The H-1B Handbook 2000

H-1B Tips and Tricks with an Overview of the New H-1B Law

by

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An electronic copy of this Handbook may be downloaded from www.usvisa-law.com/h1bhandbook2000.htm

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Preface

The incredible economic prosperity enjoyed by the United States at the start of this new millennium has resulted in a shortage of skilled workers. Although this shortage affects many industries, the information technology industry has suffered most. The competitive US labor market for skilled workers has driven employers to look abroad for the technicians and programmers who fuel our new, idea-driven economy. Many studies predict that this shortage will last at least five years, perhaps longer. Human Resources professionals unequipped to evaluate the employability of foreign candidates will turn away valuable, skilled workers. And those unable to administrate the foreign skilled labor visa process may be unable to fill key vacant positions.

Congress and the President recently acknowledged this shortage by passing new business immigration legislation focused on H-1B visas and employment-based greencards. But H-1B filing fees will be increased from $610 to $1,110 for most employers on December 17, 2000. And INS and the Department of Labor announced secret Silicon Valley area audits in an August edition of the San Francisco Chronicle newspaper. While H-1B laws are becoming more employer-friendly from the perspective of available benefits, they are also becoming more complex, creating new compliance issues.

This handbook provides an overview of the H-1B process including the basic legal requirements and special rules for certain types of candidates. It also provides tips and tricks on speeding the process. It is intended as a concise desk reference for the Human Resources manager or corporate administrator who coordinates foreign hiring issues. Please consult the Table of Contents on page four as a quick reference to potential issues while reviewing resumes and during interviews. This handbook should be used as a handy guide to foreign employment issues and not as a procedural manual. Please feel free to download an electronic copy of this Handbook from www.usvisa-law.com/handbook.htm. To text-search the electronic copy, open it in your word processor and press 'Control + F.' Visitors with ordinary Internet connections may experience download times as long as five minutes.

I. General Requirements for H-1B Visas

A. Overview of H-1B and H-4 Requirements

1. H-1B Skilled Worker Visa

DEFINITION
- Job requiring complex, specialized job duties and bachelor's degree or equivalent
- Subject to an annual cap of 195,000 visas for fiscal years 2001 to 2003 and returning to 65,000 in 2004 (Congress may raise the cap again before FY 2004)

DURATION
- Three-year validity, may be extended three years for a maximum stay of six years

PROCEDURE
- Obtain Prevailing Wage from State Employment Services Agency or alternate wage data source
- File Labor Condition Application with Department of Labor (DOL Form ETA-9035)
- File Petition for Skilled Worker with INS (INS Form I-129 with H Supplement)

The H-1B skilled worker visa allows aliens with a minimum of a bachelor's degree or equivalent training, education or experience to work in the United States in positions requiring complex and specialized job duties. The alien's training, education or experience must be directly useful to the position. Thus, an alien with a bachelor's degree in business administration will generally not qualify for an H-1B visa covering a position as a computer programmer unless that alien also possesses a bachelor's degree or equivalent training, education or experience in a field directly related to computer programming.

The employer must pay the higher of the prevailing or actual wage for the position to the foreign skilled worker and must promise to pay the transportation costs to return the worker to his or her home country at the end of the employment relationship.

This visa raises complex employer compliance issues that may result in fines and other penalties. For a more detailed discussion of the H-1B visa category, please see Section III of this *Handbook*.

2. H-4 Dependents of H-1B Visa Holders

DEFINITION
- Allows spouses and minor children of H-1B visa holders to enter and remain temporarily in the United States; does not allow work or study in the United States

DURATION
- Valid for only so long as the primary H-1B visa holder is in valid H-1B status

PROCEDURE
- File H-4 Dependent Petition with INS (INS Form I-129 with INS Form I-539)
- Include all supporting documentation from the primary H-1B holder's petition

The H-4 visa allows the spouse and minor children of the H-1B holder to remain in the United States while the primary holder's H-1B status is valid. The H-4 visa *does not* allow the holder to work or attend college or university in the United States. A separate work authorization or student visa is required to authorize those activities. Minor children are children under age twenty-one.

B. Necessary Position and Employer Qualifications

The requisition that the employer intends to fill must be one requiring the application of a specialized body of knowledge and a minimum of a bachelor's degree or its equivalent to perform the job's necessary duties. The legal definition of H-1B eligible employment opportunities is *an occupation 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*. The Department of Labor generally accepts positions that require a bachelor's degree or its equivalent provided that the equivalent experience, training or education equals three years to every one of the required bachelor's degree, a requirement known as the 'three-to-one rule.'

A bachelor's degree, for business immigration purposes, is counted as *two years* of education because only two of the bachelor's degree's four study years are concentrated in the student's major or focus of study. The Department of Labor is concerned with that major because it becomes the fund of knowledge that the employee will apply in the position. To this end, the bachelor's degree that the employer requires must have some rational, logical relationship to the job duties to be performed.

In other words, a requisition for a computer programmer should not list minimum requirements of a bachelor's degree in computer science, or European history. A programmer or systems analyst position may require a bachelor's degree in computer science, information systems or electrical engineering, but even a bachelor's degree in mechanical engineering may fall outside of the useful educational ambit for these types of positions.

Employers should carefully consider the position's minimum requirements. Minimum requirements are those that are absolutely necessary for the employee to function acceptably in the position. Effective requisitions divide a position's description into required qualifications and desired qualifications. The minimum qualifications must be reasonable as compared with the job title and salary. An employer offering a $45,000 annual salary for a position entitled 'Level I Software Engineer' that lists a master's degree or its equivalent as required qualifications, will have difficulty because such qualifications are generally not required by the industry for those positions. Similar difficulties exist for employers that *require* ten years of transactional finance experience, where the sponsored employee only has five years of that experience. If the minimum requirements are ten years of experience, then why is the employer hiring someone with less than that minimum required experience?

The employer must show that it is able to pay the wages promised on the Labor Condition Application. This is accomplished by including copies of the corporation's

federal tax return (variations of IRS Form 1120), and Securities and Exchange Commission 10K reports if the corporation is publicly traded or otherwise falls under SEC reporting requirements. Start up corporations with little or no history of earnings may hire H-1B employees upon sufficient proof of an ability to pay. That proof may comprise an initial capitalization statement, evidence of current revenue, binding contracts for goods to be provided or services to be performed in the future, business plans, cash flow projections and other evidence.

C. Necessary Prospective Employee Qualifications

H-1B skilled workers must possess a bachelor's or more advanced degree in the occupational specialty in which they are being hired. The INS will accept equivalent experience under certain circumstances. To qualify without a bachelor's degree, the prospective employee must generally possess at least three years of progressive experience and education for every one year of education normally required through the bachelor's degree (known as the 'three-to-one rule').

Usually, a bachelor's degree is counted as two years of education because only two years of the study program focus on the major subject. Thus, candidates without bachelor's degrees should possess at least six years of related, progressive experience. Progressive experience is generally defined as holding positions of increasing complexity and responsibility over a period of time.

But this alone is not enough. The employer must also show that the prospective employee is a member in a recognized US or foreign association or society in the specialty occupation *or* provide documented recognition of the prospective employee as a member of the profession by two authorities in the field. Alternatively, the alien may show foreign or US licensure to practice the profession. These requirements are in addition to the three to one rule listed above.

D. Prevailing Wages and the Labor Condition Application

The Labor Condition Application is designed to provide notice of information about the intended foreign skilled worker's employment to employees on site as well as to the public. The employer must post the Labor Condition Application at the work site before employing an H-1B skilled worker (as discussed below in Section III. *F.* 1.). The Labor Condition Application contains information about the proposed employment including the wage to be paid to the prospective H-1B employee as well as the intended duration of his or her employment. This notice also contains information about how to submit complaints to the Department of Labor.

E. The H-1B Petition and Supporting Documentation

The H-1B petition is filed on INS Form I-129 with the H Supplement, the Labor Condition Application, evidence of accurate prevailing wage data or State Employment Services Agency prevailing wage determination and other supporting documentation. The petition should be submitted to the INS Service Center with jurisdiction over the geographical area of intended employment. The INS California Service Center in Laguna Niguel has jurisdiction over California employment.

The H-1B petition should include evidence of the prospective employee's educational qualifications, generally a bachelor's or more advanced degree as well as letters from prior employers attesting to the prospective employee's prior work experience. The degree or other educational certificates should be certified originals or certified copies endorsed by the issuing educational institution. If the prospective employee gained the degrees or certificates outside of the United States, the petition should include a report from an educational equivalency consultant attesting to the US equivalent to the degree or certificate.

The employer should submit information showing an ability to pay the alien's salary, usually provided with an IRS Form 1120 federal corporate tax return, a Securities and Exchange Commission report 10K, or an annual report showing gross and net revenue for the preceding year or years if available.

F. H-1B File Maintenance and the Penalties for Failure to Comply

The H-1B application process is relatively simple and is generally subject to only a limited review by the Department of Labor and Immigration and Naturalization Service. Unfortunately, many employers believe that once the Labor Condition Application and H-1B petition are approved, the employer's duty ends. This is not true. DOL and INS do audit employers to enforce compliance. Employers should take the time to maintain an H-1B compliance file. This section provides some guidelines for H-1B file maintenance.

The information listed below should be compiled and maintained in a separate file folder for each H-1B employee.

- Accurate Copy of the Submitted and Approved H-1B Petition

- Employer's Supporting Documentation

  This information includes financial statements, tax returns or other documentation used to verify the employer's ability to pay the approved prevailing wage to the H-1B employee.

- Labor Condition Application and Notice

  Include a copy of the approved Labor Condition Application as well as a statement of the dates and locations of LCA posting. The person who posted the approved Labor Condition Application at the work site should also be identified and that person should initial or sign the statement identifying the posting information.

