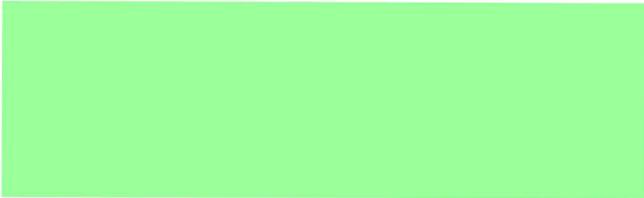


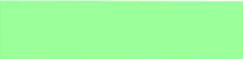
(b)(6)

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



U.S. Citizenship  
and Immigration  
Services



Date: **MAY 31 2013** Office: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary:

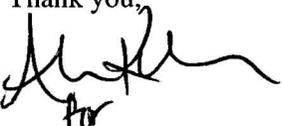
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,  


Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for further proceedings and the issuance of a new decision.

On the Form I-129 visa petition, the petitioner describes itself as a law office with one employee. In order to employ the beneficiary in what it designates as a law clerk position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The visa petition was originally filed with the petitioner's name specified as [REDACTED]. The petitioner has since provided evidence that it has changed its name to [REDACTED].

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and the petitioner's submissions on appeal. The AAO reviewed the record in its entirety before issuing its decision.

The Labor Condition Application (LCA) submitted to support the visa petition is certified for a "law clerk" position pursuant to Standard Occupational Classification (SOC) code and title 23-2092.00 Law Clerks from the Occupational Information Network (O\*NET). The LCA is certified for a prevailing wage of \$18.58 per hour.

The record contains evidence to show that the beneficiary has a bachelor of law degree from the [REDACTED] in South Korea, and a master of laws degree from the [REDACTED]. The petitioner also submitted evidence indicating that the beneficiary passed the [REDACTED] bar examination in May 2009. A search of the [REDACTED] website indicates that the beneficiary is currently registered as an attorney in New York.

With the visa petition, the petitioner provided a letter, dated November 10, 2010, from its managing partner. That letter describes the duties of the proffered position as follows:

- Research for and study legal resources including documents to investigate facts and law of cases, to determine causes of action and to prepare cases under the supervision of licensed attorneys;
- Review and file pleadings, petitions and other documents relevant to the representation of clients;
- Prepare affidavits of documents and maintain document files and case correspondence;
- Translate and interpret foreign laws, treaties, and/or regulations;

- Research and analyze law sources to prepare drafts of briefs or arguments for review, approval, and use by attorneys;
- Serve copies of pleas to opposing counsel;
- Schedule and maintain meetings between clients and legal professionals;
- Store, catalog, and maintain currency of legal volumes;
- Communicate and arbitrate disputes between parties; and
- Deliver or direct delivery of subpoenas to witnesses and parties to action.

The petitioner's managing partner also stated that the proffered position requires "a baccalaureate or higher degree in Laws with highly specialized knowledge in the field of law."

On November 24, 2010, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center outlined the specific evidence to be submitted.

In response, the petitioner submitted a letter, dated December 30, 2010, from its managing member. That letter contains the following revised and expanded version of the duties of the proffered position:

- 1) Interview clients and witnesses and handle other details in preparation for trial including gathering evidence for trial. Such duties include, but are not limited to following: (20%)
  - Initial client interview;
  - Interview witnesses;
  - Litigation document review;
  - UCC lien search for bankruptcy and/or foreclosure cases;
  - Prepare witness for deposition, demand for bill of particulars, request for admission;
  - Follow and assist clients in filing criminal complaint in municipal court and/or file police report in collection, domestic violence, and other matters dealing with municipal ordinance violation;
  - Research and assist clients in getting temporary legal protective measures available to them, such as TRO;
  - Translate deposition, affidavits, contracts and other legal documents and evidences taken in Korean or Chinese language to English for submission to appropriate court and/or agencies.

