U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JAN 1 6 2014 OFFICE: CALIFORNIA SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The California Service Center director revoked the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained.

The petitioner filed a Petition for a Nonimmigrant Worker (Form I-129) with the California Service Center. The petitioner sought to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director initially approved the petition; subsequently, however, the director reviewed the record of proceeding and revoked the approval of the nonimmigrant visa petition. Counsel for the petitioner submitted an appeal of the decision.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has overcome the director's sole basis for revoking this petition on notice.

In the instant case, the petitioner has sufficiently developed relative complexity/uniqueness as an aspect of the proffered position. The AAO also observes that the petitioner indicated on the Labor Condition Application that the proffered position involves a level of education, skill and experience at the Level IV wage rate, which is consistent with and corresponds to a relatively complex/unique position.[1] The totality of the evidence presented establishes that this particular position is so

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[1] Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. According to the U.S. Department of Labor (DOL), a requirement for years of experience or educational degrees that are at the higher ranges denoted in the Occupational Information Network (O*NET) Job Zones would be indicators that a Level III or Level IV wage should be considered.

The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level IV wage rate is described as follows:

> **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. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. 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. They generally have management and/or supervisory responsibilities.

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.

complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent. *See* 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*). Further, the petitioner has established that the proffered position otherwise qualifies for classification as a specialty occupation as that term is defined by section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In addition, the AAO has reviewed the qualifications of the beneficiary and finds that, more likely than not, he is qualified to perform the duties of the proffered position based on the evidence presented.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met.

ORDER: The appeal is sustained. The director's decision dated May 7, 2013 is withdrawn, and the approval of petition is reinstated.

The petitioner designated the proffered position at a Level IV wage rate, and the offered salary is significantly higher than the prevailing wage for the occupation. Further, the petitioner attested that it will pay at least the required wage rate to the beneficiary. *See* 20 C.F.R. § 655.731(a).