



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 01 2015** OFFICE: CALIFORNIA 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director (hereinafter "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.

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a law office with no employees established in [REDACTED]¹. In order to employ the beneficiary in what it designates as a "Law Clerk" position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, the petitioner asserts that the director's basis for denial was erroneous and contends that the petitioner satisfied all evidentiary requirements.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a Law Clerk position, and that it corresponds to Standard Occupational Classification (SOC) code and title 23-1012, Judicial Law Clerks, from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position, and that the prevailing wage for the position in the petitioner's location is \$51,979 annually.

With the visa petition, the petitioner submitted evidence that the beneficiary received a bachelor's degree in philosophy from [REDACTED] and a Juris Doctorate from [REDACTED].

The petitioner also submitted his own letter, dated April 1, 2014. That letter contains the following description of the duties of the proffered position:

1. Research intellectual property laws in Japan related to the registration of trademarks and patent prosecution.
2. Review copyright and patent legislation in Japan to determine if a particular product may be sold under a particular product/trade name.
3. Research Japanese import and export restrictions and related laws; report findings to the Attorney.
4. Research Japanese governmental websites and databases for rules and regulations governing shipments of goods from the United States into Japan, and vice versa.
5. Work with the Attorney in drafting business documents, including sales contracts, supply contracts, manufacturing agreements, licensing agreements, distribution agreements and nondisclosure agreements.

¹ In a letter of support submitted with the petition, the petitioner states that it was established in [REDACTED]

6. Prepare and file documents necessary for the creation and maintenance of California corporations or business organizations, including issuance of securities.
7. Explain U.S. and California labor law requirements to Japanese clients, including record keeping, breaks, wages, and other benefits; work with Attorney to create employee handbooks designed for a particular client's labor needs.
8. Review Japanese documents provided by clients and translate necessary portions into English.
9. Draft letters and emails in Japanese to explain the contents of a legal document.
10. Correspond with clients in Japanese to obtain information, explain case status, and to discuss various courses of action available to the clients.
11. Work with the Attorney in preparing and filing work visas and permanent residency applications.
12. Attend client consultations with the Attorney to take notes.

The petitioner also provided a copy of the O*NET Summary Report pertinent to Judicial Law Clerks and cited it for the proposition that the proffered position is a specialty occupation by virtue of requiring a Juris Doctorate degree.

On May 2, 2014, 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 provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements.

In response, the petitioner submitted (1) evidence pertinent [REDACTED] and [REDACTED] (2) letters, dated July 11, 2014 and July 22, 2014, from two other people in the legal industry; and (3) the petitioner's own July 22, 2014 letter.

Résumés of [REDACTED] and [REDACTED] state that each works or has worked for the petitioner as a law clerk. Form 1099, Miscellaneous Income statements show that [REDACTED] and [REDACTED] received \$3,245 and \$8,762.50, respectively, from the petitioner during 2013, but not as an employee. A Form W-2 Wage and Tax Statement issued to [REDACTED] shows that she was an employee of the petitioner and was paid \$5,664.51 in 2013.

The July 11, 2014 letter is from [REDACTED] managing partner of the [REDACTED] and the July 22, 2014 letter is from [REDACTED], partner of the [REDACTED]

[REDACTED] stated, "[A]n individual working as a law clerk must possess at least a bachelor's degree in order to competently perform all required duties." He further stated:

[I]t has been the common practice of the [REDACTED] to hire law clerks with a minimum of a bachelor's degree, especially those with a Liberal Arts education that require training in reading comprehension and writing.²

[REDACTED] stated, "[A]ny individual performing the job duties of a law clerk must have at least a bachelor's degree."³

In his own July 22, 2014 letter, the petitioner provided the following more detailed description of the proffered position:

