

AQ-s & A-s@ Regarding Level I and Level II Designations in the Alien Employment Certification Program

1. What are the general factors involved in determining that a position should be designated a level I position?

General Administration Letter 2-98 (GAL 2-98) states:

Level I employees are 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, practice, and programs.

They may assist staff performing tasks requiring skills equivalent to a level II and may perform high-level work for training and development purposes.

These employees work under close supervision and receive specific instruction on tasks and results expected.

The level I job can require education and/or experience, but it does not require an advanced level of understanding to perform the job duties. Level I includes "entry level" jobs, but may also include some supervised activities, which exceed those normally, considered as entry level.

With a basic understanding gained through education and/or experience, the level I employee will perform tasks that range from routine to moderately complex, relative to the occupation. The level I employee might exercise some independent judgment, but his/her exercise of independent judgment will be on a limited, non-routine basis.

The level I employee may assist more advanced employees. A level I employee may perform some higher level work under supervision, but the purpose of such work is primarily to gain experience and exposure to other aspects of the employer's operations.

Level I work is closely monitored and reviewed for accuracy.

Level I includes those jobs, which are typically referred to as "entry level positions," but may include jobs, which have activities that normally exceed "entry level" activities.

2. What are the general factors involved in determining that a position should be designated a level II position?

GAL 2-98 states:

Level II employees are *fully competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and 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.*

3. Are certain OES/SOC codes always classified as level II positions?

No. All OES/SOC codes encompass both level I and level II positions. It is improper to classify any job as level I or level II based solely on the OES/SOC code. The OES/SOC survey provides level I and level II wages for all OES/SOC codes, including managerial and professional jobs at the high end, and assistant or helper codes at the low end. Any job may be performed at either level of skill, depending on the level of supervision provided, the relative complexity of the job duties, the level of judgment required, and application of the other factors that distinguish between levels I and II.

4. Are certain Dictionary of Occupational Titles (DOT) codes always classified as level II positions?

No. Further, if the DOT code is used for reference, it should be “cross walked” to the relevant OES/SOC code, and then the job description and requirements should be analyzed to determine whether the particular job is at level I or level II. It should be noted that the DOT to SOC crosswalk is sometimes in error, so the occupation descriptions from the DOT and SOC must be compared before accepting the results of the crosswalk. If the Standard Vocational Preparation (SVP) for the more narrowly defined DOT occupation differs from the SVP/job zone shown on O*Net, the DOT SVP may be used until the O*NET has completed its experience/training survey of the specific occupation being requested.

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5. Since the OES/SOC, DOT, or SVP codes do not indicate whether the job is level I or level II, how can the job description be used to determine whether the job is level I or level II?

The generic occupation descriptions found in the OES/SOC, DOT and similar coding structures do not provide sufficient information to the State Workforce Agency (SWA) to determine whether the job is level I or level II. Close adherence to the generic occupation description, without providing additional information in the job description, can lead to erroneous classifications. The job description should include words describing one or more of the specific relevant factors: the complexity of the job duties, the level of judgment, the amount of

supervision, the nature of supervision, and the level of understanding required to perform the job duties. The job description is the primary determinant for a level designation. Additional information regarding the job will not be given the same weight as the actual wording of the job description or the stated job requirements.

If a job description includes the tasks normally performed by a fully competent employee in the occupation, and the job description does not specifically point to the general factors associated with a level I position, then it will likely be designated a level II position.

6. If an employee has some level II duties, is the job always level II?

Workers at level I may perform some higher level work under supervision, primarily for training and development purposes.

7. Does the place in the employer's hierarchy determine whether a job is level I or level II?

The location of a position within an employer's internal job structure or hierarchy might be one relevant factor in determining whether a job is level I or level II. Workers at a lower level within an employer's hierarchy are more likely to be working under close supervision, and working on tasks that are routine or only moderately complex, consistent with level I. However, the job description is the primary determinant.

8. Is the amount of experience required for a job a relevant factor in determining whether the job is level I or level II?

The amount of experience required for a job is relevant, but not necessarily determinative. Some level I jobs require some experience. Thus, jobs that require experience can be level I, so long as the job description is consistent with the nature of the work performed at level I as described above. Jobs that require significant years of 4 experience are more likely to be level II jobs. There is, however, no fixed amount of experience that divides level I from level II.

When an employer requests training/experience that exceeds the SVP/job zone for the occupation requested, it is assumed this is a level II position unless the employer provides adequate evidence that it is a level I. It should be noted that, until the DOT SVP is superseded by a revision to the occupation's Job Zone/SVP based on the O*NET study of the occupation's training and experience, if the employer can show evidence that the DOT SVP for the DOT occupation being requested varies from the job zone for the appropriate OES/O*NET occupation, that DOT SVP may be used in a level I/level II determination. However, the job description is the primary determinant.

