

**U.S. Department of Labor**

Board of Alien Labor Certification Appeals  
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**Issue Date: 18 November 2015**

**BALCA Case No.:** 2015-PWD-00009  
**ETA Case No.:** P-100-14344-702455

*In the Matter of:*

**CSID,**  
*Employer*

Center Director: William K. Rabung  
National Prevailing Wage Center

Appearances: Delisa J.F. Bressler, Esquire  
Foster LLP  
West Lake Hills, Texas  
*For the Employer*

Jeffrey L. Nesvet, Associate Solicitor  
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Office of the Solicitor  
Division of Employment and Training Legal Services  
Washington, DC  
*For the Certifying Officer*

Before: Morris D. Davis, *Administrative Law Judge*, Stephen R. Henley,  
*Chief Administrative Law Judge*, and Larry S. Merck,  
*Administrative Law Judge*

**DECISION AND ORDER OVERRULING AND REMANDING  
CENTER DIRECTOR'S PREVAILING WAGE DETERMINATION**

**PER CURIAM.** This matter arises from the Employer's appeal pursuant to 20 C.F.R. § 656.41 of the Employment and Training Administration, Office of Foreign Labor Certification's ("OFLC") prevailing wage determination for the position of Technical Project Manager.

## **BACKGROUND**

### *Initial Prevailing Wage Determination*

On December 10, 2014, CSID (the “Employer”) submitted a prevailing wage determination (“PWD”) request to the OFLC’s National Prevailing Wage Center (“NPWC”). (AF 197-235).<sup>1</sup> The request was made in connection with the Employer’s application for permanent alien labor (“PERM”) certification for the position of Technical Project Manager. (AF 197).

In its PWD request, the Employer suggested the Standard Occupational Classification (“SOC”) code for the Position should be 15-1199.09, “Information Technology Project Managers,” (“IT Project Managers”). (AF 194). The Employer indicated that this recommendation was based upon the decision *Meltwater News USI, Inc.*, 2014-PWD-5 (July 16, 2014). (AF 194). The Employer noted that the SOC code 15-1199.09 would result in an assignment of the “All Other” SOC code, 15-1199 “Computer Occupations, All Other.”

The OFLC issued a PWD on January 29, 2015. (AF 193). The OFLC assigned the position SOC occupation code 11-3021, “Computer and Information Systems Managers” (“CI Systems Manager”). The OFLC further determined that the Occupational Employment Statistics (“OES”) wage level for the position was level IV. Based on these determinations, the prevailing wage was determined to be \$165,922 per year. (AF 193).

### *Redetermination of Prevailing Wage*

On February 4, 2015, the Employer submitted a request for redetermination of the PWD. (AF 117-189). The Employer explained that it had previously tried to secure a classification for a Technical Project Manager and the OFLC had previously declined to classify the job as an IT Project Manager because it fell under one of the “All Other” SOC codes. *Meltwater News* was issued after that initial determination and the Employer therefore re-filed based on that case. The Employer raised several different points. First, *Meltwater News* “held that the DOL must apply the occupational classification that most closely matches the job description, even if it falls under one of the ‘All Other’ categories.” (AF 118). Despite being one of the “All Other” categories, the position offered corresponds to IT Project Managers, 15-1199.09, not CI Systems Managers, 11-3021. The CI Systems Managers occupation has too much management authority over people, and too much responsibility within the organization, while the Technical Project Manager only has authority at the project level. Second, the Employer also contested the wage level arguing that if the OFLC insisted that the CI Systems Managers code was more appropriate, the wage level should, at most be level II. Only one point needed to be added for experience, and no additional points for education or job duties. The Employer contended that a level III, or IV, IT Project Manager is the appropriate SOC classification and wage level for this position. (AF 118-123).

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<sup>1</sup> In this decision, “AF” is an abbreviation for “Appeal File.”

The OFLC upheld its initial wage determination and stated that the “All Other” occupation group was not appropriate because the occupation had not yet been incorporated by the SOC Board, and the OES survey does not always have information on such occupations. (AF 114). Furthermore, it stated that the duties of the job were beyond those tasks outlined in the IT Project Managers position because the job duties required “coordinating cross-functionally, performing oversight of multiple projects at once, and collaborating to plan overall operating budgets and staffing.” (AF 114). The job duties, according to the OFLC, were “primarily planning and directing.” (AF 114).