1. Research intellectual property laws in Japan related to the registration of trademarks and patent prosecution.
 - Laws in Japan and in the United States are vastly different from each other. As a bilingual law office, we regularly consult with clients who conduct business in both countries. Apart from verifying all the basic import/export regulations, many products that a client may propose to export to the United States from Japan require the Law Clerk to research how securely the intellectual property related to a given product is protected under the laws of Japan, and how they might be affected by the intellectual property laws in the United States. To this extent, the Law Clerk generally has absolute discretion. If the Law Clerk finds that there is a high risk of infringement, or non-protection of, these intellectual property rights, the Clerk will have the authority to recommend to the client a specific course of action to secure the rights before the products are prepared for export.
 - [The petitioner] believes [the beneficiary] will spend approximately 20-25% of her annual time in performance of this task.
2. Review copyright and patent legislation in Japan to determine if a particular product may be sold under a particular product/trade name.
 - Copyright and patent legislation change rapidly, on a daily basis. In advising clients who conduct business both in Japan and in the United States, it is crucial that we be aware of the most up to date laws and regulations that may affect the sale/exportability of certain products. It is often the case that future legislation note [sic] yet enacted will affect whether a given product is exportable. The Law Clerk has absolute discretion in determining these facts based on the study of Japanese legislative notes and any other relevant documents created by the [REDACTED]

² We observe that Mr. [REDACTED] did not, in either of his statements, indicate that a law clerk position requires a minimum of a bachelor's degree *in a specific specialty* or its equivalent.

³ Like Mr. [REDACTED], Mr. [REDACTED] did not assert that a law clerk position requires a minimum of a bachelor's degree *in a specific specialty* or its equivalent.

- █. The Law Clerk is also responsible for determining whether there are ways we might come under or within a certain import restriction.
- [The petitioner] believes [the beneficiary] will spend approximately 5-10% of her annual time in performance of this task.
3. Research Japanese import and export restrictions and related laws; report findings to the Attorney.
 - As stated above, the Law Clerk is responsible for the research of both Japanese and U.S. laws and regulations to determine what import/export restrictions may affect the clients' products in international trade. For example, if a client wishes to import a specific product into the United States, the Law Clerk will have the discretion to report only the necessary findings to the Attorney to determine how to comply with all the rules and regulations. The Law Clerk will then assist the Attorney in deriving a solution for any legal obstacles that may exist in the manufacturer's jurisdiction. Once there is a determination that a product can be delivered to the designated port of shipment, the Law Clerk will research whether there are import restrictions (i.e. restrictions on the part of the recipient of the goods). Any such restrictions will then have to be woven into the sales/distribution contract for the purchase of the product. This process absolutely requires the skills of an individual who has a bachelor's degree or higher, since the individual must have the ability to read through complex legal documents and make independent judgments as to what areas and points need further research.
 - [The petitioner] believes [the beneficiary] will spend approximately 15-20% of her annual time in performance of this task.
 4. Research Japanese governmental websites and databases for rules and regulations governing shipments of goods from the United States into Japan.
 - As stated in earlier sections, our clients import from and to Japan. One of the Law Clerk's duties will be to determine how Japanese import restrictions may influence products being shipped from the United States into Japan. Once again, the Law Clerk's discretion is generally absolute – when certain products are restricted from being imported from the United States, it may become necessary to contract with foreign producers of same or similar products in order to get around some import restrictions. The Law Clerk will work with the Attorney in determining what provisions of given regulations or laws need to be addressed before such contract can be drafted and then executed.
 - [The petitioner] believes [the beneficiary] will spend approximately 15-20% of her annual time in performance of this task.
 5. Work with the Attorney in drafting business documents, including sales contracts, supply contracts, manufacturing agreements, licensing agreements, distribution agreements and nondisclosure agreements.

- After conducting all necessary research that are stated above, and having discussed the issues with the Attorney, Law Clerk will then be required to draft the legal documents to address various stages of the international trade and sales process. In addition to drafting transactional documents, the Law Clerk will also help the Attorney in drafting documents such as nondisclosure agreements, noncompetition agreements, as well as licensing and distribution agreements between companies. The Law Clerk will review various existing contracts and make suggestions as to what terms would have to be modified in order to account for the various import/export restrictions that were found in the research. After the provisions are drafted by the Law Clerk, the draft will be reviewed and approved by the Attorney prior to final presentation to the clients.
 - [The petitioner] believes [the beneficiary] will spend approximately 20-25% of her annual time in performance of this task.
6. Prepare and file documents necessary for the creation and maintenance of California corporations, including issuance of securities.
- Many of the law office's Japanese clients are corporations that have, or desire to have, subsidiaries in the United States. The Law Clerk will draft all necessary documents that the clients need to establish the U.S. corporation, and to maintain existing U.S. businesses according to California law. These documents include, but are not limited to, the following:
 - Articles of Incorporation, Articles of Organization, Bylaws, and minutes of the required meetings for corporate maintenance. The Law Clerk will also issue securities based on the amount of investments made by the company's various shareholders, including the reporting of the issuance of said securities to the U.S. Department of Corporations.
7. Explain U.S. and California labor law requirements to Japanese clients, including record keeping, breaks, wages, and other benefits; work with Attorney to create employee handbooks designed for a particular client's labor needs.
- Our clients requiring employment law advice consist of both employees and employers. The Law Clerk will review the most current labor rules and regulations to determine what advice needs to be given to the individual clients. California employers must adhere to both state and federal employment laws, and the Law Clerk will report all findings to the Attorney and work with the Attorney to determine the best course of action for the individual employer. For larger-size corporations, our law office drafts employment handbooks for the employers to specify company regulations. The Law Clerk will discuss with the employer to review the company's internal policies, then use that information to draft the employment handbook that will adhere to both California and federal laws. The drafted work will then be reviewed and finalized by the Attorney before being presented to the clients.

