

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LADYBUG AND FRIENDS PRESCHOOL, LLC and IULIA SALAJAN,)	
)	
)	
Plaintiffs,)	
)	
v.)	Case No. 14 C 1972
)	
JANET NAPOLITANO , Secretary of the Department of Homeland Security, et al.,)	
)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

This Court has just received (belatedly¹) a copy of the Complaint filed by Ladybug and Friends Preschool, LLC ("Ladybug") and Iulia Salajan ("Salajan") against Department of Homeland Security Secretary Janet Napolitano and Christina Poulos, Director of the USCIS (United States Citizenship and Immigration Service, referred to here for convenience simply as the "Service") California Service Center. This Court has conducted the threshold review that it always applies to newly-assigned complaints, and this memorandum opinion and order ("Opinion") addresses two troubling aspects revealed by that review.

To begin with, the filing of this action in this judicial district is problematic -- Complaint ¶ 7 speaks of venue only in these amorphous terms:

¹ See both (1) this District Court's LR 5.2(f), mandating the prompt delivery of a paper copy of a newly-filed Complaint to the chambers of the judge assigned to the case, and (2) the more particularized directive set out at the beginning of this Court's website. With something over a week having elapsed after the March 20 filing of the lawsuit without plaintiffs' counsel having complied with those directives, this Court issued a March 31 memorandum order that directed such delivery together with the payment of a \$100 fine, and on April 9 it received a copy of the Complaint but not a payment of the fine (which plaintiffs' counsel has represented will be made shortly).

Venue is proper pursuant to 28 U.S.C. 1391 because Plaintiffs and Defendants operate in this District.

But in fact, even though Complaint ¶ 2 describes Ladybug as "an Illinois based organization," the petition whose rejection forms the gravamen of this lawsuit was prepared by attorney Robert Perkins (who offices at Culver City, California and who has also prepared and filed this lawsuit), and that petition was transmitted from attorney Perkins' Culver City office to defendant Poulos at her office in Laguna Niguel, California -- here are Complaint ¶ 5 and the first two sentences of Complaint ¶ 17, with a copy of the first page of Complaint Ex. 2 (referred to in the second of those paragraphs) being attached to this Opinion:

5. Defendant Christina Poulos is the Director, USCIS California Service Center. As such, she is in charge of adjudicating H-1 visa applications including those filed by Plaintiffs herein.

17. On April 5, 2013 Plaintiff Ladybug and Friends Preschool filed an H-1B petition (the "Petition") with the USCIS Service Center to obtain an H-1B visa for Plaintiff Iulia Salajan. (See Exhibit 2, a copy of the petition as well as a receipt from the messenger service Petitioner used to deliver the petition)

So it appears highly questionable for the Northern District of Illinois to have been selected as the place for this action to be brought. Moreover, if one thinks ahead to a resolution of the merits of the case, it would seem that the key witness or witnesses on the fundamental question whether the petition at issue was rejected in violation of the Service's own requirements (as plaintiffs allege) would be defendant Poulos and possibly other members of her staff at the California location.

That point leads into the other troublesome matter that has emerged from this Court's preliminary review of the Complaint -- a substantive rather than procedural issue. What the Complaint charges is that the Service's refusal to process Ladybug's petition for H-1B visa status

for Salajan violated its own relevant instructions and regulations, so that plaintiffs were victims of a violation of due process of law. On that score attorney Perkins' April 2, 2013 letter to the Service's Laguna Niguel Service Center (part of the bulky Complaint Ex. 2) specifically listed this as one of the enclosures:

Form ETA 9035, Labor Condition Application, which has been duly filed with and approved by the Department of Labor.

It was the lack of signature on that form (referred to in administrative-speak as "LCA") what led to the Service's refusal to consider the petition at issue, even though the petition had survived the lottery that the Service had to conduct because the glut of petitions overwhelmed the number of available slots.

In that respect Complaint Ex. 2 also includes a copy of the LCA, which is also attached to this Opinion. On that score particular note should be taken of Paragraph A) on its first page and Paragraph N on its last page, the relevant portions of which are reproduced here:²

A) I understand and agree that, upon my receipt of ETA's certification of the LCA by electronic response to my submission, I must take the following actions at the specified times and circumstances:

- print and sign a hardcopy of the electronically filed and certified LCA
- maintain a signed hardcopy of this LCA in my public access files;
- submit a signed hardcopy of the LCA to the United States Citizenship and Immigration Services (USCIS) in support of the I-129, on the date of submission of the I-129;
- provide a signed copy of the LCA to each H-1B nonimmigrant who is employed pursuant to the LCA.