*Review by the Center Director*

On April 22, 2015, the Employer submitted a request for Center Director’s (“CD”) review. (AF 69-75). The Employer reiterated the argument that the SOC should be “IT Project Managers” even if it is grouped under an “All Other” category, and that if DOL insisted on classifying the position as CI Systems Managers, then the wage level should be level II, not IV. (AF 69).

The CD affirmed the classification and original wage level as CI Systems Managers with a wage level IV. The CD stated that the NPWC looks to the “totality of the information represented on an employer’s submitted ETA Form 9141, in aggregate.” (AF 59). The Employer’s job duties involved “planning, directing, or coordinating various technical projects across diverse functions,” were “broad in scope,” and “[were] not solely focused on project execution for discrete projects,” and therefore fell “beyond the scope of the core tasks” of IT Project Managers. (AF 59-60). He characterized the position as one in which the “prospective employee will be primarily engaged in planning, directing, or coordinating varied technical projects across diverse functions, including planning overall operational budgets for hardware, software and staffing, and collaborating among disparate organizational specialists, including developers, quality assurance, production support, and account teams.” (AF 59). The CD acknowledged that the Employer had argued that the position has “no responsibility with respect to organizational goals, policies and procedures” like a CI Systems Manager would, but then explained that this aspect is only one of the seventeen tasks for a CI Systems Manager. (AF 60). The CD also determined that the level IV wage was appropriate. This is a Job Zone 4 position and such a job normally has a requirement of 24-48 months of experience. The requirement of 60 months of experience warranted adding three wage points therefore taking the wage level to IV. (AF 60-61). The CD did, however, modify the determination to reflect an updated validity period and wage based upon the current OES wage data. (AF 60).

*Appeal to the Board of Alien Labor Certification Appeals.*

On August 6, 2015, the Employer appealed the CD’s decision to the Board of Alien Labor Certification Appeals (“BALCA” or “the Board”) pursuant to 20 C.F.R. § 656.41. (AF 1-57).

The appeal request included a statement of position. After the Board issued its Notice of Docketing and Order Setting Briefing Schedule, the Employer filed an additional statement of position. The two statements are similar. The Employer again argued that the NPWC must

assign the classification that most closely fits the offered position and cited to *Meltwater News*. The Employer then compared the duties of the actual job against the duties for the two SOC codes at issue. It acknowledged that there are job duties that match with the CI Systems Managers' duties, but then argued that those duties are also consistent with an IT Project Managers' duties. Therefore, it contends the IT Project Managers SOC code still controls. It stated that seventeen of the twenty-one duties for the IT Project Managers classification have a direct corollary in one or more job duties in the position. The Employer reiterated that the Technical Project Manager does not track projects across diverse departments, and that the employee does not manage or control budgets or departments. (AF 2, 6). We note that the Employer did not contest the wage level for a CI Systems Managers classification on appeal as there was no mention of it in the briefs.

On appeal, the CD argued that he had used his discretion to determine that the CI Systems Managers SOC code "best encapsulates the full range of technical and supervisory duties." (CD Brf. 5). The CD again asserted that the NPWC came to its decision "by looking at the totality of the circumstances to see if the requested job classification fit the described job duties." (CD Brf. 3). The CD's brief consisted largely of the generalized argument that the wage determination was not an abuse of discretion and that the duties listed by the Employer for its Technical Project Manager position were beyond the scope of an IT Project Manager as described in the SOC.

## **DISCUSSION**

### *Standard of Review*

The Board applies an abuse of discretion standard to appeals of prevailing wage determinations. *Gen. Anesthesia Specialists Partnership Med. Group (GASP)*, 2013-PWD-5, slip op. at 6 (Jan. 28, 2014); *Emory University*, 2011-PWD-1 & -2, slip op. at 6-7 (Feb. 27, 2012) (adopting *RP Consultants, Inc.*, 2009-JSW-1 (June 30, 2010) (for PERM prevailing wage cases). Accordingly, we will uphold the Center Director's prevailing wage determination in this case unless it is inconsistent with the applicable regulations or does not constitute a reasonable exercise of his discretion.