- [The petitioner] believes [the beneficiary] will spend approximately 10-15% of her annual time in performance of this task.
8. Work with the Attorney in preparing and filing work visas and permanent residency applications.
 - Many of our Japanese individual and corporate clients require business visas in order to lawfully work in the United States. The Law Clerk will attend client meetings to gather necessary information about the applicant, discuss various nonimmigrant and immigrant visa options depending on the clients' individual circumstances, then fill out all forms necessary for the visa application. In addition to all the forms, the Law Clerk will draft support letters on behalf of the employers who wish to hire foreign workers. The Law Clerk will also study various immigration law websites and online forums to obtain the most current visa information and trends, and apprise the Attorneys of all relevant news.
 - [The petitioner] believes [the beneficiary] will spend approximately 15-20% of her annual time in performance of this task.
 9. Correspond with clients in Japanese to explain the contents of a legal document, obtain necessary information, appraise [sic] of case status, and to discuss various courses of action available to the clients.
 - Since over 75% of our law office's clients are Japanese or Japanese speaking, the ability to correspond with the clients in Japanese is crucial. The Law Clerk will communicate directly with the Japanese speaking clients for multiple purposes, including but not limited to, obtaining information needed to fill out visa applications, inform them of case status and give any updates relevant to their case, and relay the findings of the Law Clerk's research results that will affect the individual client's case.
 - [The petitioner] believes [the beneficiary] will spend approximately 5-10% of her annual time in performance of this task.
 10. Review Japanese documents provided by clients and translate necessary portions into English.
 - Since all documents that are submitted to the United States government must be in English, the Law Clerk with the necessary language ability will translate Japanese documents into English before submission. Examples of these documents are: birth certificates, marriage licenses, family registry records, employment contracts, and resumes.
 - [The petitioner] believes [the beneficiary] will spend approximately 5% of her annual time in performance of this task.
 11. Attend client consultations with the Attorney.
 - Generally, the client will come in for an initial consultation before the law office begins any work. The initial consultation is important for various reasons. The Law Clerk will attend client consultations not only to provide language support, but also to participate in the discussion to help the Attorney ascertain all legal issues. The Law Clerk will take notes, and

make independent judgments as to which areas need to be researched further in order for the law office to give accurate legal advice, once being formally retained by the client.

- [The petitioner] believes [the beneficiary] will spend approximately 5-10% of her annual time in performance of this task.

As to the requirements of law clerk positions, the petitioner stated:

Due to the highly complex nature of the duties [described above], work to be performed by the Law Clerk absolutely requires the services of an individual who has a bachelor's degree or higher. Although law offices do not normally require the individual to have majored in a specific area of study, a bachelor's degree or higher in a writing/reading intensive major such as English, Pre-Law, Political Science, Education, or Philosophy, is preferred.⁴

Later in the same letter, the petitioner stated that the "Law Clerk would need to have completed a bachelor's degree at the very minimum, although a law school education is certainly preferred."

The director denied the petition on August 6, 2014, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the proffered position's duties appear to be within the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook's)* section on paralegals and legal assistants and that the petitioner satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner provided (1) diplomas awarded to [REDACTED] and [REDACTED]; (2) a letter, dated September 3, 2014, from the petitioner; and (3) a brief.

The diplomas provided show that [REDACTED] and [REDACTED] each received a Juris Doctorate degree.