* * *

² In that reproduction the emphasis in Paragraph A) has been added here, while the boldface, capitalization and italicization contained in Paragraph N were in the original document.

N. Signature Notification and Complaints

The signatures and dates signed on this form will not be filled out when electronically submitting to the Department of Labor for processing, but **MUST** be complete when submitting non-electronically. If the application is submitted electronically, any resulting certification **MUST** be signed *immediately upon receipt* from the Department of Labor before it can be submitted to USCIS for further processing.

It would thus seem that to go forward with this lawsuit here, plaintiffs must not only address the procedural venue question raised at the outset but must also provide a better explanation of how a rejection of their petition for the lack of signature on the LCA violated their rights. Attorney Perkins is ordered to provide a response in both those areas on or before April 25, 2014.



Milton I. Shadur
Senior United States District Judge

Date: April 10, 2014

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SERVICES



LA: 213-482-5555
OC: 714-662-5555
SD: 619-263-5555
Statewide: 888-512-9990
www.ddslegal.com

CLIENT #: 10294
CLIENT: Robert A. Perkins & Associates
CALLER: Robert A. Perkins
PHONE: (310) 461-1199

FROM: Robert A. Perkins & Associates
400 Corporate Pointe Ste 300
Culver City, CA 90230

TO: Immigration Court
24000 Avila Rd
Laguna Niguel, CA 92677

DOCUMENTS / INSTRUCTIONS:
DELIVER ENV

TRACKING NUMBER:
2485409

"Rush" Delivery

COMPLETE BY: 4/5/13 16:00
CASE NUMBER:

REFERENCE(S):
Salajan

EMAIL:
robert@immigration-professor.com

CRN

APR 05 2013

H16

539 + H1B

PH



92677-3401



X-0006-D2485409

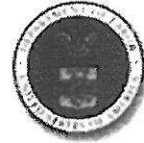
WAIT/ RESEARCH TIME: _____ ADVANCED FEE: _____ CHECK #: _____

DDS STATUS: _____

COMPLETION DATE: _____ RECEIVED BY: _____

COMPLETION TIME: _____ PRINT NAME: _____

Labor Condition Application for Nonimmigrant Workers
ETA Form 9035 & 9035E
U.S. Department of Labor



**Electronic Filing of Labor Condition Applications
For The H-1B Nonimmigrant Visa Program**

This Department of Labor, Employment and Training Administration (ETA), electronic filing system enables an employer to file a Labor Condition Application (LCA) and obtain certification of the LCA. This Form must be submitted by the employer or by someone authorized to act on behalf of the employer.

A) I understand and agree that, upon my receipt of ETA's certification of the LCA by electronic response to my submission, I must take the following actions at the specified times and circumstances:

- print and sign a hardcopy of the electronically filed and certified LCA,
- maintain a signed hardcopy of this LCA in my public access files;
- submit a signed hardcopy of the LCA to the United States Citizenship and Immigration Services (USCIS) in support of the I-129, on the date of submission of the I-129;
- provide a signed hardcopy of this LCA to each H-1B nonimmigrant who is employed pursuant to the LCA.

Yes No

B) I understand and agree that, by filing the LCA electronically, I attest that all of the statements in the LCA are true and accurate and that I am undertaking all the obligations that are set out in the LCA (Form ETA 9035E) and the accompanying instructions (Form ETA 9035CP).

Yes No

C) I hereby choose one of the following options, with regard to the accompanying instructions:

I choose to have the Form ETA 9035CP electronically attached to the certified LCA, and to be bound by the LCA obligations as explained in this form

I choose not to have the Form ETA 9035CP electronically attached to the certified LCA, but I have read the instructions and I understand that I am bound by the LCA obligations as explained in this form

Labor Condition Application for Nonimmigrant Workers
ETA Form 9035 & 9035E
U.S. Department of Labor



Please read and review the filing instructions carefully before completing the ETA Form 9035 or 9035E. A copy of the instructions can be found at <http://www.foreignlaborcert.doleta.gov/>. In accordance with Federal Regulations at 20 CFR 655.730(b), incomplete or obviously inaccurate Labor Condition Applications (LCAs) will not be certified by the Department of Labor. If the employer has received permission from the Administrator of the Office of Foreign Labor Certification to submit this form non-electronically, ALL required fields/items containing an asterisk (*) must be completed as well as any fields/items where a response is conditional as indicated by the section (§) symbol.