### *Regulations and Guidelines*

The PERM regulations require an employer to request a prevailing wage determination from the NPWC. 20 C.F.R. § 656.40(a). The regulations provide several methods by which the prevailing wage is determined. 20 C.F.R. § 656.40(b)(1)-(4). The applicable regulation in this matter is § 656.40(b)(2), which provides:

If the job opportunity is not covered by a CBA [collective bargaining agreement], the prevailing wage for labor certification purposes shall be the arithmetic mean, except as provided in paragraph (b)(3) of this section, of the wages of workers similarly employed in the area of intended employment. The wage component of the DOL Occupational Employment Statistics Survey shall be used to determine

the arithmetic mean, unless the employer provides an acceptable survey under paragraph (g) of this section.

20 C.F.R. § 656.40(b)(2).

The OES Survey provides four levels of wages for each O\*NET-SOC occupation, commensurate with the experience, education, and level of supervision required. *See* Employment and Training Administration, *Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs* (Rev. Nov. 2009) (“PWD Guidance”) at 6.<sup>2</sup> When determining a prevailing wage, the NPWC selects one of the four wage levels based on a comparison of the employer’s job requirements to the general occupational requirements contained in O\*NET. *Id.*

The PWD Guidance outlines a five-step, standardized approach for determining the OES wage level. All prevailing wage determinations start with a Level I wage. *Id.* at 8. Step 1 of the process is determining the O\*NET job requirements. *Id.* at 1. Points are then awarded after a comparison of the employer’s job offer requirements to the general requirements for similar occupations. *Id.* at 8. The points are then totaled on a worksheet to arrive at the appropriate wage level. When determining the wage level, points may be added based on the job offer’s requirements for: step 2) experience, step 3) education, step 4) special skills and other requirements, and step 5) supervisory duties. *Id.* at 9-13.

Even though the PWD Guidance uses a standardized approach for determining the wage level, the guidance notes that the process should not be implemented in an automated fashion. *Id.* at 13. The NPWC may exercise judgment when making prevailing wage determinations to reach a wage level commensurate with the complexity of tasks, independent judgment required, and amount of close supervision received as described in the employer’s job opportunity. *Id.*

#### *Standard for Determining Applicable O\*NET/SOC Code*

The PWD Guidance explains that a job’s O\*NET/SOC code is identified by selecting the O\*NET job description that best corresponds to the employer’s job offer. *Id.* at 4; *Gen. Anesthesia Specialists Partnership Med. Group (GASP)*, 2013-PWD-5, *supra* at 6. The PWD Guidance further provides: “If the employer’s job opportunity has worker requirements described in a combination of O\*NET occupations, the NPWHC [National Prevailing Wage and Helpdesk Center] should default directly to the relevant O\*NET/SOC occupational code for the highest paying occupation. For example, if the employer’s job offer is for an engineer/pilot, the NPWHC shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.” PWD Guidance at 4.

In cases involving disputes over which O\*NET/SOC applies, the Board has considered the job duties O\*NET lists for each code and compared them to the job duties the Employer listed on its prevailing wage form. *See, e.g., Gen. Anesthesia Specialists, supra; Emory University, supra.*

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<sup>2</sup> [www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf)

## *Analysis of the Facts*

Pursuant to *Meltwater News*, it is an abuse of discretion to refuse to consider an “All Other” SOC code if it is the most appropriate classification of a position. Furthermore, pursuant to *Quest Diagnostics, Inc.*, 2015-PWD-2 (Feb. 12, 2015), the CD must choose the job classification that is most similar to the employer’s duties. In this case, the main issue is whether the CD abused his discretion in determining that one SOC code was more appropriate than another. In evaluating that issue, we will consider the duties described by the Employer, the tasks identified under the CI Systems Managers SOC code, and the tasks identified under the IT Project Managers SOC code.

On the PWD request, the Employer described the job duties of the Technical Project Manager position as follows:

1. Oversee Technical Projects and ensure project schedules and objectives are clearly communicated and tracked across all technical resources and projects;
  2. Oversee, report and communicate project updates to stakeholders;
  3. Collaborate with team members to plan, track and measure overall operating and capital budgets for hardware, software, staffing and other operational expenses;
  4. Collaborate with client services and/or department staff to ensure that all technology projects meet client expectations;
  5. Plan, coordinate and oversee multiple simultaneous projects;
  6. Translate project requirements into objectives and tasks;
  7. Develop detailed project schedules, track key milestones, and adjust plans to meet customer needs;
  8. Coordinate with project and/or client services teams;
  9. Prepare and manage release schedules;
  10. Develop and update project plans for information technology projects including information such as project objectives, technologies, systems, information specifications, schedules, funding and staffing;
  11. Collaborate with developers, quality assurance, production support and account teams to provide technical input on development, design, systems analysis and implementation.
- A. The Duties of a Technical Project Manager Are Similar to IT Project Managers, SOC Code 15-1199.09

According to O\*NET, the primary role of IT Project Managers is:

Plan, initiate, and manage information technology (IT) projects. Lead and guide the work of technical staff. Serve as liaison between business and technical aspects of projects. Plan project stages and assess business implications for each stage. Monitor progress to assure deadlines, standards, and cost targets are met.