*The law clerk is responsible for interviewing clients in various stages of our representation. At first, initial client interview entails making the clients at ease and gathering relevant facts as well as checking conflicts of interest. Then, based on the facts gathered, the law clerk contacts the client or other witnesses, relevant agencies (police, the USCIS, etc.) to gather evidence to confirm and support the facts. Knowing and judging what types of evidence is required to substantiate the client's claim is crucial since not every evidence are admissible in the court of law.*

*Understanding the laws of evidence and criminal procedure especially pertaining to admissible evidence such as the hearsay and hearsay exceptions is crucial and this can only be gained through the law school education. Additionally, we are a general practice law firm, which means we deal with many different fields of law and often a lot of different legal issues are entangled in one case.*

*Consequently, to interview and conduct research, a law clerk must have the legal mind to understand legal principles to sort out the issues and seek the correct course of research, a necessary skill which can only be obtained through the law school education. Furthermore, we would like to point out that litigation document review task (reviewing and sorting our evidence for trial) in this industry is normally done by a temporary attorney or one who has a J.D. and/or LL.M since there is 'attorney-client privilege' issue and legal mind is required to spot a legal issue that is relevant to the trial is important aspect of the job. (See the attached **EXHIBIT 6**)<sup>1</sup>*

*Furthermore, being able to speak and write Korean language is essential in our firm which is evidenced by our primary clientele consists almost entirely of Koreans. Translation of legal documents and evidences is a complex task. One must know the legal terms of both Korean and American judicial system to convey the correct meaning. This is not a simple interpretation task. We are actively planning on expanding our services to Chinese immigrants in [REDACTED] NY and [REDACTED] [The beneficiary's] familiarity in Chinese culture and language are necessary.*

2) Act as a case manager. (15%)

- Develop a case management plan, strategy and arguments for use by attorney.
- Maintain document files and case correspondence;
- Keep client informed of his/her case

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<sup>1</sup> A Schedule of Exhibits included in the petitioner's managing member's December 30, 2010 letter states that Exhibit 6 consists of Copies of Job Postings from similar employers for the Litigation Document Review position.

- Answer client's question during the course of legal proceeding and solve issues that arise;
- Inform and advise clients as to legal rights and applicable laws, under supervision of licensed attorney;
- Take business trips to other states (if necessary) to interview, consult and/or assist clients (necessary in immigration and bankruptcy law practice since it is federal administrative law which is uniform through out the Unites States.)

*More than 90% of the cases end up settled. However, to best serve our clients, we believe it is important that we prepare to go all the way (i.e. trial) not minding the possibility of settlement. A law clerk must develop a case management plan from start to finish that acts as a road map of a given case. It includes strategy and legal arguments that the attorney must be mindful of at the various stages of representation. For instance, we have to be able to predict the possible course of action of the other side in order to diligently represent our client.*

*Once facts are gathered and verified, the law clerk starts a legal research to find appropriate cause of actions(s) or legal defense(s). This is mostly done by using the Westlaw, the online legal research tool. An ability to understand the legal decisions and be able to differentiate actual case law from dicta (judge's personal opinion) is crucial. This is a complex skill and can only be trained through the law school education. Once this is done, the research is presented to the attorney for his review. Once reviewed, the law clerk then explains to the client the legal rights and laws applicable to his/her case.*

*Our client in immigration and bankruptcy are not pertained to New York and New Jersey areas. [The beneficiary] has recently taken a business trip to meet and resolve a case for our client in Florida. (See the attached EXHIBIT 12)<sup>2</sup>*

- 3) Interpret federal and state statutes, rulings and regulations, and present summary to attorney for review, approval, and use; (15%)
  - Especially in Federal Bankruptcy law, Immigration and Nationality Act, Real Estate Settlement Procedure Act (RESPA), Truth in Lending Act (TILA), Credit Reporting Act (FCRA), and Equal Credit Opportunity Act (ECOA), but not limited to these;

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<sup>2</sup> The evidence counsel refers to as Exhibit 12 includes an airline itinerary and other evidence showing that the beneficiary traveled to Tampa, Florida on Wednesday, December 8, 2010, and returned to Newark, New Jersey on the following day.