- Prevailing Wage Information

  This is a common audit area resulting in employer liability. Include the Employment Development Department Prevailing Wage Determination, or if the

employer used an alternative wage data source, include *all* relevant information about that alternative data source. For example, if an alternative wage survey was used, the name of that survey, that survey's publication date, photocopies of the pages defining the geographical area of the survey, the number of employers and positions reported for that specific job description, as well as the pages describing the job surveyed and the methods for differentiating skill and pay levels. When alternative surveys are used, only the most recently published survey may be used and the data that survey is based on must be no more than 24 months old.

- Employee Information

Include all documentation that was submitted with the H-1B petition reflecting the H-1B employee's qualifications. These documents usually include copies of degrees and certificates, copies of previous employer's letters attesting to job experience and other documents reflecting the employee's qualifications.

1. Posting and Notice Requirements

- Posting the Labor Condition Application at the Primary Work Site

The Employer must post the Labor Condition Application at *two* conspicuous locations at the primary work site for at least ten days. This posting should be made where Department of Labor Wage and Hour notices and Occupational Health and Safety Notices are customarily posted. Each H-1B employee must be given a copy of the Labor Condition Application on the first day of employment.

The employer should make a *signed memorandum* noting who posted the Labor Condition Applications, where they were posted and which dates they were posted. This memorandum should be kept in the H-1B compliance file at the employer's primary place of business.

- Additional, Temporary Work Sites

When an H-1B employee is sent to a client's place of business to perform work, a Labor Condition Application must be posted there no later than the day the H-1B employee will commence work. That Labor Condition Application, as the one listed above, must be posted at *two* conspicuous locations for at least ten days. The employer should make the same memorandum of this posting and have the person making the posting sign the memo. No rule prohibits an employee of the client company, the H-1B employee or anyone else from making the posting. But this posting must be recorded.

- The 90 Day Rule

Employers need not file or post an additional Labor Condition Application at a temporary work site if the employer has not exceeded a cumulative total of 90

offsite workdays during the three-year validity period of the Labor Condition Application. This includes if one or more H-1B workers worked at any site within that area of intended employment. For the purposes of the rule, one workday is any day that one or more H-1B employees are working off site. For example, if ten H-1B employees are working at four sites all during the same four-day period, this constitutes four workdays. Please note that these are not consecutive workdays only, workdays are cumulated throughout the three-year period.\

2. The Public Access File Requirement

Employers must maintain an onsite public access file that contains certain basic information: (1) an approved labor condition application, (2) an actual wage memo, and (3) supporting prevailing wage information.[1] This information should be segregated from the H-1B employee's general file because government agents as well as any member of the public enjoy the right to inspect it. Ideally, H-1B public access files should be kept in a different filing cabinet or filing cabinet drawer. Each H-1B employee should have a separate manila folder containing his or her approved labor condition application, actual wage memo and prevailing wage information. For H-1B employees relying on a blanket labor condition application, the employer should have handy a list of employees who are working under that labor condition application – which, of course, should not include more employees than the approved form allows for.

G. The New FY 2000 H-1B Cap Increase and Related Provisions

The American Competitiveness in the Twenty-First Century Act of 2000 (ACTFCA) contains some of the most sweeping business immigration benefits of perhaps any legislation introduced *ever*. While ACTFCA is best known for increasing the H-1B cap to 195,000 for fiscal years 2001 to 2003, it also does some other incredible things for employers.

The New H-1B Cap

The previous H-1B cap was set in the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), temporarily raising the cap due to a severe shortage of IT workers – and intense lobbying by the computer industry. Surprisingly, even after the increase, the cap was reached relatively early in the fiscal year – this last year it was reached in mid-March. So with additional pressure from the industry, Congress again increased the H-1B cap.

As mentioned above, ACTFCA increases the H-1B cap to 195,000 for fiscal years 2001 to 2003 returning the cap to 65,000 in 2004. But ACTFCA also provides additional relief by not charging any of the visas in queue before August 31, 2000 against the 2001 cap. This has the practical effect of exempting an undetermined number of visas over the 195,000 cap from being counted against it. Estimates vary of the number of H-1B visa

[1] This may be an approved prevailing wage determination from your State Employment Services Agency, an alternative wage survey, or an employer conducted wage survey. If either of the latter, the survey results must be accompanied by the date the survey was issued, the date the survey data was compiled, the number of responding employers, and the geographical area that the survey comprises.

petitions filed before August 31, 2000 and in queue for fiscal year 2001 processing – possibly between 30,000 and 50,000.

H-1B Change of Employer Petitions

The new law[2] provides immediate employment authorization for H-1B transfer employees providing that they meet the following three requirements:

1. The alien was lawfully admitted into the United States,
2. The new employer filed a nonfrivolous petition for new employment *before* the alien's previous authorization of stay expired, and
3. The alien has not worked without authorization in the US since his or her last lawful admission.

These requirements are relatively clear, but some specific issues may not be clarified until INS passes regulations to implement this new law. The questions that immediately arise from this legislation are three:

1. When can H-1B transfers begin working – i.e. when will INS deem a case *filed*?
2. Can aliens who had H-1B status in the past, but are currently in some other work authorized status like L-1 benefit from this immediate work provision?
3. To what extent will employers be held liable for H-1B workers who have worked without authorization since last lawfully admitted to the US?

Employers should address these important questions now because INS may not issue implementing regulations for several months. And if those regulations appear to restrict the intended scope of ACTFCA's H-1B transfer provisions, litigation to challenge them may further delay clear guidance.

Although *no one* knows what INS will attempt to do with implementing regulations, we can review this law as it is written as well as look to other INS implementing regulations.

When Can Transfers Start Working?

This issue arises only because employers must complete a form I-9 within three business days of hiring a new employee. That form requires that the new employee submit evidence of authorization to work in the United States. Because H-1B visas are employer-specific, an H-1B for a different employer is insufficient. So what is sufficient under the new law? The new law states that the H-1B worker may accept new employment "upon the filing by the prospective employer of a new petition on behalf of such nonimmigrant." So the question becomes: when is *upon the filing*?

There are four possible times that this can be: (1) the day the case is sent, (2) the day INS receives the case, (3) the day the employer receives the receipt notice, (4) when INS deposits the filing fee check, or (5) the date INS sends some other type of notice that it may develop to implement this new law. **It is not possible to safely say which**

[2] ACTFCA Section 105 – INCREASED PORTABILITY OF H-1B STATUS.

of these options INS will adopt into new regulations. Employers are left to determine policy depending on risk aversion.

The safest option is for the employer employ the new worker only after receiving the INS I-797 receipt notice – this generally arrives 7 to 10 days after INS receives the case, but INS occasionally will take up to one month to issue receipt notices. The employer can then use this receipt notice to complete the I-9 form.

More eager employers may take an additional undetermined risk by employing the worker before receiving the I-797 notice. Employers that wish to take this additional risk must use some documentation that the case has been filed to complete the I-9. This may be an attorney-certified copy of the petition package and the mailing receipt, a copy of the cancelled check deposited by INS and identified in the memo section as applying to a specific petitioner and beneficiary, or perhaps some combination of these documents.

Unlimited H-1B Extensions for Certain H-1B Visa Holders

Before ACTFCA, H-1B employers and employees often worried about long Department of Labor and INS processing times as the employee-beneficiary's maximum stay in H-1B status approached.[3] ACTFCA provides that an H-1B worker may receive unlimited one-year extensions until INS adjudicates his or her case[4] provided that at least one year has passed since:

1. The employer filed a labor certification for this employee;
2. A petition for an immigrant worker was filed for this employee

This provision will provide relief only to timely filed applications. Candidates whose employers begin the labor certification process with only a few months remaining on H-1B visas will not likely find help here. But those candidates waiting for longer periods through slow INS or DOL processing will be able to safely remain in the United States.

Increased Greencard Portability

Until ACTFCA, employees who began the employment-based permanent immigration process were forced to remain with the sponsoring employer at the penalty of having to begin the entire process over again. For H-1B workers with a maximum stay of six year in the United States – and a labor certification processing taking between two to five years – this proved a powerful retention tool.

ACTFCA provides that H-1B workers who are the beneficiaries of permanent immigration petitions may change employers and retain eligibility under the original application provided that an application for adjustment of status was pending for at least 180 days at the time that the employee transfers.[5] Although adjustment of status is the last step in the employment-based permanent immigration process, it tends to take

[3] H-1B workers may remain in the United States for a maximum of six years and then must depart the US for a minimum of one year before being eligible again for H-1B or L status.
[4] ACTFCA Section 106.
[5] ACTFCA Section 106(c).

longer than the other steps – adjustment along may require two to three years. This provision will allow increased job mobility for H-1B workers far along in the permanent immigration process.

Greencard Spillover Provision for Per Country Quotas

Employers seeking permanent immigration benefits for certain workers also received favorable treatment under ACTFCA. Congress poses a per country annual quota on employment-based permanent immigration. For beneficiaries from China and India the *additional* wait for an available visa number may be up to three years. Under the pre-ACTFCA regime unused permanent visas available for one country were not available to oversubscribed countries.[6]

ACTFCA ameliorates the current backlog by making unused permanent visas available to oversubscribed countries. It is unclear, however, to what extent this will benefit the backlog. While some improvement is expected, sources at the INS California Service Center noted that the number of unused visas from other countries was relatively small and unlikely sufficient to bring the second and third preference categories current for China and India.

