

USCIS Tightens the Rules Related to H-1B Visas for Third Party Worksites

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On February 22, 2018, the U.S. Citizenship and Immigration Services (USCIS) issued a new policy memo making it more restrictive for H-1B employers who have their consultants work at third party work sites to fulfil client projects. The new policy memo updates the January 2010 agency memo that outlined the guidelines in determining “Employer-Employee Relationship for Adjudication of H-1B Petitions, Including Third-Party Site Placements,” which is also called Neufeld memo. The administration says the memo was issued to combat fraud and to also ensure that H1B adjudication policy for the upcoming FY 2019 cap season is in alignment with the executive order, “Buy American, Hire American” strategy. The biggest impacted employers will be outsourcing firms, but others will also be affected.

The new policy memo will now require employers to submit a "detailed statements of work or work orders" about the work that will be performed when an H-1B visa worker is employed at a third-party work site. The memo specifically states that if the H-1B worker will be placed at one or more third-party worksites, the employer must provide additional evidence to support that it "has specific and non-speculative qualifying assignments in a specialty occupation for the beneficiary for the entire time requested in the petition; and the employer will maintain an employer-employee relationship with the beneficiary for the duration of the requested validity period." That means USCIS may limit the approval period to coincide with the evidentiary documentation provided to support the H-1B worker.

To prove that an employee-employer relationship exists and that the H-1B worker is engaged in a specialty occupation at the third party work site, the memo indicates it is looking for detailed contracts and work orders, work product, and contractual agreements regarding the placement. Interestingly, the memo seems to specify what the end-client letter or other documentation should include, a detailed job description of the H-1B worker’s specialty occupation, the job requirements, the duration of the job at that particular third party site, the salary, hours worked, benefits, and information about who will supervise the H-1B worker; however, it is unclear why the end client would have this information, since they are not the employer.

The memo appears to overlap with USCIS making a decision to change its mission statement where they removed “nation of immigrants” line and rewrote it to read, “U.S. Citizenship and Immigration Services administers the nation’s lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values.” These changes reflect that the administration is taking decisive steps to ensure its agencies are in-line with their immigration policy strategy.

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