- By researching law and analyzing legal precedents by utilizing the Westlaw research program and going to law library to prepare legal briefs and arguments;

*Federal Bankruptcy law and immigration law are one of the most often modified laws. Consequently it is essential that we have to be able to stand up to date with the most recent changes. This is also a very complex task since one must understand how to interpret the federal statute and how the change will trigger different interpretation of the statute, what part, if any, changed in the preceding decisions and how it would affect the outcome of the future cases. We, as law firm, need someone who can reliably perform this job. This is not an ordinary task simply to note the changes in law.*

- 4) Assist attorney in representing client in court, and before quasi-judicial or administrative agencies of government; **(10%)**
  - Inform client of court proceedings and civil procedures;
  - Answer any client's question regarding procedure and law;
  - Prepare clients for immigration interview;
  - Prepare clients for the bankruptcy Section 341 meeting with creditors and trustees.
- 5) Draft, revise, and review contracts and/or lease agreement; Research foreign regulations if transaction deals with foreign states or country; **(10%)**
  - Especially in bankruptcy cases where debtor is foreigner in which case special provision governs on the properties located in the foreign state;
  - Also in foreign currency exchange and wire fund transfer regulations dealing with South Korea and China. [Footnote omitted.].
- 6) Contact, mediate, and arbitrate disputes between parties for eventual presentation to attorney for settlement; **(20%)**
  - Assist negotiating with trustees and creditors in bankruptcy case especially in 341 meeting;
  - Negotiate with creditor banks in loan modification cases;
  - Negotiate, mediate, arbitrate property settlement, child custody/support, alimony in divorce proceeding or other civil matter.

*Settlement is important method to resolve a dispute. As mentioned above, more than 90% of the cases end up settled. This is usually done through mediation and/or arbitration. This arises most frequently in divorce where child custody, alimony and support are in dispute. It is also complicated and complex skill requiring meeting with both sides, accommodate the need of our client, identify legal issues that may arise if terms are overlooked or not specifically defined, drafting legally binding settlement for review and sign by the attorney. This also arises in loan modification procedure where being able to understand and interpret state and federal regulations to being able to spot issues relating to illegal interest rate, insufficient notice, or fraud to effectively negotiate with the banks. For bankruptcy, being able to understand and interpret federal bankruptcy law and state exemption statute is absolutely necessary in negotiating with trustees.*

- 7) Draft and file motions, briefs, petitions, and motions with court clerk and/or administrative agencies; **(10%)**

The director denied the petition on January 12, 2011, finding that the proffered position of "law clerk," as it relates to the petitioner's business operation, has not been demonstrated to qualify as a specialty occupation. Specifically, the director stated the following:

[T]he position of law clerk generally qualifies as a specialty occupation, however, [the Form I-129 visa] petition indicates that [the petitioner has] only one employee. Consequently, [the petitioner was] notified that it is unclear as to how the beneficiary will be relieved from performing non-qualifying duties.

\* \* \*

[The petitioner has] not established that [it has] sufficient personnel to perform the non-qualifying duties associated with running a law firm.

\* \* \*

Therefore, USCIS is not persuaded that the duties to be carried out by the beneficiary will be primarily those of a law clerk.

As noted above, the petitioner stated that the proffered position is a law clerk position, pursuant to SOC code and title 23-2092.00 Law Clerks from O\*NET. That classification is no longer in use. It has been divided into two separate categories, 23-1012.00 for Judicial Law Clerks, who assist judges in preparing decisions for the court, and 23-2011.00 Paralegals and Legal Assistants. The proffered position is not a position for a clerk to assist a judge with the business of the court.

The AAO recognizes the U.S. Department of Labor's *Occupational Outlook Handbook*, cited by the petitioner, as an authoritative source on the duties and educational requirements of the wide variety

of occupations that it addresses.<sup>3</sup> In the "Paralegals and Legal Assistants" chapter, the *Handbook* provides the following description of the duties of those positions:

Paralegals and legal assistants typically do the following:

- Investigate the facts of a case
- Conduct research on relevant laws, regulations, and legal articles
- Organize and present the information
- Keep information related to cases or transactions in computer databases
- Write reports to help lawyers prepare for trials
- Draft correspondence and other documents, such as contracts and mortgages
- Get affidavits and other formal statements that may be used as evidence in court
- Help lawyers during trials

Paralegals and legal assistants help lawyers prepare for hearings, trials, and corporate meetings. However, their specific duties may vary depending on the size of the firm or organization.