The 1998 American Competitiveness and Workforce Improvement Act

In October 1998 President Clinton signed into law the American Competitiveness and Workforce Improvement Act (ACWIA). This law raised the annual cap on H-1B skilled work visa to 115,000 in 1999, 115,000 in 2000, 107,500 in 2001 and returning to 65,000 in 2002. The annual cap before this increase was 65,000. The increase was the result of intensive lobbying by the information technology industry as well as data and projections anticipating dramatic shortages in skilled information technology workers over the next five to ten years. Although there is some controversy over the extent of this shortage, the IT job market in the Bay Area indicates a severe shortage.

The ACWIA also imposed new burdens on employers seeking to hire H-1B workers. These burdens include new 'attestations' that the employer must make on forms filed with the Department of Labor, certain additional requirements for employers that rely heavily on H-1B skilled labor and increased fines for employers failing to comply with legal requirements. The law also imposed an additional $500 filing fee to be used to train US workers. The total current filing fee for a single H-1B skilled worker is $610. The law mandates that employers pay the entire H-1B filing fee and additional penalties may be levied against employers attempting to recover this cost from the H-1B employee.

II. Tips and Tricks to Speed Processing

Generally, there is little that anyone can do to speed an H-1B petition's processing. Some people promise special results and cult-like procedures that result in improved processing speed, but there is only one way to enjoy processing ahead of the pack, and a few simple ways to avoid unnecessary delays.

[6] ACTFCA Section 104.

First, it is important to understand just why there is no special way to enjoy improved processing times other than an approved expedite request: *all INS service centers process H-1B visas in the order received*.[7] When H-1B petitions arrive at the service center mailroom, service center employees open them and route them to the proper processing unit. The filing fees check is removed and deposited and preliminary case data entered into a database; the case is organized into a file, and a receipt number is issued. Then, the case file is placed on *the shelf*. The cases on the shelf are organized by the order of receipt and service center employees keep piling them on one-by-one in the order of receipt while service center adjudicators pull the cases off of the *other side of the shelf* for processing one-by-one.

Before taking any action to check on a case's status, it is important to consider the implications of this physical ordering system and the incredible volume of cases that each service center processes. Each service center employee has a highly specialized function. The service center itself is organized into highly specialized units. Most inquiries into a case's status result in an order for the file to be retrieved from the adjudication division where the case is processed. This can cause delays; sometimes very long delays. It also may disrupt a very delicate process. INS occasionally loses petitions, applications and case files. So it is best not to disrupt the normal course of processing unless there is a *high likelihood* that a problem has already developed.

A. The H-1B Expedite Request

Many employers are intrigued with the prospect of having an H-1B petition approved in only four to seven days when at certain times of the year ordinary processing takes as long as four months. Stories of affixing red sticky dots to express mail packages and making special incantations abound in human resources and hiring manager circles as well as in foreign technology worker Internet chat rooms.

H-1B expedite requests are seldom granted. California Service Center director Donna Coltice confirmed in a statement made late last year that very few expedite requests would be granted due to past abuses, perhaps two per week. This will give applicants in the area of a 1 in 1,000 chance of winning an approval.[8] Filing an expedite also *adds* several days if not a few weeks to the normal course of processing. *After* an expedite request is denied, the case is placed on the shelf for processing in normal order.

Expedites may be granted only if there is a severe, time-sensitive problem that was not caused by the applicant employer. This problem must result in a significant loss or gain of money or jobs that can be directly remedied by swiftly hiring the listed H-1B beneficiary. Employers who suffer a sufficiently severe problem, but lack the foresight

[7] With the small exception that occasionally cases subject to the annual H-1B cap are segregated and processed at a different rate that those not subject to the cap. This sometimes results in "cap cases" being processed more quickly.

[8] This speculative, illustrative figure results by dividing the number of new H-1Bs issued annually by the number of service centers, then by the number of weeks in each year and then assumes that the California Service Center is slightly more active in H-1B processing than other regional service centers. The California Service Center likely processes a many more H-1Bs due to change of employer petitions.

to take action early will be refused. For example, an employer who submits an expedite request with strong documentation that thirty US workers will be laid off if the subject H-1B expedite is not approved will still be denied if that employer could have taken some ameliorative action earlier.

So a strong expedite will focus on a potential significant loss or gain of jobs for US workers, a loss or gain of money, funding or market share, as well as the reasons that the events leading to the problem were completely unforeseeable.

Generally, INS only approves expedites for senior corporate officers and very highly qualified technical personnel. A company seeking an expedite for an experienced chief executive officer shortly after an existing chief executive officer unexpectedly resigned presents a strong case. Technical personnel with at least a master's degree in the sciences and strong, specialized experience *that is very rare in the industry* may also be good candidates, but *only if all of the requirements for an expedite are met*. Again, it is not enough to have a highly qualified candidate, *or* a severe problem posing a serious potential revenue and job loss that did not result from the employer's failure to plan or take action earlier. Instead, the employer-petitioner must meet *all* of these requirements.

Finally, carelessly filed expedites not only harm employer-petitioners generally, they may harm the employer that filed the petition. An employer and attorney who files unmeritorious expedite requests may frustrate the processing service center resulting in other informal problems later.

The only part of the folklore surrounding expedite requests that is indeed true is the little red sticky dots. Expedites are best sent via express mail to the general California Service Center office address and they should have several red sticky dots affixed to the bottom left corner of the envelope (although many enthusiastic petitioners cover the entire envelope with red sticky dots). Expedite requests should also be accompanied by a California Service Center expedite coversheet which allows mailroom employees and the adjudicating officer to easily identify the grounds on which the expedite request is made.

B. The Little Things that Can Save Days or Weeks

The little things are very important in this process because of the volume of cases passing through the California Service Center. The difference between a good practitioner and a poor one is attention to detail.

Each service center has a wide variety of adjudicators with different training and educational backgrounds. The combination of these differing backgrounds and preferences as well as the informal nature of immigration law results in a wide range of decisions. Poorly prepared applications may be denied or result in Requests for Evidence that cause significant delays. Petition packages should be complete and carefully reviewed. All forms and letters should be reviewed to make certain that they have been signed. The filing fee check should bear the name of the petitioner and beneficiary in the memo section and it can be helpful to include a photocopy of the check in petition package in case INS loses the check during processing.

The California Service Center also prefers an optional green coversheet that assists mailroom employees in routing the case to the proper adjudication division. Cases subject to the cap are also segregated from those not subject to the cap. After the annual cap is reached, it becomes important to carefully identify non-cap cases to avoid the possibility that those cases will be diverted to a section that will not be reviewed until shortly before October 1 when the cap is replenished. It can be helpful to print or write a note on the express mail package and on the form that the case is not subject to the annual cap.

III. Monitoring Processing

A. Service Center Processing Time Reports

Each service center periodically publishes a processing time report that lists the rough amount of time that center is taking to process cases. The California Service Center report is called the "Just-in-Time Report." This report lists case types, like H-1B COS,[9] H-1B EOS,[10] and most other types of cases that the service center processes.

B. Using the INS Direct Telephone Inquiry System

INS Direct is a telephone inquiry system that allows callers to check the status of cases using automated prompts. There are four telephone numbers to INS Direct, one for each INS Regional Service Center. [11] INS uses ordinary US mail when responding to inquiries and issuing approvals, denials, and RFEs.[12] The estimated delay between the date of approval and the date that the approval notice arrives via mail is about seven business days. So checking INS Direct may provide news of an approval, denial or RFE a week before it arrives via mail. This "heads up" may allow a valuable employee to begin work a week earlier than would have otherwise have been possible. To use INS Direct, you must have the Service Center case number.[13]

C. Finding the Never-Received Receipt Number

This section discusses different actions an employer or attorney can take to find out why an application is delayed. Unfortunately, virtually every inquiry into a case's status requires a receipt number. What to do when the receipt notice listing the case number is never received? All four regional service centers share certain policies. One of these

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[9] *Change of Status* means a petition for a beneficiary not already in H-1B status; COS petitions are subject to the annual H-1B cap, currently 115,000.

[10] *Extension of Status* means a petition for a beneficiary *currently* in H-1B status in the United States; a new employer or an existing employer may file an extension of status petition.

[11] California (949) 831-8427, Nebraska (402) 323-7830, Vermont (802) 527-4913, Texas (214) 381-1423.

[12] An RFE is a *Request for Evidence*. INS issues these when it asserts that the filing is incomplete or does not provide some information necessary to determine whether the petition qualifies for the benefit sought.

[13] Nonimmigrant visa petitions are issued a case code. The code begins with WAC – California Service Center, LIN – Nebraska Service Center, EAC — Vermont Service Center, and SRC — Texas Service Center. The format is WAC-00-090-52463: the first three letters indicate the Service Center where the petition was filed, and the second two the year the petition was filed (last two digits of the year).

is to route filing fee checks for collection early in the case adjudicating process. When INS delivers the check for collection to its bank, a service center employee writes the case number on the check. Thus, there are two easy actions that can reveal a case's status before the receipt notice arrives:

- If the filing fee check is cashed, the case has at least been admitted for initial processing, although INS may have lost the file at a later stage

- Requesting a copy of the filing fee check from the bank against which the check was drawn should reveal the case number written in pen on its face

D. Using Fax Inquiry Procedures

IV. Prevailing Wages and Avoiding Fines and Penalties

Readers should note that although alternative prevailing wage survey requirements are the same in all states under Department of Labor guidelines, most states have individual preferences as to the format and supporting information provided. Section IV of the *Handbook* only addresses the preferred format and supporting documents for surveys submitted to the Employment Development Department in California.

A. The Basics on Prevailing and Actual Wages

Under current regulations, employers sponsoring H-1B employees must pay the *higher* of the prevailing or actual wage. The prevailing wage is the "going rate" for similarly employed workers in the same geographical area.[14] The actual wage is the average paid to other similarly situated employees at the same company. Because the law imposes penalties and sometimes fines on employers who fail to pay the higher of the prevailing or actual wage to H-1B workers, it is important to determine the correct wage and maintain a public access file that complies with legal requirements.