O\*NET lists the twenty-one core job duties, in descending order of importance for IT Project Managers. Each of the duties described for the employer’s Technical Project Manager

position fits squarely within at least one of the duties listed on O\*NET for IT Project Managers as demonstrated by the examples in the following table.

<b>Job duties for the position of IT Project Manager, SOC/O*NET Code 15-1199.09.</b>	<b>The Technical Project Manager duties which correspond to the SOC/O*NET Code.</b>
Manage project execution to ensure adherence to budget, schedule, and scope	(3) <sup>3</sup> Collaborate with team members to plan, track and measure overall operating and capital budgets for hardware, software, staffing and other operational expenses  (5) Plan, coordinate and oversee multiple simultaneous projects
Develop or update project plans for information technology projects including information such as project objectives, technologies, systems, information specifications, schedules, funding, and staffing	(10) Develop and update project plans for information technology projects including information such as project objectives, technologies, systems, information specifications, schedules, funding and staffing
Monitor or track project milestones and deliverables	(7) Develop detailed project schedules, track key milestones, and adjust plans to meet customer needs
Confer with project personnel to identify and resolve problems	(4) Collaborate with client services and/or department staff to ensure that all technology projects meet client expectations  (8) Coordinate with project and/or client services teams
Develop and manage work breakdown structure (“WBS”) of information technology projects	(6) Translate project requirements into objectives and tasks <sup>4</sup>
Submit project deliverables, ensuring adherence to quality standards	(4) Collaborate with client services and/or department staff to ensure that all technology projects meet client expectations
Prepare project status reports by collecting, analyzing, and summarizing information and trends	(9) Prepare and manage release schedules  (2) Oversee, report and communicate project updates to stakeholders

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<sup>3</sup> This number relates to the numbered job duty for the Technical Project Manager position. All but one of the duties for the position is represented in this chart.

<sup>4</sup> We note that the Employer attached a Wikipedia explanation of WBS. WBS “is a deliverable-oriented decomposition for a project into smaller components. [It] is a key project deliverable that organizes the team’s work into manageable sections.” (AF 49). In other words, it involves translating a project into smaller objectives and tasks.

Direct or coordinate activities or project personnel	(5) Plan, coordinate and oversee multiple simultaneous projects  (6) Translate project requirements into objectives and tasks
Establish and execute a project communication plan	(1) Oversee Technical Projects and ensure project schedules and objectives are clearly communicated and tracked across all technical resources and projects  (2) Oversee, report and communicate project updates to stakeholders
Assign duties, responsibilities and spans of authority to project personnel	(5) Plan, coordinate and oversee multiple simultaneous projects  (6) Translate project requirements into objectives and tasks
Schedule and facilitate meetings related to information technology projects	(5) Plan, coordinate and oversee multiple simultaneous projects
Initiate, review, or approve modifications to project plans	(7) Develop detailed project schedules, track key milestones, and adjust plans to meet customer needs
Perform risk assessments to develop response strategies	None
Monitor the performance of project team members, providing and documenting performance feedback	(5) Plan, coordinate and oversee multiple simultaneous projects  (6) Translate project requirements into objectives and tasks
Negotiate with project stakeholders or suppliers to obtain resources or materials	None
Identify need for initial or supplemental project resources	None
Coordinate recruitment or selection of project personnel	None
Identify, review, or select vendors or consultants to meet project needs	None
Develop and manage annual budgets for information technology projects	(3) Collaborate with team members to plan, track and measure overall operating and capital budgets for hardware, software, staffing and other operational expenses
Develop implementation plans that include analyses such as cost-benefit or return on investment (ROI)	(10) Develop and update project plans for information technology projects including information such as project objectives, technologies, systems, information specifications, schedules, funding and staffing

Assess current or future customer needs and priorities through communicating directly with customers, conducting surveys, or other methods	(4) Collaborate with client services and/or department staff to ensure that all technology projects meet client expectations
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Out of the twenty-one IT Project Manager job duties, the Technical Project Manager has duties that align with sixteen of them, or approximately 76%. Also the main purpose of an IT Project Manager is to plan and manage IT *projects*. From the Employer’s job duties, this appears to be the same purpose as the Technical Project Manager.