In smaller firms, paralegals duties tend to vary more. In addition to reviewing and organizing information, paralegals may prepare written reports that help lawyers determine how to handle their cases. If lawyers decide to file lawsuits on behalf of clients, paralegals may help prepare the legal arguments and draft documents to be filed with the court.

In larger organizations, paralegals work mostly on a particular phase of a case, rather than handling a case from beginning to end. For example, a litigation paralegal might only review legal material for internal use, maintain reference files, conduct research for lawyers, and collect and organize evidence for hearings. Litigation paralegals often do not attend trials, but might prepare trial documents or draft settlement agreements.

Law firms increasingly use technology and computer software for managing documents and preparing for trials. Paralegals use computer software to draft and index documents and prepare presentations. In addition, paralegals must be familiar with electronic database management and be up to date on the latest software used for electronic discovery. Electronic discovery refers to all

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<sup>3</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

electronic materials that are related to a trial, such as emails, data, documents, accounting databases, and websites.

Paralegals can assume more responsibilities by specializing in areas such as litigation, personal injury, corporate law, criminal law, employee benefits, intellectual property, bankruptcy, immigration, family law, and real estate. In addition, experienced paralegals may assume supervisory responsibilities, such as overseeing team projects or delegating work to other paralegals.

Paralegal tasks may differ depending on the type of department or the size of the law firm they work for.

The following are examples of types of paralegals:

**Corporate paralegals** often help lawyers prepare employee contracts, shareholder agreements, stock-option plans, and companies' annual financial reports. Corporate paralegals may monitor and review government regulations to ensure that the corporation is aware of new legal requirements.

**Litigation paralegals** maintain documents received from clients, conduct research for lawyers, and retrieve and organize evidence for use at depositions and trials.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Paralegal and Legal Assistants," <http://www.bls.gov/ooh/Legal/Paralegals-and-legal-assistants.htm> (last visited May 29, 2013).

The many duties described by the petitioner's managing partner include interviewing witnesses; preparing witnesses for deposition; assisting clients in getting temporary restraining orders; answering client questions; traveling to other states to interview and assist clients in immigration and bankruptcy cases; explaining the law and legal rights to the client; researching, interpreting and summarizing statutes, regulations, and case law; reviewing litigation documents; drafting, revising, and reviewing contracts and lease agreements; mediating and arbitrating settlements in various types of civil cases; negotiating with banks; negotiating, mediating, arbitrating property settlement, child custody/support, alimony in divorce proceedings or other civil matters; and drafting motions, briefs, and petitions. Those duties are far in excess of the duties the *Handbook* attributes to paralegals and legal assistants. In fact, the petitioner's managing partner admitted, in his December 30, 2010 letter, that the job of litigation document review, which is a duty of the proffered position, is normally done by an attorney "since there is 'attorney client privilege' . . . ." The AAO finds that the proffered position is not a paralegal or legal assistant position.

In the "Lawyers" chapter, the *Handbook* provides the following description of the duties of those positions:

Lawyers typically do the following:

- Advise and represent clients in courts, before government agencies, or in private legal matters
- Communicate with their clients and others
- Conduct research and analysis of legal problems
- Interpret laws, rulings, and regulations for individuals and businesses
- Present facts in writing or verbally to their clients or others and argue on their behalf
- Prepare and file legal documents, such as lawsuits, appeals, wills, contracts, and deeds

Lawyers, also called attorneys, act as both advocates and advisors.

As advocates, they represent one of the parties in criminal and civil trials by presenting evidence and arguing in court to support their client.

As advisors, lawyers counsel their clients about their legal rights and obligations and suggest courses of action in business and personal matters. All attorneys research the intent of laws and judicial decisions and apply the laws to the specific circumstances that their clients face.

To prepare for cases more efficiently, lawyers increasingly use the Internet, online legal databases, and virtual law libraries. Lawyers also often oversee the work of support staff, such as paralegals and legal assistants. For more information about legal support staff, see the profile on [paralegals and legal assistants](#).

Lawyers may have different titles and different duties, depending on where they work.

***Criminal law attorneys*** are also known as **prosecutors** or **defense attorneys**. ***Prosecutors*** work for the government to file a lawsuit, or charge, against an individual or corporation accused of violating the law.