A. Employment-Based Nonimmigrant Visa Information

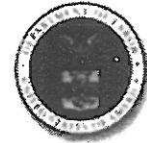
1. Indicate the type of visa classification supported by this application (Write classification symbol): *	H-1B
--	------

B. Temporary Need Information

1. Job Title * DIRECTOR		
2. SOC (ONET/OES) code * 11-1021	3. SOC (ONET/OES) occupation title * GENERAL AND OPERATIONS MANAGERS	
4. Is this a full-time position? * <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Period of Intended Employment	
	5. Begin Date * 08/30/2013 (mm/dd/yyyy)	6. End Date * 08/15/2016 (mm/dd/yyyy)
7. Worker positions needed/basis for the visa classification supported by this application		
1 <input type="text"/> Total Worker Positions Being Requested for Certification *		
Basis for the visa classification supported by this application (indicate the total workers in each applicable category based on the total workers identified above)		
1 <input type="text"/> a. New employment *	0 <input type="text"/> d. New concurrent employment *	
0 <input type="text"/> b. Continuation of previously approved employment * without change with the same employer	0 <input type="text"/> e. Change in employer *	
0 <input type="text"/> c. Change in previously approved employment *	0 <input type="text"/> f. Amended petition *	

C. Employer Information

1. Legal business name * LADYBUG & FRIENDS DAYCARE AND PRESCHOOL, LLC		
2. Trade name/Doing Business As (DBA), if applicable N/A		
3. Address 1 * 2255 W. LAWRENCE AVE.		
4. Address 2 N/A		
5. City * CHICAGO	6. State * IL	7. Postal code * 60625
8. Country * UNITED STATES OF AMERICA		9. Province N/A
10. Telephone number * 3128886076		11. Extension N/A
12. Federal Employer Identification Number (FEIN from IRS) * 455078776		13. NAICS code (must be at least 4-digits) * 611699



Labor Condition Application for Nonimmigrant Workers
 ETA Form 9035 & 9035E
 U.S. Department of Labor

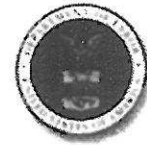
D. Employer Point of Contact Information

Important Note: The information contained in this Section must be that of an employee of the employer who is authorized to act on behalf of the employer in labor certification matters. The information in this Section must be different from the agent or attorney information listed in Section E, unless the attorney is an employee of the employer.

1. Contact's last (family) name *	2. First (given) name *	3. Middle name(s) *
MOIGRADAN	CALIN	OVIDIU
4. Contact's job title * PRESIDENT		
5. Address 1 * 2255 W. LAWRENCE AVE.		
6. Address 2 N/A		
7. City * CHICAGO	8. State * IL	9. Postal code * 60625
10. Country * UNITED STATES OF AMERICA		11. Province N/A
12. Telephone number * 3128886076	13. Extension N/A	14. E-Mail address CALINMOIGRADAN_ABS@YAHOO.COM

E. Attorney or Agent Information (If applicable)

1. Is the employer represented by an attorney or agent in the filing of this application? *		<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
if "Yes", complete the remainder of Section E below.			
2. Attorney or Agent's last (family) name §	3. First (given) name §	4. Middle name(s) §	
PERKINS	ROBERT	AARON	
5. Address 1 § 400 CORPORATE POINTE			
6. Address 2 SUITE 300			
7. City § CULVER CITY	8. State § CA	9. Postal code § 90230	
10. Country § UNITED STATES OF AMERICA		11. Province N/A	
12. Telephone number § 3103840200	13. Extension N/A	14. E-Mail address ROBERT@IMMIGRATION-PROFESSOR.COM	
15. Law firm/Business name § ROBERT A. PERKINS & ASSOC.		16. Law firm/Business FEIN § 364267738	
17. State Bar number (only if attorney) § 6202519		18. State of highest court where attorney is in good standing (only if attorney) § ILLINOIS	
19. Name of the highest court where attorney is in good standing (only if attorney) § SUPREME			



Labor Condition Application for Nonimmigrant Workers
 ETA Form 9035 & 9035E
 U.S. Department of Labor