The first step is to determine the prevailing wage. Different methods for determining this figure are discussed in the next section. The second step is to determine the actual wage. The actual wage is the mean wage paid to similarly situated employees. For example, if a company has 12 computer programmers under the title "Senior Software Engineer" and the mean wage for this position *within the company* is $91,500 per year and the prevailing wage *outside of the company* is $80,000 per year, the employer must pay a minimum of $91,500 to the new H-1B worker. Although the employer may pay within 5% of the prevailing wage (as discussed below), it may not pay less than the actual wage when the actual wage is controlling. The actual wage *controls* when it is higher than the prevailing wage.

B. EDD Prevailing Wage Determinations and the OES/BLS Regime

[14] "Same area" is defined in the regulations as *the area within normal commuting distance.*

In the late 1980s public displeasure with some US employers hiring foreign skilled workers for below market wages resulted in the Immigration Control and Reform Act of 1990. That Act required the Department of Labor to devise a system for determining prevailing wages for certain occupations in different areas of the United States. The prevailing, or mean wage for a certain occupation in a certain geographical area became the legal minimum wage for H-1B employees intended to work in that area.

The Department of Labor had significant difficulties implementing the data gathering system. Originally, DOL charged the State Employment Services Agencies with obtaining and submitting this data. Because each state collected data in a different manner, this practice lead to gross discrepancies between states for wages covering the same occupations. As a result and in an effort to standardize national prevailing wage methodologies the Occupational Employment Statistics/Bureau of Labor Statistics (OES/BLS) regime was created.

When a prevailing wage determination request is sent to a State Employment Services Agency like California's EDD, the agency attempts to match the job description on the request form with the appropriate job title and description in the Dictionary of Occupational Titles (DOT). The DOT lists more than 10,000 job titles and corresponding descriptions. After locating the appropriate job code, the wage analyst then indexes the DOT code to the appropriate Occupational Employment Statistics (OES) code. That OES code is matched to the OES prevailing wage for the Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) where the proposed employment will occur. (For an example Prevailing Wage Request Form, See Section V. *H.* of this *Handbook*; for an online electronic Prevailing Wage Request Form, visit www.usvisa-law.com/eddpwd.htm). While the OES/BLS regime generally uses data confined to an MSA or PMSA, GAL 1-00 noted that the Department of Labor is mostly concerned with their regulatory mandate that survey wage data be confined to an area *within normal commuting distance*. *General Administration Letter 1-00, issued May 16, 2000.*

The employer is required to pay the higher of the Prevailing Wage or Actual Wage for the *area of intended employment*. The area of intended employment is defined as the area within normal commuting distance of the place of intended employment. The Department of Labor recognizes MSAs and PMSAs as within normal commuting distance and thus in the area of intended employment.

1. Metropolitan Statistical Areas (MSA)

The general concept of a Metropolitan Area (MA) is one of a large population nucleus, together with adjacent communities that have a high degree of economic and social integration with that nucleus.

Each MA must contain either a minimum population of 50,000 or a Census Bureau-defined urbanized area and a total MA population of at least 100,000. An MA comprises one or more counties. An MA may also include one or more outlying counties that have close economic and social relationships with the central county. An outlying county must have a specified level of commuting to the central counties and

also must meet certain standards regarding metropolitan character, such as population density, urban population, and population growth.

2. Primary and Consolidated MSAs (PMSA/CMSA)

If an MA has more than one million persons, primary metropolitan statistical areas (PMSA) may be defined within it. PMSAs consist of a large urbanized county or cluster of counties that demonstrate very strong internal economic and social links, in addition to close ties to other portions of the larger area. When PMSAs are established, the larger area of which they are component parts is designated a consolidated metropolitan statistical area (CMSA).

Metropolitan statistical areas (MSAs) are relatively freestanding MAs and are not closely associated with other MAs. Non-metropolitan counties typically surround MSAs.

The Bureau of Labor Statistics (BLS) compiles OES wage data. PMSAs and MSAs are geographical areas of intended employment that generally comprise several cities or a county. Under Department of Labor guidelines (GAL 2-98, discussed in Section IV. B. below), employers responding to the wage survey must be contained within a geographical area no larger than the MSA or PMSA *where the H-1B worker the employer seeks to cover by that wage survey will work.* OES/BLS data are not always restricted to those areas, but are nonetheless always accepted by DOL when issued by a State Employment Services Agency.

The most shocking problem with OES/BLS data is that it adjusts for only two levels within an occupational description. In other words, for each occupation, OES/BLS data are divided into two levels: Level I and Level II. Under GAL 2-98, a Level I position is one requiring close and direct supervision, while a Level II position is one requiring relatively little supervision.

This two-tiered approach clumps candidates into a low-end or high-end wage with no mid-range. For example, the 1999 OES/BLS wage (effective for 2000) for a Level I Software Engineer in the San Jose PMSA is $23.18 per hour, and the Level II wage for the same position in the same PMSA is $38.98 per hour. This discrepancy forces employers to pay a minimum of these two wages and often results in employees being overpaid or underpaid.

Human resources professionals can be faced with uncomfortable decisions under these circumstances. An unsupervised software engineer with one year of experience should be a Level II. If the employee's manager is paid $65,000 per year and the employee must be paid at least $81,078.40 per year, significant employee morale problems result. And the law requires that the employer post the Labor Condition Application with the H-1B employee's wage in two conspicuous locations to alert other employees to potential wage abuses. The Department of Labor envisions those abuses as underpayment rather than overpayment. But publicized overpayment can result in an ineffective management hierarchy. A manager knowingly paid less than his or her subordinate may express dissatisfaction by inappropriately supervising that employee. And an employee knowingly paid more than his or her manager may also present challenges to management.

C. An Overview of GAL2-98 Wage Survey Requirements

General Administration Letter 2-98 (GAL 2-98) outlines the Department of Labor's requirements for alternative wage surveys for all business immigration purposes. The text of this letter is reproduced in Appendix Section V. *G*.

GAL 2-98 requires State Employment Service Agencies (SESAs), such as the Employment Development Department, to use OES wage data when issuing Prevailing Wage Determinations. And this directive also directs SESAs to accept employer conducted surveys provided that they meet the requirements listed in Item J of GAL 2-98. SESAs are free to use other wage data only when none of these other sources is available.

The employer must pay the higher of the prevailing or actual wage to the prospective H-1B employee. Prevailing wages are discussed in Section IV. *A*. The actual wage is the wage the petitioning employer pays other employees in the same job description. GAL 2-98 also recognizes the employer's right to pay a wage within five percent of the appropriate Prevailing Wage if the Prevailing Wage is controlling, but this five percent variance does not apply when the Actual Wage is controlling.

Another important issue addressed by GAL 2-98 is the designation of two skill levels for all occupational classifications tracked under the OES/BLS survey regime. This designation separates positions into skill levels I and II. Level I comprises beginning level employees who perform routine or moderately complex tasks that require limited exercise of judgment and close supervision. Level II employees are fully competent employees with sufficient experience to plan and conduct work requiring independent judgment in solving unusual and complex problems. Level II employees receive only technical guidance. Positions requiring advanced degrees where a bachelor's degree is normally required for entry into the occupation are deemed Level II positions. Positions requiring state licensure are also generally deemed Level II.

Finally, GAL 2-98 sets forth the requirements for alternative prevailing page determinations. Those requirements are discussed in more detail in the next section, Section IV. *C*.

D. Guidelines for Conducting California EDD Compliant Wage Surveys

What are the advantages of conducting an independent wage survey? OES/BLS wage survey data may be inaccurate in the amount $10,000 or more *for a single employee's salary*. Employers hiring twenty H-1B skilled workers over a period of one or two years using prevailing wages as inaccurate as in this example will be penalized by paying more than $200,000 in excess salary. Employers unable to obtain alternative wage surveys satisfying GAL 2-98 that hire several employees for the same job title in the same geographical area may find an employer-conducted survey economical.

Employers are free to conduct independent wage surveys to establish a prevailing wage under GAL 2-98. While the employer's survey results may be directly submitted to the Department of Labor as an entry on the Labor Condition Application, this practice increases the employer's risk of fines and penalties. If the Department of Labor finds

that the employer's survey did not meet GAL 2-98 requirements, the employer may be liable to the H-1B employee for back wages equal to the difference between the employer's wage data and the prevailing wage that the Department of Labor finds appropriate. Employers obtaining Employment Development Department approval of independent, employer-conducted wage surveys decrease the risk of a later finding of a failure to comply.

The agency in California charged with reviewing independent, employer wage surveys is the Wage Research Unit of EDD's Labor Market Information Division (LMID/WRU). Only about twenty-five percent of independent wage surveys submitted to the Wage Research Unit are approved. This low approval rate results from employers failing to observe EDD's preferences regarding these surveys. While GAL 2-98, discussed above, provides DOL rules for complying surveys, EDD has certain preferences for the detail and format of information submitted. EDD issued guidelines for employer conducted wage surveys in October 1998.

In addition to following GAL 2-98 requirements, employers should observe additional EDD preferences and make certain to include supporting information in the submission.

