and its minimum educational requirement. Again, the petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Ho*, 19 I&N Dec. at 591.

Nor has the Petitioner demonstrated that [REDACTED] possesses a sound factual basis for his conclusions about industry hiring standards. The evaluator states that “[i]t is typical for an entertainment, pop culture, gaming, and technology news website publisher with more than 5 million monthly visitors to hire a Graphic Designer or someone in a similar professional position, and require a minimum attainment of a Bachelor’s Degree in Graphic Design.” But he does not further discuss in detail the extent of his experience and knowledge of the Petitioner’s industry, and of companies similar to the Petitioner. He also does not reference any studies, surveys, publications, or other sources of empirical information which he may have consulted in coming to his conclusions. The Petitioner must support its assertions with relevant, probative, and credible evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

For all of the above reasons, we conclude that [REDACTED] evaluation has very limited evidentiary value in this proceeding, and is insufficient to demonstrate the proffered position’s qualification as a specialty occupation. We may, in our discretion, use opinion statements submitted



by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Id.*

## II. LCA

We also find that the Petitioner has not sufficiently demonstrated that the LCA is certified for the actual location of intended employment, and thus, supports and corresponds to the proffered position

### A. Legal Framework

While DOL is the agency that certifies LCA applications before they are submitted to U.S. Citizenship and Immigration Services (USCIS), DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . 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, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements for H-1B visa classification.*

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the Beneficiary.

### B. Analysis

On the LCA, the Petitioner listed the Beneficiary's sole place of employment as [REDACTED] New York. However, this is not the address of intended employment listed on the Form I-129 petition. On the Form I-129, the Petitioner listed the Beneficiary's sole place of employment as [REDACTED] New York. The Petitioner has not explained the reason for these different addresses. The Petitioner's affirmation on appeal that "[i]ndeed, the actual location of intended employment of beneficiary is the location provided in the LCA" does not explain why the Petitioner provided different addresses on the LCA and H-1B petition.

We recognize that the addresses of [REDACTED] and [REDACTED] are both located in [REDACTED] in New York. Hence, they appear to be within the same metropolitan statistical area (MSA). But while a petitioner's subsequent change in the place of employment to another location within the same MSA would generally not require a new LCA (provided no material changes in employment are present), that is not the case here. *See Matter of Simeio Solutions*, 26 I&N Dec. 542 (AAO 2015). In the instant case, the Petitioner does not claim to have later changed addresses. Instead, the Petitioner listed different work addresses for the

Beneficiary on the LCA and on the Form I-129, and has not submitted a valid LCA that corresponds to the proposed work location.<sup>10</sup> An inaccurate statement anywhere on the H-1B petition or in the evidence submitted in connection with the petition mandates its denial. *See* 8 C.F.R. § 214.2(h)(10)(ii); *see also* 8 C.F.R. § 103.2(b)(1).

The Petitioner asserts that the Director did not provide an opportunity to address this issue in the RFE. However, the regulation at 8 C.F.R. § 103.2(b)(8) permits the Director to deny a petition for failure to establish eligibility without having to request evidence regarding the grounds of ineligibility identified by the Director. Further, the Petitioner has an opportunity submit rebuttal evidence by filing a motion or appeal, which it has done here.

The Petitioner further asserts that it should have had an opportunity to resolve the LCA issue by filing an amended H-1B petition to add the actual employment location. However, while the Petitioner may file an amended H-1B petition, 8 C.F.R. § 103.2(b)(1) requires eligibility to be established at the time of filing; therefore, filing an amended H-1B petition with an LCA certified by DOL after the filing of an initial H-1B petition would not establish eligibility for the initial petition. Therefore, even if the Director had notified the Petitioner of this issue in the RFE, the Petitioner could not have resolved the issue, unless it had another LCA certified on or before the filing date of the petition, with information, accurate as of the petition's filing date, as to where the Beneficiary would actually be employed. The Petitioner did not submit another LCA certified on or before the filing date of this petition that corresponds to the petition.

Aside from the location of intended employment, we also cannot find that the LCA supports and corresponds to the proffered position because the Petitioner has not demonstrated the substantive nature of the proffered position. As previously discussed, the Petitioner listed several job duties which appear to involve web development and marketing-related functions, as well as graphic design duties at a leadership or management level. These job duties and requirements do not correspond to a position classified as "Graphic Designers" at a Level II (qualified) wage level.<sup>11</sup>

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<sup>10</sup> DOL regulations governing LCAs require that "[e]ach LCA shall state . . . [t]he places of intended employment." 20 C.F.R. § 655.730(c)(4) (emphasis added). "Place of employment" is defined as "the worksite or physical location where the work actually is performed by the H-1B . . . nonimmigrant." 20 C.F.R. § 655.715.

<sup>11</sup> Although not asserted here, we note that for positions involving duties of more than one occupational classification, the LCA should reflect the occupational classification of the most relevant, i.e., highest-paying, occupation. *See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

According to the LCA, the prevailing wage for a Level II "Graphic Designers" position (SOC code 27-1024) in the area and time period of intended employment is \$51,688 per year. The Beneficiary is being offered \$52,000 per year. But if, for example, the proffered position were to combine duties of "Web Developers" (SOC code 15-1134), then a Level II prevailing wage for that occupation in the relevant area and time period of intended employment would be higher, at \$63,149 per year. For more information regarding wages for "Web Developers" in the [REDACTED] NY-NJ MSA for the period 7/2014 – 6/2015, see FLC Data Center at [http://www.flcdatacenter.com/OesQuickResults.aspx?code=15-1134&area=\[REDACTED\]&year=16&source=1](http://www.flcdatacenter.com/OesQuickResults.aspx?code=15-1134&area=[REDACTED]&year=16&source=1) (last visited Mar. 27, 2017). In that case, we would find the LCA for a Level II "Graphic Designers" position does not correspond to the proffered position.

*Matter of C-E-, Inc.*

### III. CONCLUSION

The Petitioner has not established that (1) the proffered position qualifies as a specialty occupation, and (2) the LCA supports the petition.

**ORDER:** The appeal is dismissed.

Cite as *Matter of C-E-, Inc.*, ID# 328643 (AAO Mar. 28, 2017)