F. Rate of Pay

1. Wage Rate (Required) From: \$ <u>28.00</u> * To: \$ <u>N/A</u>	2. Per: (Choose only one) * <input checked="" type="checkbox"/> Hour <input type="checkbox"/> Week <input type="checkbox"/> Bi-Weekly <input type="checkbox"/> Month <input type="checkbox"/> Year
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G. Employment and Prevailing Wage Information

Important Note It is important for the employer to define the place of intended employment with as much geographic specificity as possible. The place of employment address listed below **must be a physical location and cannot be a P.O. Box**. The employer may use this section to identify up to three (3) physical locations and corresponding prevailing wages covering each location where work will be performed and the electronic system will accept up to 3 physical locations and prevailing wage information. If the employer has received approval from the Department of Labor to submit this form non-electronically and the work is expected to be performed in more than one location, an attachment must be submitted in order to complete this section.

a. Place of Employment 1

1. Address 1 * 2255 W.LAWRENCE AVE.	
2. Address 2 N/A	
3. City * CHICAGO	4. County * COOK
5. State/District/Territory * ILLINOIS	6. Postal code * 60625
Prevailing Wage Information (corresponding to the place of employment location listed above)	
7. Agency which issued prevailing wage § N/A	7a. Prevailing wage tracking number (if applicable) § N/A
8. Wage level * <input checked="" type="checkbox"/> I <input type="checkbox"/> II <input type="checkbox"/> III <input type="checkbox"/> IV <input type="checkbox"/> N/A	
9. Prevailing wage * \$ <u>27.83</u>	10. Per: (Choose only one) * <input checked="" type="checkbox"/> Hour <input type="checkbox"/> Week <input type="checkbox"/> Bi-Weekly <input type="checkbox"/> Month <input type="checkbox"/> Year
11. Prevailing wage source (Choose only one) * <input checked="" type="checkbox"/> OES <input type="checkbox"/> CBA <input type="checkbox"/> DBA <input type="checkbox"/> SCA <input type="checkbox"/> Other	
11a. Year source published * 2013	11b. If "OES", and SWA/NPC did not issue prevailing wage OR "Other" in question 11, specify source § OFLC ONLINE DATA CENTER

H. Employer Labor Condition Statements

Important Note: In order for your application to be processed, you **MUST** read Section H of the Labor Condition Application – General Instructions Form ETA 9035CP under the heading "Employer Labor Condition Statements" and agree to all four (4) labor condition statements summarized below:

- (1) **Wages:** Pay nonimmigrants at least the local prevailing wage or the employer's actual wage, whichever is higher, and pay for non-productive time. Offer nonimmigrants benefits on the same basis as offered to U.S. workers.
- (2) **Working Conditions:** Provide working conditions for nonimmigrants which will not adversely affect the working conditions of workers similarly employed.
- (3) **Strike, Lockout, or Work Stoppage:** There is no strike, lockout, or work stoppage in the named occupation at the place of employment.
- (4) **Notice:** Notice to union or to workers has been or will be provided in the named occupation at the place of employment. A copy of this form will be provided to each nonimmigrant worker employed pursuant to the application.

1. I have read and agree to Labor Condition Statements 1, 2, 3, and 4 above and as fully explained in Section H of the Labor Condition Application – General Instructions – Form ETA 9035CP. *	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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**Labor Condition Application for Nonimmigrant Workers
ETA Form 9035 & 9035E
U.S. Department of Labor**

I. Additional Employer Labor Condition Statements – H-1B Employers ONLY

! Important Note: In order for your H-1B application to be processed, you **MUST** read Section I – Subsection 1 of the Labor Condition Application – General Instructions Form ETA 9035CP under the heading “Additional Employer Labor Condition Statements” and answer the questions below.

a. Subsection 1

1. Is the employer H-1B dependent? §	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2. Is the employer a willful violator? §	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3. If “Yes” is marked in questions 1.1 and/or 1.2, you must answer “Yes” or “No” regarding whether the employer will use this application <u>ONLY</u> to support H-1B petitions or extensions of status for exempt H-1B nonimmigrants? §	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A

If you marked “Yes” to questions 1.1 and/or 1.2 and “No” to question 1.3, you **MUST** read Section I – Subsection 2 of the Labor Condition Application – General Instructions Form ETA 9035CP under the heading “Additional Employer Labor Condition Statements” and indicate your agreement to all three (3) additional statements summarized below.

b. Subsection 2

- A. **Displacement:** Non-displacement of the U.S. workers in the employer’s workforce
- B. **Secondary Displacement:** Non-displacement of U.S. workers in another employer’s workforce; and
- C. **Recruitment and Hiring:** Recruitment of U.S. workers and hiring of U.S. workers applicant(s) who are equally or better qualified than the H-1B nonimmigrant(s).