DOL requirements observed by EDD include:

- Wage data should be submitted within 24 months of the date its collection
- At least eight employers must respond to the survey
- All responding employers must be located in the same MSA or PMSA as the actual job location
- If possible, surveys should be across industries

Some additional requirements include:

- Contact each employer in the sample and request to speak to someone in the position of knowing salaries, for example a human resources official or administrator
- Record the name, job title and phone number of this contact person
- Read the job description to that person to determine if the employer currently employs people in the same job
- Ask the employer for the pay of each current employee in that job description, *not what the theoretical pay would be for such a person*
- If the wage in question is for an entry-level person who performs the job under close supervision, ask if the employer has any workers in that category. Please note that there may be different wages for entry-level workers depending on factors such as their skill or expertise at the time of hire

- If the wage in question is for a journey-level person who can perform with a minimum level of supervision or who exercises a high level of independent thinking, ask what the actual pay is for such an individual. Please note that there may be different wages for journey level workers as well.

- Collect information from the company spokesperson for each employee in the occupation at each wage level. Include commissions, but exclude bonuses or non-cash compensation such as housing. Wages must be expressed in one consistent time basis (i.e. yearly, monthly, weekly , or hourly). Use one full time year equal to 2,080 hours or 52 weeks.

- Calculate the weighted average of all responses. Multiply the number of employees at each wage rate by that wage rate, then add all individual results together and divide this sum by the total number of employees of all companies surveyed.

The above documentation should then be submitted to the Labor Market Information Division or the Alien Labor Certification Office for review. Employer-conducted surveys must include at least the following information:

- Job description used in the survey
- Steps taken to select the employer sample
- Description of the geographic area covered by the survey
- The name and address of each employer in the sample (minimum of eight affirmative responses required)
- The Name, telephone number and job title of the contact person who provided the information
- Number of employees and the actual pay for the specific job description
- A weighted average wage of all companies surveyed – *All calculations must be shown*

Employers should also use the spreadsheet format preferred by the Employment Development Department. An example of this preferred format may be found in the Appendix Section V. *I*.

When planning the survey, the employer should attempt to survey across industries. For example, an Internet company seeking a Level I Software Engineer should survey Internet companies and software companies, as well as other companies outside of the computer industry such as an insurance company, media company or retail company if possible.

E. The INS/DOL Penalty Mechanism and Failures to Comply

VIOLATION	PENALTY
Inadvertent Failure to Comply with Attestations, Labor	Employer may be liable for a $1,000 fine for each violation. Additionally, the Attorney General shall

Condition Application Posting Requirements, Legal Requirements, or Inaccurate Representations of Fact	not approve H-1B petitions or employment-based greencard petitions filed by that employer for one year.
Willful Misrepresentation of Fact or Willful Failure to Comply	Employer may be liable for a $5,000 fine for each violation. Additionally, the Attorney General shall not approve H-1B petitions or employment-based greencard petitions filed by that employer for two years.
Willful Misrepresentation of Fact or Willful Failure to Comply that Displaces a US Worker at the Same Employer within the 90 days before an after any visa petition filing.	Employer may be liable for a $35,000 fine for each violation. Additionally, the Attorney General shall not approve H-1B petitions or employment-based greencard petitions filed by that employer for three years.

V. Appendix

A. Sample H-1B Visa Petition Form (INS Form I-129 with H Supplement)

Page One I-129H

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0168
Petition for a Nonimmigrant Worker

START HERE - Please Type or Print

Part 1. Information about the employer filing this petition.
If the employer is an individual, use the top name line. Organizations should use the second line.

Family Name	Given Name	Middle Initial
Company or Organization Name		
Address - Attn:		
Street Number and Name		Apt. #
City	State or Province	
Country	Zip/Postal Code	
IRS Tax #		

Part 2. Information about this Petition.
(See instructions to determine the fee)

1. **Requested Nonimmigrant classification:**
(write classification symbol at right) _____
2. **Basis for Classification** (check one)
   a. ☐ New employment
   b. ☐ Continuation of previously approved employment without change
   c. ☐ Change in previously approved employment
   d. ☐ New concurrent employment
3. **Prior Petition.** If you checked other than "New Employment" in item 2 (above) give the most recent prior petition numbers for the worker(s):
_____
4. **Requested Action:** (check one)
   a. ☐ Notify the office in Part 4 so the person(s) can obtain a visa or be admitted (NOTE: a petition is not required for an E-1, E-2, or R visa)
   b. ☐ Change the person(s) status and extend their stay since they are all now in the U.S. in another status (see instructions for limitations). This is available only where you check "New Employment" in item 2, above.
   c. ☐ Extend or amend the stay of the person(s) since they now hold this status.
5. **Total number of workers in petition:**
_____
(See instructions for where more than one worker can be included)

Part 3. Information about the person(s) you are filing for.
Complete the blocks below. Use the continuation sheet to name each person included in this petition.

If an entertainment group, give their group name.		
Family Name	Given Name	Middle Initial
Date of Birth (Month/Day/Year)	Country of Birth	
Social Security #	A #	
If in the United States, complete the following:		
Date of Arrival (Month/Day/Year)	I-94 #	
Current Nonimmigrant Status	Expires (Month/Day/Year)	

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
Interviewed ☐ Petitioner ☐ Beneficiary	

Class: _____
# of Workers: _____
Priority Number: _____
Validity Dates: From _____ To _____

☐ **Classification Approved**
☐ Consulate/POE/PFI Notified
At: _____
☐ Extension Granted
☐ COS/Extension Granted

Partial Approval (explain)

Action Block

To be Completed by Attorney or Representative, if any
☐ Fill in box if G-28 is attached to represent the applicant
VOLAG#
ATTY State License #

Form I-129 (Rev. 12/11/91)N *Continued on back.*

Part 4. Processing Information

a. If the person named in Part 3 is outside the U.S. or a requested extension of stay or change of status cannot be granted, give the U.S. consulate or inspection facility you want to be notified if this petition is approved.

Type of Office (check one): ☐ Consulate ☐ Pre-flight inspection ☐ Port of Entry

Office Address (City) U.S. State or Foreign Country

Person's Foreign Address

b. Does each person in this petition have a valid passport?
☐ Not required to have passport ☐ No - explain on separate paper ☐ Yes

c. Are you filing any other petitions with this one? ☐ No ☐ Yes - How many? _____

d. Are applications for replacement/Initial I-94's being filed with this petition? ☐ No ☐ Yes - How many? _____

e. Are applications by dependents being filed with this petition? ☐ No ☐ Yes - How many? _____

f. Is any person in this petition in exclusion or deportation proceedings? ☐ No ☐ Yes - explain on separate paper

g. Have you ever filed an immigrant petition for any person in this petition? ☐ No ☐ Yes - explain on separate paper

h. If you indicated you were filing a new petition in Part 2, within the past seven years has any person in this petition:

1) ever been given the classification you are now requesting? ☐ No ☐ Yes - explain on separate paper

2) ever been denied the classification you are now requesting? ☐ No ☐ Yes - explain on separate paper

i. If you are filing for an entertainment group, has any person in this petition not been with the group for at least 1 year?
☐ No ☐ Yes - explain on separate paper

Part 5. Basic Information about the proposed employment and employer.
Attach the supplement relating to the classification you are requesting.

Job Title | Nontechnical Description of Job

Address where the person(s) will work if different from the address in Part 1.

Is this a full-time position? ☐ No - Hours per week ☐ Yes | Wages per week or per year

Other Compensation (Explain) | Value per week or per year | Dates of Intended employment From: To:

Type of petitioner - check one ☐ U.S. citizen or permanent resident ☐ Organization ☐ Other - explain on separate paper

Type of business | Year established

Current number of employees | Gross Annual Income | Net Annual Income

Part 6. Signature.
Read the information on penalties in the instructions before completing this section.

I certify, under penalty of perjury under the laws of the United States of America, that this petition, and the evidence submitted with it, is all true and correct. If filing this on behalf of an organization, I certify that I am empowered to do so by that organization. If this petition is to extend a prior petition, I certify that the proposed employment is under the same terms and conditions as in the prior approved petition. I authorize the release of any information from my records, or from petitioning organization's records, which the Immigration and Naturalization Service needs to determine eligibility for the benefit being sought.

Signature and title | Print Name | Date

Please note: If you do not completely fill out this form and the required supplement, or fail to submit required documents listed in the instructions, then the person(s) filed for may not be found eligible for the requested benefit, and this petition may be denied.

Part 7. Signature of person preparing form if other than above.

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature | Print Name | Date

Firm Name and Address

OMB No. 1115-0168

U.S. Department of Justice
Immigration and Naturalization Service

H Classification
Supplement to Form I-129

Name of person or organization filing petition:

Name of person or total number of workers you are filing for:

List the alien's and any dependent family members' prior periods of stay in H classification in the U.S. for the last six years. Be sure to list only those periods in which the alien and/or family members were actually in the U.S. in an H classification. If more space is needed, attach an additional sheet.

Classification sought (check one):

- ☐ H-1A Registered Professional nurse
- ☐ H-1B1 Specialty occupation
- ☐ H-1B2 Exceptional services relating to a cooperative research and development project administered by the U.S. Department of Defense
- ☐ H-1B3 Artist, entertainer or fashion model of national or international acclaim
- ☐ H-1B4 Artist or entertainer in unique or traditional art form
- ☐ H-1B5 Athlete
- ☐ H-1BS Essential support personnel for H-1B entertainer or athlete
- ☐ H-2A Agricultural worker
- ☐ H-2B Nonagricultural worker
- ☐ H-3 Trainee
- ☐ H-3 Special education exchange visitor program

Section 1. Complete this section if filing for H-1A or H1B classification.

Describe the proposed duties

Alien's present occupation and summary of prior work experience

Statement for H-1B specialty occupations only:

By filing this petition, I agree to the terms of the labor condition application for the duration of the alien's authorized period of stay for H1-B employment

Petitioner's Signature — Date

Statement for H-1B specialty occupations and DOD projects:

As an authorized official of the employer, I certify that the employer will be liable for the reasonable costs of the return transportation of the alien abroad if the alien is dismissed from employment by the employer before the end of the period of the authorized stay.