9. Is the amount of education required for a job a relevant factor in determining whether the job is level I or level II?

Yes. Under GAL 2-98, if a baccalaureate degree is normally required for entry into the occupation, the wage rate for a job offer that requires an advanced degree (Master's or Ph.D.) shall be at level II. There are instances when the employer can present sufficient evidence that the job does not require independent performance of all of the duties encompassed by the occupation and, therefore, is a level I in that particular instance.

10. Will a job that requires a Master's degree always be classified as level II?

Some positions requiring a Master's degree can be level I, if entry into the occupation requires the basic knowledge gained through graduate level education. (See Q&A 12, below.) Under GAL 2-98, if an advanced degree is the minimum entry requirement into the occupation, the wage rate shall be level I, unless there are other requirements contained in the job offer or components thereof which require skills that are at a level II. With that in mind, the job description should address the level I factors such as whether the employee will perform no more than moderately complex tasks relative to the occupation; whether the employee is closely supervised; and whether the employee is limited in exercise of independent judgment.

11. Does the SVP code indicate whether a Bachelor's or Master's degree is the normal entry requirement for the occupation?

The SVP code for the occupation is relevant, but not necessarily determinative. SVP time can include experience, formal education, and any combination of experience and education. Thus, the SVP alone is not a guide as to whether the occupation requires a Bachelor's or Master's degree. Do not infer that a job requires a particular educational level based solely on the SVP rating. Of course, an advanced degree exceeds the allowable SVP for jobs at SVP 6 and below.

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12. How can one determine whether a Bachelor's or advanced degree is the entry-level requirement for an occupation?

The Occupational Outlook Handbook can be consulted as a guide for many occupations. Other relevant sources about industry standards may include expert opinions written by knowledgeable individuals, supported by evidence and persuasive reasoning.

13. Do certain tasks, such as researching or analyzing, inherently result in a level II designation?

No. Any task can be performed under close supervision and can involve working on routine tasks or tasks of moderate complexity consistent with level I.

14. Should medical residents be classified as level I or level II?

It will depend on the nature of the resident position. As a general rule, first year residents would be level I because they are closely supervised. Other residents might be classified as level II

because of the nature of the residency. The nature of the job duties might deem a particular position level II, if the job description indicates the resident will operate with little supervision, perform advanced medical procedures, and exercise great latitude of independent judgment.

15. Are all managerial jobs level II?

No. All managerial jobs are not *per se* level II. There must be entry-level managers for there to be experienced managers. Many managers are entry-level and later progress to more complex and more responsible duties. Entry-level managers might supervise other workers, but their work is closely supervised by a senior manager or another superior. Look to the job description to assess the nature of the duties, supervision, exercise of judgment, and other factors.

16. Should level II be used if the job involves work at a client or customer site?

Not necessarily. It is possible for employers to provide close supervision to employees even if the employees are working offsite. Offsite or roaming employees may have limited discretion, may be required to follow specific guidelines and instructions, and may be required to provide frequent and detailed reports to their supervisors. In addition, employers may assign an entire team, including supervisors or team leads, to work at a client or customer site. Thus, it is improper to classify a job as level II solely

because the work is performed at a client or customer location. The job description should provide a sufficient explanation of the work to determine whether it is level I or level II.

17. If a position requires a license is it automatically considered level II?

No. Although the starting point in the analysis is that if an occupation requires a license, then the position is level II, some positions that require licensing are not necessarily level II. The employer has the option to produce evidence that the position does not involve the independent performance of all of the duties of the occupation.

In particular, the SWA should look to the employer's job description and stated requirements to evaluate, along with other factors, whether the position is closely supervised, involves only moderately complex duties, and allows limited exercise of independent judgment. If this is the case, then the position could be classified as level I, even though a license is required to perform the job. An example is a psychologist in a group practice. A license is required. But a first year psychologist may be assigned to work alongside a senior psychologist, or be closely supervised by a more senior psychologist. Under these circumstances, the position could be considered level I.

18. If a SWA assigns a level II wage from the OES/SOC survey, and the employer does not agree with the level designation but does not wish to use an alternative survey, what is an employer's recourse to obtain approval for a level I wage?

The employer should first verify with the SWA the specific OES/SOC code that was used. If the employer believes the OES/SOC code is not correct, the employer should provide an explanation of why a different code is more appropriate. If the OES/SOC code is not disputed, the employer may provide a more detailed job description, addressing the factors discussed above, to demonstrate why the position should be classified at level I. If the education or experiences are at issue, the employer may also submit additional evidence showing that an advanced degree or some experience is an accepted entry-level requirement for the occupation. If the SWA still stands by its determination, the employer may proceed with a challenge according to the regulations and procedures governing the program for which certification is sought.