**B. The Duties of a Technical Project Manager are Not as Similar to CI Systems Manager, SOC Code 11-3021**

According to O\*NET, the primary role of CI Systems Managers, is to “[p]lan, direct, or coordinate activities in such fields as electronic data processing, information systems, systems analysis, and computer programming.”

O\*NET then lists the following seventeen core job duties, in descending order of importance. The position described by the Employer does have some overlap with the position of CI Systems Manager, and the Employer concedes this. This is evidenced in the chart below.

<b>Job duties for the position of CI Systems Managers, SOC/O*NET Code 11-3021.</b>	<b>The Technical Project Manager duties which correspond to the SOC/O*NET Code.</b>
Review project plans to plan and coordinate project activity	(5) Plan, coordinate and oversee multiple simultaneous projects  (10) Develop and update project plans for information technology projects including information such as project objectives, technologies, systems, information specifications, schedules, funding and staffing
Manage backup, security and user help systems	None
Develop and interpret organizational goals, policies, and procedures	None
Develop computer information resources, providing for data security and control, strategic computer, and disaster recovery	None
Consult with users, management, vendors and technicians to assess computing needs and system requirements	None
Stay abreast of advances in technology	None

Meet with department heads, managers, supervisors, vendors, and others, to solicit cooperation and resolve problems	Superficial Match <sup>5</sup>
Provide users with technical support for computer problems	None <sup>6</sup>
Recruit, hire, train and supervise staff, or participate in staffing decisions	None
Evaluate data processing proposals to assess project feasibility and requirements.	None
Control operational budget and expenditures	(3) Collaborate with team members to plan, track and measure overall operating and capital budgets for hardware, software, staffing and other operational expenses
Review and approve all systems charts and programs prior to their implementation	None
Direct daily operations of department, analyzing workflow, establishing priorities, developing standards and setting deadlines	None. We agree with the Employer's contention that this only takes place at a <i>project</i> level, not a departmental one.
Assign and review the work of systems analysts, programmers, and other computer-related workers	None. We agree with the Employer's contention that this only takes place at a <i>project</i> level, not a departmental one.
Evaluate the organization's technology use and needs and recommend improvements, such as hardware and software upgrades	None.
Prepare and review operational reports or project progress reports	(2) Oversee, report and communicate project updates to stakeholders <sup>7</sup>
Purchase necessary equipment	None

Only a few of the eleven duties for the Technical Project Manager position clearly fit within duties under the CI Systems Manager position. Furthermore, only three of the seventeen duties of the CI Systems Managers are a clear match for a duty of a Technical Project Manager, or 18%.

The Employer contends that the duties which do overlap between the CI Systems Manager position and the Technical Project Manager position are also duties that overlap with

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<sup>5</sup> This match is superficial because the employee would not lead these meetings nor meet with department heads, managers, or vendors. Any meeting the employee would take part in would involve staff and client services on a project, and the employee would not be soliciting any cooperation. There is a different level of authority between the CI Systems Manager's duty and the employee's duty.

<sup>6</sup> In *Meltwater News*, BALCA noted that this was a "central duty for the occupational classification of Computer & Information Systems Managers." (AF 13). It is important to note that the employee will not be performing this important role. *Id.* See also *Meltwater News*, at 10. (" . . . aside from the managerial aspects of [the CI Manager] position, the main goal of [the] job is to provide computer support services.")

<sup>7</sup> Despite the Employer's contention that this match is superficial, we disagree. The employee will prepare progress reports on projects. The duty of the CI Systems Managers is also to prepare reports on projects. While the CI Systems Manager may also prepare reports on departmental levels, the duties nevertheless overlap.

the IT Project Manager Position. Therefore, it argues, the position is still most closely related to the IT Project Manager position. We agree. The three duties of the CI Systems Managers position which correspond with the job offered also correspond with the IT Project Manager position as evidenced by the chart below.