Signature of authorized official of employer — Date

Statement for H1-B DOD projects only:

I certify that the alien will be working on a cooperative research and development project under a reciprocal Government-to-Government agreement administered by the Department of Defense.

DOD project manager's signature — Date

Section 2. Complete this section if filing for H-2A or H-2B classification.

Employment is: (check one)
- ☐ Seasonal
- ☐ Peakload
- ☐ Intermittent
- ☐ One-time occurrence

Temporary need is: (check one)
- ☐ Unpredictable
- ☐ Periodic
- ☐ Recurrent Annually

Explain your temporary need for alien's services (attach a separate paper if additional space is needed).

Form I-129 Supplement H (12/11/91) N

Continued on back.

Section 3. Complete this section if filing for H-2A classification.

The petitioner and each employer consent to allow government access to the site where the labor is being performed for the purpose of determining compliance with H-2A requirements. The petitioner further agrees to notify the Service in the manner and within the time frame specified if an H-2A worker absconds or if the authorized employment ends more than five days before the relating certification document expires, and pay liquidated damages of ten dollars for each instance where it cannot demonstrate compliance with this notification requirement. The petitioner also agrees to pay liquidated damages of two hundred dollars for each instance where it cannot be demonstrated that the H-2A worker either departed the United States or obtained authorized status during the period of admission or within five days of early termination, whichever comes first.

The petitioner must execute Part A. If the petitioner is the employer's agent the employer must execute Part B. If there are joint employers, they must each execute Part C.

Part A. Petitioner:

By filing this petition, I agree to the conditions of H-2A employment, and agree to the notice requirements and limited liabilities defined in 8 CFR 214.2 (h) (3) (vi).

Petitioner's signature Date

Part B. Employer who is not petitioner:

I certify that I have authorized the party filing this petition to act as my agent in this regard. I assume full responsibility for all representations made by this agent on my behalf, and agree to the conditions of H-2A eligibility.

Employer's signature Date

Part C. Joint Employers:

I agree to the conditions of H-2A eligibility.

Joint employer's signature(s) Date

Joint employer's signature(s) Date

Joint employer's signature(s) Date

Joint employer's signature(s) Date

Joint employer's signature(s) Date

Section 4. Complete this section if filing for H-3 classification.

If you answer "yes" to any of the following questions, attach a full explanation.

a.	Is the training you intend to provide, or similar training available in the alien's country?	☐ No	☐ Yes
b.	Will the training benefit the alien in pursuing a career abroad?	☐ No	☐ Yes
c.	Does the training involve productive employment incidental to training?	☐ No	☐ Yes
d.	Does the alien already have skills related to the training?	☐ No	☐ Yes
e.	Is this training an effort to overcome a labor shortage?	☐ No	☐ Yes
f.	Do you intend to employ the alien abroad at the end of the training?	☐ No	☐ Yes

If you do not intend to employ this person abroad at the end of this training, explain why you wish to incur the cost of providing this training, and your expected return from this training.

B. General Administration Letter 2-98

General Administration Letter 2-98
Date: October 31, 1997

Directive: General Administration Letter No. 2-98

To: All State Employment Security Agencies

From: Wendy L. McConnell
Acting Administrator for Regional Management

Subject: Prevailing Wage Policy for Nonagricultural Immigration Programs

1. Purpose. To provide policy clarification and procedural guidance for making prevailing wage determinations for nonagricultural immigration programs subsequent to the implementation of the wage component of the Occupational Employment Statistics program.

2. References. 20 CFR part 655, subpart A; 20 CFR part 655, subparts H and I; 20 CFR part 656; and Technical Assistance Guide (TAG) No. 656 Labor Certifications.

3. Background. Over the past two years, the Employment and Training Administration (ETA) has been considering proposals for reengineering the process used by the States to determine prevailing wages in order to increase the timeliness of responses to employer requests, insure the use of a consistent methodology by all States, and to maximize the accuracy of the determinations. As a result of this activity, it was determined that the most efficient and cost effective way to develop consistently accurate prevailing wage rates is to use the wage component of the Bureau of Labor Statistics' expanded Occupational Employment Statistics (OES) program.

Effective January 1, 1998, State Employment Security Agencies (SESAs) are to implement the attached prevailing wage policy for nonagricultural immigration programs. The OES wage data should not be used for alien certification purposes until that date unless there are no other sources of wage data for a particular occupational classification and area. The validity of SESA surveys or published surveys which were to expire October 1, 1997, pursuant to GAL 2-97, "Changes in the Prevailing Wage Process for Labor Certification During Fiscal Year 1997," is hereby extended through December 31, 1997. The policy guidance provided in this document supersedes that contained in GAL No. 4-95 (May 18, 1995) effective January 1, 1998.

4. Action Required. State Administrators are requested to:
A. Provide the attached policy and procedural guidance to appropriate staff.
B. Instruct staff to follow these policies and procedures in making prevailing wage determinations under the permanent and H-2B temporary labor certification programs as well as under the H-1B nonimmigrant program for professionals in specialty occupations or as fashion models of distinguished merit and ability.

5. Inquiries. Inquiries regarding this memorandum should be addressed to the appropriate regional certifying officer.

6. Attachment. Prevailing Wage Policy for Nonagricultural Immigration Programs.

Attachment to GAL No. 2-98

Prevailing Wage Policy for Nonagricultural Immigration Programs

Table of Contents

PREVAILING WAGE POLICY FOR NONAGRICULTURAL IMMIGRATION PROGRAMS

I. Background

In arriving at prevailing wage determinations, the same policies and procedures shall be followed for the permanent labor certification program, the nonimmigrant program pertaining to H-1B professionals in specialty occupations or as fashion models of distinguished merit and ability, and the H-2B temporary nonagricultural labor certification program. The implementation of the wage component of the Occupational Employment Statistics (OES) program requires that policy clarification and procedural guidance be issued to ensure consistency among State Employment Security

Agencies (SESAs) in making prevailing wage determinations.

II. General Prevailing Wage Policy

A. Summary

In determining prevailing wages for the permanent and H-2B temporary labor certification programs and the H-1B program the regulatory scheme at 20 CFR 656.40 must be followed. Where a wage determination has been issued under the Davis-Bacon Act (DBA) or the Service Contract Act (SCA), or negotiated in a collective bargaining agreement, that rate shall be controlling. In the absence of a wage determination issued under the DBA, SCA, or a collective bargaining agreement, SESAs are to determine prevailing wage rates using wage surveys conducted under the wage component of the OES program. In the absence of a wage determination under the DBA, SCA, or a collective bargaining agreement, if the employer provides the SESA with a survey, whether public or private, which meets the requirements described in item J of this General Administration Letter that rate shall be used by the SESA as the prevailing wage determination in response to that particular request. Where no wage determination exists under any of the above sources and the SESA is aware of alternative sources of wage information, whether public or private, the SESA may utilize that wage data for prevailing wage purposes as long as it meets the criteria established in item J with regard to the adequacy of employer-provided wage data.

The methodology in any type of survey must reflect the average (arithmetic mean) rate of wages, that is, the rate of wages to be determined, to the extent feasible, by adding the wages paid to workers similarly employed in the area of intended employment and dividing the total by the number of such workers. This will, by definition of the term arithmetic mean, usually require computing a weighted average. Surveys which list a median or modal wage rate may not be used. The regulations also provide that the wage offered by the employer shall be considered as meeting the prevailing wage standard if it is within 5 percent of the average rate of wages. The 5 percent variance does not apply to prevailing wage determinations based on DBA or SCA determinations nor does it apply to wages set forth in negotiated union agreements.

However, SESAs and employers should be aware that the Department's enforcement policy under the H-1B program does not allow a 5 percent variance if back wages are assessed as a result of an investigation conducted of an H-1B employer. In the H-1B program, the required wage rate is the higher of either the "actual wage" (see §655.731(a)(1)) or the "prevailing wage" (see §655.731(a)(2)). Where the required wage is the prevailing wage and if an employer pays a rate that is no less than 95 percent of the prevailing rate of wages, no violation will be found. However, if the employer is found to have paid less than 95 percent of the prevailing wage, a violation will be cited and back wages will be assessed and due based on 100 percent, not 95 percent, of the prevailing rate. The 5 percent variance does not apply where the required rate is the actual wage.

In issuing wage determinations the SESAs may be required to convert an

hourly rate to a weekly, monthly or annual rate, or to convert a weekly, monthly or annual rate to an hourly rate. As a matter of policy, such conversions shall be based on 2,080 hours of work in a year.

B. "Similarly Employed"

Section 656.40 defines "similarly employed" as having substantially comparable jobs in the occupational category in the area of intended employment, except that if no such workers are employed by employers other than the employer applicant in the area of intended employment, "similarly employed" means:

(1) Having jobs requiring a substantially similar level of skills within the area of intended employment; or

(2) If there are no substantially comparable jobs in the area of intended employment, having substantially comparable jobs with employers outside of the area of intended employment. Occupations within an OES code will be considered as meeting the criteria of similarly employed as defined above.

C. "Area of Intended Employment"

A clear understanding of the definition of "area of intended employment" is necessary to properly implement the regulation at 20 CFR 656.40. The definition of "area of intended employment" at 20 CFR 656.3 states that the: Area of intended employment means the area within normal commuting distance of the place (address) of intended employment. If the place of intended employment is within a Metropolitan Statistical Area (MSA), any place within the MSA is deemed to be within the normal commuting distance of the place of intended employment.