⁴ Although it is not important to our analysis, below, we observe that the petitioner, like Mr. [REDACTED] and Mr. [REDACTED] did not assert that a law clerk position requires a minimum of a bachelor's degree in a *specific specialty* or its equivalent. In fact, the petitioner did not state that there is even a preference for a degree in any specific specialty. As such, if we were to accept the petitioner's assertions as authoritative, to base our decision on them, and to decide this matter on specialty occupation grounds, the proffered position would not be found to be a specialty occupation position.

In his September 3, 2014 letter, the petitioner stated, "[B]y law, a paralegal cannot apply a specific set of unique circumstances and analyze them under the applicable law(s)."⁵

In the brief, the petitioner asserted that the evidence submitted is sufficient to demonstrate that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

We base our decision upon our review of the entire record of proceeding, which includes: (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.

II. THE LAW

The issue before us is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) 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 regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

⁵ Although it is not important to our analysis, we observe that the petitioner did not provide any citation for this asserted legal restriction.

- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of

the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien; and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

III. ANALYSIS

As a preliminary matter, we note that the petitioner stated that a bachelor's degree is required for the proffered position, but it did not indicate that a bachelor's degree in a *specific specialty* is required. Rather, it appears that the petitioner will accept a degree in a range of fields such as education, political science, education, or philosophy. To establish eligibility for H-1B classification, a petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. USCIS has consistently stated that, although a general-purpose bachelor's degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007). The petitioner has failed to demonstrate that the fields of study that it deems acceptable for entry into the proffered position denote a specific specialty.

As was noted above, the petitioner stated, on the LCA, that the proffered position corresponds to a position described at SOC code and title 23-1012, Judicial Law Clerks in O*NET. O*NET states that Judicial Law Clerks "Assist judges in court or by conducting research or preparing legal documents." However, the proffered position is not a position for a clerk to assist a judge with the business of the court; therefore, it is clear that the proffered position has been misclassified.

We recognize the *Handbook*, cited by the petitioner, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁶ In the "Paralegals and Legal Assistants" chapter, the *Handbook* provides the following description of the duties of those positions:

What Paralegals and Legal Assistants Do

Paralegals and legal assistants do a variety of tasks to support lawyers, including maintaining and organizing files, conducting legal research, and drafting documents.

Duties

⁶ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online.

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 maintain documents in a paper or electronic filing systems
- Gather and arrange evidence and other legal documents for attorney review and case preparation
- Write reports to help lawyers prepare for trials
- Draft correspondence and legal documents, such as contracts and mortgages
- Get affidavits and other formal statements that may be used as evidence in court
- Help lawyers during trials by handling exhibits, taking notes, or reviewing trial transcripts
- File exhibits, briefs, appeals and other legal documents with the court or opposing counsel
- Call clients, witnesses, lawyers, and outside vendors to schedule interviews, meetings, and depositions

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 and the area of law in which the paralegal works.

In small firms, paralegals duties tend to vary more. In addition to reviewing and organizing documents, 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 large organizations, paralegals may work on a particular phase of a case, rather than handling a case from beginning to end. For example, a litigation paralegal may only review legal material for internal use, maintain reference files, conduct research for lawyers, or collect and organize evidence for hearings.

Litigation paralegals may assist attorneys in preparing for trial by organizing document binders, creating exhibit lists, or drafting settlement agreements. Some litigation paralegals may also help coordinate the logistics of attending the trial, including reserving office space, transporting exhibits and documents to the courtroom, and setting up computers and other equipment.

Paralegals use technology and computer software for managing and organizing the increasing amount of documents and data collected during a case. Many paralegals use computer software to catalog documents, and to review documents for specific

keywords or subjects. Because of these responsibilities, 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 electronic materials that are related to a trial, such as emails, data, documents, accounting databases, and websites. Paralegals may specialize 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.

Paralegals and legal assistants often work in teams with attorneys, fellow paralegals, and other legal support staff. They may also have frequent interactions with clients and third-party vendors.

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*, 2014-15 ed., "Paralegals and Legal Assistants," <http://www.bls.gov/ooh/legal/paralegals-and-legal-assistants.htm#tab-2> (last visited Mar. 11, 2015).