4. I have read and agree to Additional Employer Labor Condition Statements A, B, and C above and as fully explained in Section I – Subsections 1 and 2 of the Labor Condition Application – General Instructions Form ETA 9035CP. §	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

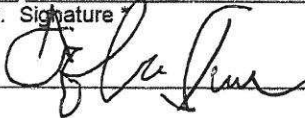
J. Public Disclosure Information

! Important Note: You must select from the options listed in this Section.

1. Public disclosure information will be kept at *	<input checked="" type="checkbox"/> Employer’s principal place of business <input type="checkbox"/> Place of employment
--	--

K. Declaration of Employer

By signing this form, I, on behalf of the employer, attest that the information and labor condition statements provided are true and accurate; that I have read sections H and I of the Labor Condition Application – General Instructions Form ETA 9035CP, and that I agree to comply with the Labor Condition Statements as set forth in the Labor Condition Application – General Instructions Form ETA 9035CP and with the Department of Labor regulations (20 CFR part 655, Subparts H and I). I agree to make this application, supporting documentation, and other records available to officials of the Department of Labor upon request during any investigation under the Immigration and Nationality Act. Making fraudulent representations on this Form can lead to civil or criminal action under 18 U.S.C. 1001, 18 U.S.C. 1546, or other provisions of law.

1. Last (family) name of hiring or designated official *	2. First (given) name of hiring or designated official *	3. Middle initial *
MOIGRADAN	CALIN	OVIDIU
4. Hiring or designated official title *		
PRESIDENT		
5. Signature *		6. Date signed *
		3/27/13



Labor Condition Application for Nonimmigrant Workers
ETA Form 9035 & 9035E
U.S. Department of Labor

L. LCA Preparer

Important Note: Complete this section if the preparer of this LCA is a person other than the one identified in either Section D (employer point of contact) or E (attorney or agent) of this application.

1. Last (family) name § N/A	2. First (given) name § N/A	3. Middle initial § N/A
4. Firm/Business name § N/A		
5. E-Mail address § N/A		

M. U.S. Government Agency Use (ONLY)

By virtue of the signature below, the Department of Labor hereby acknowledges the following:

This certification is valid from 08/30/2013 to 08/15/2016.

William J. Carlson
Department of Labor, Office of Foreign Labor Certification

04/04/2013
Determination Date (date signed)

I-200-13088-320148

CERTIFIED

Case number

Case Status

The Department of Labor is not the guarantor of the accuracy, truthfulness, or adequacy of a certified LCA.

N. Signature Notification and Complaints

The signatures and dates signed on this form will not be filled out when electronically submitting to the Department of Labor for processing, but **MUST** be complete when submitting non-electronically. If the application is submitted electronically, any resulting certification **MUST** be signed *immediately upon receipt* from the Department of Labor before it can be submitted to USCIS for further processing.

Complaints alleging misrepresentation of material facts in the LCA and/or failure to comply with the terms of the LCA may be filed using the WH-4 Form with any office of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. A listing of the Wage and Hour Division offices can be obtained at <http://www.dol.gov/esa>. Complaints alleging failure to offer employment to an equally or better qualified U.S. worker, or an employer's misrepresentation regarding such offer(s) of employment, may be filed with the U.S. Department of Justice, Office of the Special Counsel for Immigration-Related Unfair Employment Practices, 950 Pennsylvania Avenue, NW, Washington, DC, 20530. Please note that complaints should be filed with the Office of Special Counsel at the Department of Justice only if the violation is by an employer who is H-1B dependent or a willful violator as defined in 20 CFR 655.710(b) and 655.734(a)(1)(ii).

O. OMB Paperwork Reduction Act (1205-0310)

These reporting instructions have been approved under the Paperwork Reduction Act of 1995. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Obligations to reply are mandatory (Immigration and Nationality Act, Section 212(n) and (t) and 214(c). Public reporting burden for this collection of information, which is to assist with program management and to meet Congressional and statutory requirements is estimated to average 1 hour per response, including the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Room C-4312, 200 Constitution Ave. NW, Washington, DC 20210. (Paperwork Reduction Project OMB 1205-0310.) **Do NOT send the completed application to this address.**