A determination of the normal commuting distance is not necessary for places of employment within an MSA since any place within an MSA is deemed to be within normal commuting distance. Although not specifically mentioned in the definition of "area of intended employment," any place within a Primary Metropolitan Statistical Area (PMSA) is also deemed to be within normal commuting distance of the place of intended employment, since PMSAs are derived from MSAs. For prevailing wage purposes, however, commuting distance will not be extended to Consolidated Metropolitan Statistical Areas. Counties not within an MSA or PMSA have been combined into "Balance of State" areas within each State. The allocation of the counties into Balance of State areas included consideration of prevailing commuting patterns. Counties within each Balance of State area are, for prevailing wage purposes, within the same area of intended employment.

The same OES wage for the same occupation should be used by the SESA for every location within the MSA, PMSA, or appropriate Balance of State area. In cases of cross-State MSAs/PMSAs, the OES data incorporates survey findings from the entire cross-State area, and will show the same information for all States affected by the cross-State MSA/PMSA.

D. Nature of the Job

Under § 656.40, the relevant factors in arriving at a prevailing wage rate are the nature of the job and the geographic locality of the job. In determining the nature of the job, the first order of inquiry is to determine the appropriate occupational classification. The Dictionary of Occupational Titles (DOT) job description that corresponds to the employer's job offer will normally be used to assign to the job the relevant 9-digit DOT code. The relevant DOT code will then be cross walked to an SCA or OES occupational code, as appropriate. If the job opportunity does not exist in the DOT, the SESA should default directly to the relevant SCA or OES occupational code. In the case of combination jobs, e.g., engineer-pilot, the prevailing wage determination should be based on the SCA or OES code for the highest paying occupation.

E. Determining Similar Levels of Skills

In determining which occupational categories in the area of intended employment require levels of skills similar to those involved in the employer's job offer, information contained in the Dictionary of Occupational Titles, the Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles, and, in particular, the Guide to Occupational Exploration code can be very helpful. If it is necessary to use these guides, the process will lead to a DOT classification which must then be crosswalked to the appropriate SCA or OES code.

F. Expansion of the Area of Intended Employment

The OES survey data will represent all responding employers in the area of intended employment who employ workers in that OES occupational code. If the OES survey does not include enough responses in that area and occupation to allow BLS to publish the data, the OES system will first default to all MSAs, PMSAs, and Balances of State areas contiguous to the requested area within that State. If this still does not result in publishable data, the system will default to statewide information for that occupation. Because of the size of the sample, it is unlikely this will occur except in very unusual occupations or in small States.

G. Separate Wage Systems

It cannot be overemphasized that the nature of the employer is not a relevant factor in making prevailing wage determinations. As noted above, the relevant factors are the job and the geographic locality of the job.

It has been determined that the language on pages 122 and 123 of Technical Assistance Guide No. 656 Labor Certifications (TAG) which indicates that an employer may challenge a finding as to the prevailing wage for an occupation, such as school teaching, on the basis that there are separate prevailing wages applicable to employment in public and private schools, is not supportable by the regulation at § 656.40. As stated by the Board of Alien Labor Certification Appeals (BALCA) in Hathaway Children's Service 91-INA-388, February 4, 1994, in relevant part, "(t)he underlying purpose of establishing a prevailing wage is to establish a minimum level of wages

for workers employed in jobs requiring similar skills and knowledge levels in a particular locality." Factors going to the nature of the employer, such as whether the employer is public or private, profit or nonprofit, large or small, charitable, a religious institution, a job contractor, or a struggling or prosperous firm, do not bear in a significant way on the skills and knowledge levels required and, therefore, are not relevant to determining the prevailing wage for an occupation under the regulations at 20 CFR 656.40. Consequently, OES wage rates are based upon cross-industry surveys.

H. Skill Levels in Wage Determinations

The level of skill required by the employer for the job opportunity is to be considered in making prevailing wage determinations. The OES wage survey will produce two wage levels which distinguish between positions requiring significantly different degrees of skills in the occupation. The SESA will determine which of the two levels in the OES survey is appropriate, i.e., a distinction must be made based on whether or not the job opportunity involved in the employer's job offer requires skills at a level I or a level II, as defined below.

To establish uniformity among SESAs in evaluating surveys and making prevailing wage determinations within the resources available for immigration programs, prevailing wage rates for the skill levels described below should be determined in an occupation when the SESA makes a prevailing wage determination.

1. Level I

Beginning level employees who have a basic understanding of the occupation through education or experience. They perform routine or moderately complex tasks that require limited exercise of judgment and provide experience and familiarization with the employer's methods, practices, and programs. They may assist staff performing tasks requiring skills equivalent to a level II and may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Work is closely monitored and reviewed for accuracy.

2. Level II

Fully 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. They may supervise or provide direction to staff performing tasks requiring skills equivalent to a level I. These employees receive only technical guidance and their work is reviewed for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations.

If a baccalaureate degree is normally required for entry into the occupation, the wage rate for a job offer in that occupation which requires an advanced degree (Masters or Ph.D.) shall be the rate for workers performing tasks requiring skills at a level II. In this case, the requirement for advanced education substitutes for the skills required at a level II. Where an advanced degree is normally required for entry into the occupation, the wage rate for a job offer in that occupation which requires such a degree shall be the rate for workers performing tasks requiring skills at a level I, unless there are other requirements contained in the job offer or components thereof which require skills that are at a level II. For example, a job opportunity for a librarian, an occupation for which a Master's degree is normally required for entry into the occupation, would generally be considered to require skills at a level I, unless other requirements in the job offer or components thereof require skills at a level II.

Where State licensure is required for an individual to independently perform all of the duties encompassed by the occupation, such workers shall be considered to be performing work requiring skills at a level II, unless the employer can present sufficient evidence that the alien does not, in fact, independently perform all of the duties encompassed by the occupation.

I. Responses to Requests for Wage Determinations

To enable SESAs to provide employers or their representatives accurate wage determinations that take into account the employer's particular job and its requirements, all requests for and responses to wage determinations will be in writing. The requests should specify the employer's title for the job, a brief description of the job duties, the education, training and experience requirements, and any other information deemed necessary by the SESA for case processing or tracking. The name and address of the employer, contact person and telephone number, and the city or county of intended employment, if different from the employer's address, should be indicated.

The SESA's responses shall state the specific wage rate applicable to the employer's job opportunity and indicate the source of such information. The response shall also specify in bold letters that the rate is valid for filing applications and attestations for 90 days from the date of the response.

Responses to requests for a prevailing wage determination should be sent to the employer or its representative in writing in a timely manner, preferably within 14 working days of receipt of the request. If the employer provides to the SESA its own published or privately-funded survey and requests SESA acceptance of the survey's use for prevailing wage purposes, responses to such requests should be sent to the employer or its representative in writing in a timely manner, preferably within 30 working days of the receipt of the request. If the employer's survey is not accepted, the response to the employer shall include the reasons why the survey is not acceptable (e.g., the survey presented only the median wage rate, or the geographic area covered by the survey is broader than that which is necessary to obtain a representative sample), and shall provide

the employer with the appropriate prevailing wage rate as derived from the SCA or OES survey data, as appropriate.

Lastly, it is important to note that §656.40(c) provides that a prevailing wage determination for labor certification [or labor condition application] purposes shall not permit an employer to pay a wage lower than that required under any other Federal, State, or local law. For example, if the OES wage rate is lower than the Federal, State, or local minimum wage, the response to the employer's request should indicate that the employer must offer at least the minimum wage provided by Federal, State, or local law, whichever is higher. Since the OES wage data is collected in the year prior to the data being available to the SESA, this may occur in some instances.

J. Use of Employer-Provided Published Wage Surveys or Employer-Conducted

Surveys

In determining prevailing wage rates in the absence of a wage determination issued pursuant to the DBA, the SCA, or an applicable wage rate from a collective bargaining agreement, the SESA shall consider wage data that has been furnished by the employer, i.e., wage data contained in a published wage survey that has been provided by the employer, or wage data contained in a survey that has been conducted or funded by the employer. The use of such employer-provided wage data is an employer option. However, if an employer wishes to use alternative wage data, it will be incumbent upon the employer to make a showing that the survey or other wage data meet the criteria outlined below. In all cases where an employer submits a survey or other wage data for which it seeks acceptance, the employer must provide the SESA with enough information about the survey methodolgy (e.g., sample frame size and source, sample selection procedures, survey job descriptions) to allow the SESA to make a determination with regard to the adequacy of the data provided and its adherence to these criteria. If the employer does not present sufficient information with its request, the SESA shall request such additional information from the employer as may be necessary to make the determination. Information from employers that consists merely of speculation, subjective impressions, or pleas that it cannot afford to pay the prevailing wage rate determined by the SESA cannot be taken into consideration in making a wage determination.

(1) The data upon which the survey was based must have been collected within 24 months of the publication date of the survey or, if the employer itself conducted the survey, within 24 months of the date the employer submits the survey to the SESA.

(2) If the employer submits a published survey, it must have been published within the last 24 months and it must be the most current edition of the survey with wage data that meet the criteria under this section.

(3) The survey or other wage data must reflect the area of intended employment. A valid arithmetic mean for an area larger than an OES wage area, whether an MSA, PMSA, or an OES Balance of State area, may

only be used if there are not sufficient workers in the specific occupational classification relevant to the employer's job opportunity in the area of intended employment. However, the area of intended employment should not be expanded beyond that which is necessary to produce a representative sample. In all cases where an area that is larger than an OES wage area is used, the employer must establish that there were not sufficient workers in the area of intended employment, thus necessitating the expansion of the area surveyed.

