

US Homeland Security proposes changes to H-1B, L-1 visas

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H1-B visas may see changes aimed at better protecting US workers and wages.

The Department of Homeland Security (DHS) is proposing to revise the definition of specialty occupation to "increase focus on obtaining the best and the brightest foreign nationals via the H-1B program."

The changes, proposed under the Fall 2019 Unified Agenda published by the White House Office of Management and Budget on Wednesday, may see the introduction of additional requirements to ensure employers pay appropriate wages to H-1B visa holders. The Unified Agenda is a biannual regulatory agenda that provides a roadmap of planned federal rule-making across agencies.

A similar set of changes has also been proposed for L-1 visas, used in intra-company transfers. In addition, the DHS has suggested that the ban on the work authorization for spouses of H-1B visa holders should be implemented by March next year.

"The purpose of these changes is to ensure that H-1B visas are awarded only to individuals who will be working in a job which meets the statutory definition of specialty occupation," the DHS said. "In addition, these changes are intended to ensure that the H-1B programme supplements the US workforce and strengthens US worker protections."

DHS has proposed a target of December 2019 and September 2020 respectively to publish the rule for the H-1B and L-1 visa changes.

The definition of 'specialty occupation' and the 'employer-employee' relationship were passed by a Statute by the US Congress and the DHS cannot change it, said Rajiv S Khanna, managing attorney at law firm Immigration.com.

"This administration has tried to stretch the policy interpretations of the Statute to the limit, but I don't think they can make it any worse. The DHS or USCIS (US Citizenship and Immigration Services) cannot change the will of Congress," he said.

Visa denial rates for the H-1B and L-1 visa have spiked in the last few years, largely as a result of this.

The H-4 Employment Authorisation Document (H4EAD), introduced by the Obama administration in February 2015, allowed the spouses of H-1B visa holders to legally work in the United States.

The DHS first proposed doing away with this authorization in September 2017 and there is an ongoing court case to determine this.

Immigration experts believe it will take longer to be resolved.

"There is a stronger case for deregulating the H4EAD, but there still needs to be some justification for this to happen," Khanna said.

Indians have been the biggest beneficiaries of this visa.

The DHS has also proposed changing the optional practical training (OPT) program which allows international students to work in the US for 12 months after graduation and 24 additional months in science, technology, engineering and math (STEM) fields.

DHS said it would 'amend existing regulations and revise the practical training options available to nonimmigrant students on F and M visas,' with August 2020 being the proposed data for the rule.