***Defense attorneys*** work for either individuals or the government (as public defenders) to represent, or defend, the accused.

***Government counsels*** commonly work in government agencies. They write and interpret laws and regulations and set up procedures to enforce them. Government counsels also write legal reviews on agencies' decisions. They argue civil and criminal cases on behalf of the government.

**Corporate counsels**, also called **in-house counsels**, are lawyers who work for corporations. They advise a corporation's executives about legal issues related to the corporation's business activities. These issues might involve patents, government regulations, contracts with other companies, property interests, taxes, or collective-bargaining agreements with unions.

**Legal aid lawyers** work for private, nonprofit organizations for disadvantaged people. They generally handle civil cases, such as those about leases, job discrimination, and wage disputes, rather than criminal cases.

Lawyers often specialize in a particular area. The following are some examples of types of lawyers:

**Environmental lawyers** deal with issues and regulations that are related to the environment. They might represent advocacy groups, waste disposal companies, or government agencies to make sure they comply with the relevant laws.

**Tax lawyers** handle a variety of tax-related issues for individuals and corporations. Tax lawyers may help clients navigate complex tax regulations so that they pay the appropriate tax on income, profits, property, and so on. For example, they might advise a corporation on how much tax it needs to pay from profits made in different states to comply with the Internal Revenue Service's (IRS) rules.

**Intellectual property lawyers** deal with the laws related to inventions, patents, trademarks, and creative works such as music, books, and movies. An intellectual property lawyer might advise a client about whether it is okay to use published material in the client's forthcoming book.

**Family lawyers** handle a variety of legal issues that pertain to the family. They may advise clients regarding divorce, child custody, and adoption proceedings.

**Securities lawyers** work on legal issues arising from the buying and sell of stocks, ensuring that all disclosure requirements are met. They may advise corporations that are interested in listing in the stock exchange through an initial public offering (IPO) or buying shares in another corporation.

**Litigation lawyers** handle all lawsuits and disputes between parties. These could be contract disputes, personal injury disputes, or real estate and property disputes. Litigation lawyers may specialize in a certain area, such as personal injury law, or may be a general lawyer for all types of disputes and lawsuits.

Some attorneys become teachers in law schools. For more information on law school professors, see the profile on postsecondary teachers.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Lawyers," <http://www.bls.gov/ooh/legal/lawyers.htm#tab-2> (last visited May 29, 2013).

The duties the petitioner's managing partner attributed to the proffered position are consistent with the duties of lawyers as described in the *Handbook*. The AAO finds that the proffered position is more likely than not a lawyer position.

However, the LCA is not certified for a lawyer position. The LCA, therefore, does not correspond with the visa petition, in that it is not for the position proffered to the beneficiary. The duties of the proffered position fall under the SOC code 23-1011.00 for "Lawyers," an occupation that requires a minimum of \$42.10 per hour at a Level 1 wage.<sup>4</sup> As such, the petitioner was required to provide at the time of filing an LCA certified for SOC code 23-1011.00, not 23-2092.00, in order for it to be found to correspond to the petition.<sup>5</sup>

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

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a valid LCA that has been certified for the proper occupational classification, and the petition should be denied for this reason.

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<sup>4</sup> As noted above, the LCA is certified for a law clerk position at \$18.58 per hour.

<sup>5</sup> Even if the duties of the proffered position showed the proffered position to be a law clerk position, or a paralegal or legal assistant position, the degree of complexity and responsibility expressed in those duties make clear that it is not a Level 1, entry level, position. As such, even if the proffered position were a law clerk position, the LCA would not correspond to the position proffered, and the visa petition should be denied on that basis.

In this case, the position for which the LCA is certified does not correspond to the position being offered to the beneficiary. The AAO will not, therefore, reach the issue of whether the position offered to the beneficiary qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. Rather, it will withdraw the decision of denial and remand the matter to the service center for further proceedings and the issuance of a new decision. If the new decision is adverse to the petitioner, the director shall certify it to the AAO for review.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. §1361. Here, that burden has not been met. The matter will be remanded for further proceedings consistent with this decision.

**ORDER:** The decision of denial is withdrawn. The matter is remanded for further proceedings and the issuance of a new decision.