(4) The job description applicable to the employer's survey or other wage data must be an adequate match with the job description contained in the employer's request for acceptance to use the survey or other wage data for prevailing wage purposes. Published wage surveys may not always present an arithmetic mean for job opportunities requiring skills at a level I and level II. In such instances, the arithmetic mean contained in the published survey that most closely conforms with the employer's job opportunity should be used as the basis for the prevailing wage determination. The job description submitted on the request for acceptance of an employer-provided survey or other wage data will be used in determining the appropriate level of skill to be applied.

(5) The wage data must have been collected across industries that employ workers in the occupation.

(6) The survey or other wage data must provide an arithmetic mean (weighted average) of wages for workers in the appropriate occupational classification in the area of intended employment. In all cases where an employer provides the SESA with wage data for which it seeks acceptance, measures of central tendency other than the arithmetic mean, such as the median or modal wage rates, cannot be used as the basis for the prevailing wage determination.

(7) In all cases where an employer provides the SESA with a survey or other wage data for which it seeks acceptance, the employer must include the methodolgy used for the survey to show that it is reasonable and consistent with recognized statistical standards and principles in producing a prevailing wage (e.g., contains a representative sample), including its adherence to these standards for the acceptability of employer-provided wage data.

It is important to note that a prevailing wage determination based upon the acceptance of employer-provided wage data for the specific job opportunity at issue does not supersede the OES wage rate for subsequent requests for prevailing wage data in that occupation.

K. Documentation Issues in Responding to Prevailing Wage Requests

It is incumbent upon SESAs to organize the prevailing wage function and establish controls that will enable them to provide information regarding a particular prevailing wage determination, to answer questions if it is required in an enforcement action conducted by the Department of Labor, and to adequately represent the certifying officer before the Board of Alien

Labor Certification Appeals.

Requests from employers for wage determinations shall be filed in writing with the organizational subcomponent of the SESA responsible for alien labor certification prevailing wage determinations. Only that component shall respond to requests for wage information for immigration purposes. A dated copy of the prevailing wage determination provided to the employer should be maintained by the SESA for two years. The relevant portions of an employer-provided survey must also be maintained with the determination for the requisite period.

L. Challenges to Prevailing Wage Determinations

Employers who wish to challenge prevailing wage determinations made by SESAs in connection with temporary labor certification applications, labor condition applications, and attestations, may do so pursuant to the provisions of the Employment Service Complaint System. See 20 CFR part 658, subpart E. However, under the permanent labor certification program, there are regulatory provisions and procedures that allow employers to file challenges regarding prevailing wage determinations or findings made by SESAs directly with the regional certifying officer.

C. Sample Prevailing Wage Determination Request Form (EDD California)

EDD Employment Development Department
State of California

Gray Davis, Governor
Health and Human Services Agency

EDD/Labor Market Information Division
Occupational Survey Group /Wage Research Unit
FAX (916) 262-2500

For forms or information:
http://www.calmis.ca.gov
Phone (916) 262-2321

PREVAILING WAGE REQUEST FORM

PLEASE DO NOT SUBMIT DUPLICATE REQUESTS. ALLOW 14 WORKING DAYS FOR PROCESSING.

If the job is unionized and/or covered by a negotiated wage, use the negotiated wage and do not submit this Prevailing Wage Request Form.

1. Employer's Business Name _____ ❑ Nonprofit

2. Alien's Name _____ 3. Please check one: ❑ Permanent Case **OR** ❑ H-1B Professional

4. Job Site Address (Number, Street, City, State, Zip Code) _____

5. Job Site County (Where Majority of Work Will Be Performed) _____

6. Nature of Employer's Business Activity	7. Job Title of Position to Be Filled	8. Basic Hours/Week	9. Basic Pay Rate $ Per

10. Describe in detail the specific duties of the job offered. (The description **MUST BEGIN IN THIS SPACE**. It may be continued on an attachment **ONLY** after filling the space provided below.)

11. Job Title of Alien's Immediate Supervisor	12. Number of Workers Alien Will Supervise (If none, enter "**0**.")

13. **State in detail** the MINIMUM qualifications for a worker to perform the job satisfactorily including the type of degree, major field of study, and amount of experience required. If none are required, state "**No specific education required**" and/or "**No experience required.**"

14. Requester _____

Address _____

Contact Person _____ Phone ( ) _____ Fax ( ) _____

DEPARTMENTAL ACTION TO PROVIDE A PREVAILING WAGE DETERMINATION

$_____ per_____ is the current prevailing wage for the job described above. OES Code _____ Skill Level (OES) _____

DOT Code _____ DOT Title _____ SVP _____

Survey Source: ❑ OES/ALC ❑ Service Contract ❑ Davis Bacon ❑ Other _____ Survey Date _____

Survey Area _____ ❑ Local OES Area ❑ OES Expanded (to contiguous counties) ❑ State ❑ U.S.

Research Analyst _____ Phone (916) 262- _____ Date _____

OES/ALC WAGES PROVIDED IN 1999 ARE VALID FOR THE ENTIRE YEAR ENDING DECEMBER 31, 1999.

OTHER PREVAILING WAGES ARE VALID FOR FILING APPLICATIONS AND ATTESTATIONS FOR 90 DAYS FROM THE DATE OF THIS RESPONSE.

IF YOU INTEND TO FILE A PERMANENT ALIEN LABOR CERTIFICATION APPLICATION FOR THIS POSITION, INCLUDE THIS COMPLETED PREVAILING WAGE REQUEST/DETERMINATION WITH YOUR APPLICATION TO EDD'S ALIEN LABOR CERTIFICATION OFFICE.

Rev. 2/99 Employment Development Department /7000 Franklin Blvd. #1100/ Sacramento CA 95823

D. Sample Employer Conducted Wage Survey (EDD California)

Sample Employer Conducted Survey

Job Description: [Describe the job here; make the description clear enough to determine if this is an entry-level or journey-level position]

Sample Selection Procedures: [Describe here the procedures used to select your sample]

Area of Intended Employment: [This means the *geographical area* of intended employment, for example San Jose, San Francisco *or* Oakland. This geographical area must be no larger than the corresponding MSA/PMSA]

Name and Address of Sampled Employer	Name, phone #, and Job Title of Contact Person	Number of Workers Matching Job Description	Wages Paid for that Job	Weighted Wages
Jones Corporation 630 Sansome San Francisco, CA	Mary-Sue Doe (415) 555-5555 Extension 1112	1 2 1	$8.00/hr $7.50 $9.05	$8.00 $15.00 $9.05
Smith Corporation 550 Kearney San Francisco, CA	Bob Jones (415) 551-5555 Extension 1551	1 3 4	$9.00 $8.25 $8.50	$9.00 $24.75 $8.75
ABC Corporation One Nob Hill San Francisco, CA	Rob Martinez (415) 222-2222 Extension 4131	2 3 1	$7.50 $7.75 $8.75	$15.00 $23.25 $8.75
IT Corporation 400 California San Francisco, CA	Lucy Baker (415) 333-4242 Extension 3344	3 1	$8.50 $8.85	$25.50 $8.85
Computers, Inc. 450 Sutter San Francisco, CA	Wanda Roberts (415) 333-5555 Extension 1221	5 2 1	$7.50 $7.75 $9.00	$37.50 $15.50 $9.00
Tech Corp. 320 Pacific San Francisco, CA	John Smith (415) 888-7777 Extension 4544	2 1	$8.00 $8.75	$16.00 $8.75
XYZ Corporation 150 Gough San Francisco, CA	Elaine Kim (415) 777-8888 Extension 5562	1	$8.25	$8.25
Johnson Corporation 1200 Van Ness San Francisco, CA	Arthur Johnson (415) 717-6666 Extension 5500	3 1	$7.75 $8.00	$23.25 $8.00
Weighted Wage Average: [Totals of Column 5 divided by column 3]				($307.40/38) $8.09/hr

E. Sample List of Employees Under a Blanket Labor Condition Application

BLANKET LABOR CONDITION APPLICATION

Senior Software Engineer
ETA Approval No: 4421-6643-2219-8841

SALARY: **$85,200.00**
LOCATION: **Santa Clara, California**
VALIDITY DATES: ***FROM:*** **06/12/00** ***TO:*** **06/12/03**

Name of Employee	Date Filed	Authorized Case Number
1. John SMITH	02 February 2000	WAC-00-034-51684
2. Susan JONES	05 April 2000	WAC-00-055-41618

>>> THERE ARE NO OTHER H-1B EMPLOYEES THAT HAVE USED THIS APPROVED LABOR CONDITION APPLICATION

Directory of Immigration Resources

Websites

- California Employment Development Department
  www.calmis.cahwnet.gov

- Prevailing Wage Request Forms (California)
  www.calmis.cahwnet.gov/htmlfile/programs/pwformnw.pdf (blank form only)
  www.usvisa-law.com/eddpwd.htm (data may be electronically entered on form)

- US Department of State J Visas Skills List
  www.usvisa-law.com/jvisas.htm (listed under "Two Year Foreign Residency Requirement")

- Dictionary of Occupational Titles
  www.oalj.dol.gov/libdot.htm

- US Department of Labor
  www.doleta.gov

- US Department of Justice
  www.usdoj.gov

- Immigration and Naturalization Service
  www.ins.usdoj.gov

- US Department of State
  www.state.gov (General Information)
  www.travel.state.gov (Bureau of Consular Affairs)

- US Information Agency (J Exchange Visitor administration)
  www.usia.gov

- The US Code and Code of Federal Regulations Governing Immigration Law
  www.access.gpo.gov

Telephone Numbers and Addresses

- California Employment Development Department
  Labor Market Information Division
  (916) 262-2321

- INS Forms (automated INS form orders)
  (800) 870-FORM

- United States Information Agency (J Exchange Visitor administration)
  Office of General Counsel
  301 4th Street, S.W.
  Washington, D.C. 20547
  (202) 401-9800