The duties the petitioner attributes to the proffered position include researching Japanese intellectual property law, researching Japanese import and export restrictions, including pending legislation; preparing and filing corporate documents; and counseling clients on the protection of intellectual property rights. The petitioner asserts that the duties of the proffered position exceed those of a paralegal or legal assistant. We concur.

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

What Lawyers Do

Lawyers advise and represent individuals, businesses, and government agencies on legal issues and disputes.

Duties

Lawyers typically do the following:

- Advise and represent clients in courts, before government agencies, and 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 and 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 or civil trials by presenting evidence and arguing in support of 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.

Lawyers often oversee the work of support staff, such as 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*** and ***defense attorneys***.

Prosecutors typically 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 and 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 may 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 may represent advocacy groups, waste disposal companies, and 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 items such as income, profits, or property. For example, they may advise a corporation on how much tax it needs to pay from profits made in different states to comply with the Internal Revenue Service (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 may 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 selling 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, and 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*, 2014-15 ed., "Lawyers," <http://www.bls.gov/ooh/legal/lawyers.htm#tab-2> (last visited Mar. 11, 2015).

The duties the petitioner attributes to the proffered position, such as "[e]xplain[ing] U.S. and California labor law requirements to Japanese clients," are entirely consistent with the duties of lawyers as described in the *Handbook*. We disagree with the director's determination that the proffered position's duties are described in the *Handbook's* chapter on paralegals and legal assistants and we find that the proffered position is more likely than not a lawyer position.

We also note the following facts that also weigh in favor of a finding that the proffered position is a lawyer position. The State Bar of California website indicates that the beneficiary is an attorney whose status is "Active" in the State of California. The website also indicates that the beneficiary was admitted to the California Bar in December 2012, prior to the submission of the instant visa petition. (See <http://>). Furthermore, the petitioner's own website at <http://> indicates that, prior to the filing of the instant petition, the beneficiary has been working for the petitioner as an "associate attorney." Specifically, the petitioner's website states that the beneficiary "joined [the petitioner] in June of 2011 as a law clerk" and "[the beneficiary] has been an associate attorney at [the petitioner] since December of 2012 handling mainly immigration law, business creation/maintenance, corporate transaction, and estate planning issues." The petitioner's website also states that the beneficiary was "[a]dmitted to the State Bar of California in December 2012."

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.⁷ The duties of the proffered position fall under the SOC code 23-1011 for "Lawyers," an occupation that, in the petitioner's location, requires a minimum of \$104,458 annually at a Level 1 wage.⁸ As such, the

⁷ Although we have found the proffered position to be a position described at SOC code and title 23-1011, Lawyers, we observe that the decision of denial need not rest on that finding. Rather, in order to show that the LCA submitted does not correspond to the visa petition, it is sufficient to find that the proffered position is not a position described at SOC code and title 23-1012, Judicial Law Clerks, which is manifest from the fact that it is not a position assisting a judge.

⁸ As noted above, the LCA is certified for a Judicial Law Clerk position at \$51,979 annually which is less than half of what the beneficiary should be paid as a lawyer in the same location.

For more information regarding the prevailing wage for Lawyers in CA Metropolitan Division, see the All Industries Database for 7/2013 - 6/2014 for Lawyers at the Foreign Labor Certification Data Center, Online Wage Library, <http://www.flcdatabase.com/OesQuickResults.aspx?code=23-1011&&year=14&source=1> (last visited Mar. 11, 2015)

petitioner was required to provide at the time of filing an LCA certified for SOC code 23-1011, not 23-1012, in order for it to be found to correspond to the petition.⁹

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.

IV. CONCLUSION

In this case, the proffered position is more likely than not a lawyer position and the position for which the LCA is certified does not correspond to the position being offered to the beneficiary. We 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, we 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.

For more information regarding the prevailing wage for Judicial Law Clerks in [REDACTED] CA Metropolitan Division, *see* the All Industries Database for 7/2013 - 6/2014 for Judicial Law Clerks at the Foreign Labor Certification Data Center, Online Wage Library, [http://www.flcdatacenter.com/OesQuickResults.aspx?code=23-1012&\[REDACTED\]&year=14&source=1](http://www.flcdatacenter.com/OesQuickResults.aspx?code=23-1012&[REDACTED]&year=14&source=1) (last visited Mar. 11, 2015).

⁹ 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 I, entry level, position, as it is represented to be in the LCA. 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 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.