<b>Computer &amp; Information Systems Managers</b>	<b>Information Technology Project Manager</b>
Review project plans to plan and coordinate project activity	Manage project execution to ensure adherence to budget, schedule, and scope  Develop or update project plans for information technology projects including information such as project objectives, technologies, systems, information specifications, schedules, funding, and staffing
Control operational budget and expenditures	Develop and manage annual budgets for information technology projects
Prepare and review operational reports or project progress reports	Prepare project status reports by collecting, analyzing, and summarizing information and trends  Establish and execute a project communication plan

The CD argues that the duties the Employer listed consist of overarching organizational duties. The job duties of the employer were “not solely focused on project execution for discrete projects, but rather . . . quite broad in scope.” (CD Brf. 7). These arguments are unpersuasive. The Employer explained that the job duties the CD pointed to only occur on a project level. The Technical Project Manager works with people from different departments, but not as a manager or department head. The IT Project Managers SOC code contemplates this type of responsibility as well when it states that the IT Project Manager “[s]erve[s] as liaison between business and technical aspects of projects.” (AF 229). It is not beyond the scope of duties for an IT Project Manager to work with various department staff.

The Employer also argues that not every individual duty of its job description must specify “projects” in order to imply that the duty applies to specific projects, because after all, the words “project manager” are already in the job title. (AF 3). We agree. The Technical Project Manager’s responsibility is to oversee *projects*, and to ensure objectives are met. The CI Systems Managers not only reviews projects, but also manages systems, provides technical support, recruits and hires people, and directs operations over a department. The Technical Project Manager instead is supposed to manage project execution, and develop project plans. The level of authority between the positions is clearly different and each enumerated duty for a Technical Project Manager need not specify that it applies to only “projects.”

The CI Systems Managers position is much broader in scope than the Technical Project Manager position, and is of a higher level of responsibility. Not only is this evidenced in the job duties listed above, but also in the sample of related job titles for this SOC code. The O\*NET sample of reported job titles for the CI Systems Managers code are: Computing Services *Director*, Data Processing Manager, *Director* of Application Development, Information Systems *Director* (IS Director), Information Systems Manager (IS Manager), Information Systems *Supervisor* (IS Supervisor), Information Technology *Director* (IT Director), Information Technology Manager (IT Manager), MIS *Director* (Management Information Systems Director), and Technical Services Manager. (AF 239). The majority of the titles either contain the word “Director” or “Supervisor,” implying a higher level of responsibility than just “Managers.”

In contrast, O\*NET identifies a number of job titles which fall into the Information Technology Project Managers code including: IT Manager, IT Project Manager, Manager of IT, Program Manager, Project Manager, Project Manager/Team Coach, Senior Lead Project Manager, Senior Project Leader/Team Lead, *Technical Project Lead (Project Manager)*, Transition Program Manager. Of particular relevance to this case, is that the most similar to the Employer’s position of Technical Project Manager, is “Technical Project Lead (Project Manager).” The CD noted that, according to the PWD Guidance, one must not base a classification solely on the title of a job offer. (CD Brf. 10). This is true; however, the title is one factor to take into consideration, and in this case the sample titles of the IT Project Managers are more appropriate to the Technical Project Manager position.

After considering all the evidence and arguments, we find that the CD abused his discretion by failing to assess the SOC code that best corresponds to the position. In this case the occupation would be IT Project Manager, SOC 15-1199.09, which for the sake of the PWD, corresponds to 15-1199.00, Computer Occupations, All Other. The Employer previously conceded that a level III or level IV wage would be appropriate for an IT Project Manager. Since neither side briefed the issue of wage level on appeal, we remand this determination back to the CD.

## ORDER

**IT IS HEREBY ORDERED** that the prevailing wage determination made by the Center Director is **OVERRULED**, and this matter is **REMANDED** to the Center Director for further processing consistent with this order.

Entered at the direction of the panel by:

Todd R. Smyth  
Secretary to the Board of Alien Labor  
Certification Appeals

**NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW:** This Decision and Order will become the final decision of the Secretary unless within twenty days from the date of service a party petitions for en banc review by the Board. Such review is not favored and ordinarily will not be granted except (1) when en banc consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

Chief Docket Clerk  
Office of Administrative Law Judges  
Board of Alien Labor Certification Appeals  
800 K Street, NW Suite 400  
Washington, DC 20001-8002

Copies of the petition must also be served on other parties and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting en banc review with supporting authority, if any, and shall not exceed five double-spaced pages. Responses, if any, shall be filed within ten days of service of the petition, and shall not exceed five double-spaced pages. Upon the granting of a petition the Board may order briefs.