





April 4, 2018

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Grassley:

I am writing to update you on some of the efforts of U.S. Citizenship and Immigration Services (USCIS) to ensure the integrity of the immigration system, specifically the nonimmigrant worker programs. As you may be aware, USCIS is reviewing existing regulations, policies, and programs and developing a combination of rulemaking, policy memoranda, and operational changes to implement the “Buy American and Hire American” Executive Order (E.O.).¹ These initiatives aim to protect the economic interests of United States workers and prevent fraud and abuse in the immigration system.

One area where we are focusing significant attention is on strengthening the integrity of the H-1B program. For example, USCIS recently published a policy memorandum clarifying existing regulatory requirements relating to H-1B petitions filed for workers who will be employed at one or more third-party worksites.² The updated guidance makes clear that employers must provide itineraries when the H-1B petition indicates that the worker will work at more than one location. It also makes clear that USCIS may request **detailed documentation**, including **contracts** relating to the employment or assignment of such workers, to ensure that a legitimate **employer-employee relationship** will be maintained and that the beneficiary will be **performing H-1B specialty occupation work for the entire time** requested in the petition. 

When H-1B beneficiaries are placed at third-party worksites, petitioners must demonstrate that they have specific and **non-speculative** qualifying assignments in a specialty occupation for that beneficiary for the entire time requested. While an H-1B petition may be approved for up to three years, USCIS will, in its discretion, generally limit the approval period to the length of time demonstrated that the beneficiary will be placed in non-speculative work and during which the petitioner will maintain the requisite employer-employee relationship. 

¹ See E.O. 13788, Buy American and Hire American, 82 Fed. Reg. 18837 (April 18, 2017).

² See <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-02-22-PM-602-0157-Contracts-and-Itineraries-Requirements-for-H-1B.pdf>.

Further, we now have dedicated email addresses to make it easier for the public to report suspected fraud and abuse in the H-1B and H-2B programs.³ Other steps that USCIS has previously announced include **establishing a more targeted approach in our H-1B employer site visit program.**⁴ We initiated these targeted site visits to help us determine, among other things, whether H-1B-dependent employers are actually paying their workers the statutorily required salary to qualify for an exemption from recruitment attestation requirements.

USCIS is also expanding its administrative **site visit program to include L-1B petitions.** We are initially focusing on employers petitioning for L-1B specialized knowledge workers who will primarily work offsite at another company or organization's location to ensure that they are complying with the requirements from the L-1 Visa Reform Act of 2004. These requirements were meant to help prevent United States workers from being displaced by foreign workers.

In addition, USCIS has published policy guidance clarifying issues regarding L-1 qualifying relationships and proxy votes,⁵ and also clarifying that TN nonimmigrant economists be defined by qualifying business activity.⁶

We also published a policy memorandum that instructs officers to apply the same level of scrutiny to both initial petitions and extension requests for nonimmigrant visa categories.⁷ The guidance applies to all nonimmigrant classifications filed using Form I-129, Petition for a Nonimmigrant Worker. The previous policy instructed officers to give deference to the findings of a previously approved petition, as long as the key elements were unchanged and there was no evidence of a material error or fraud related to the prior determination. The updated policy guidance rescinds the previous policy. Under the law, the burden of proof in establishing eligibility for the visa petition extension is on the petitioner, regardless of whether USCIS previously approved a petition. The adjudicator's determination is based on the merits of each case, and officers may request additional evidence if the petitioner has not submitted sufficient evidence to establish eligibility.

With regard to regulations, our plans include proposing regulatory changes to remove H-4 dependent spouses from the class of aliens eligible for employment authorization, thereby reversing the 2015 final rule that granted such eligibility.⁸ We announced this intention earlier this year in the semiannual regulatory agenda of the Department of Homeland Security.⁹ Such action would comport with the E.O. requirement to "propose new rules and issue new guidance, to supersede or revise previous rules and guidance if appropriate, to protect the interests of United States workers in the administration of our immigration system ..." As with other

³ ReportH1BAbuse@uscis.dhs.gov and ReportH2BAbuse@uscis.dhs.gov.

⁴ See <https://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/combating-fraud-and-abuse-h-1b-visa-program>.

⁵ See <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2017/2017-12-29-PM-602-0155-L-1-Qualifying-Relationships-and-Proxy-Votes.pdf>.

⁶ See https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2017/2017-1120-PM-602-0153_-TN-Economists.pdf.

⁷ See <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2017/2017-10-23Rescission-of-Deference-PM6020151.pdf>.

⁸ See Employment Authorization for Certain H-4 Dependent Spouses, 80 Fed. Reg. 10283 (February 25, 2015).

⁹ See Unified Agenda of Federal Regulatory and Deregulatory Actions, 83 Fed. Reg. 1872 (January 12, 2018).

revisions to regulations, the public will have an opportunity to provide feedback during a notice and comment period.

USCIS has also announced that it is working on two proposed regulations to improve the H-1B program. The first regulation proposes to establish an electronic registration program for petitions subject to numerical limitations for the H-1B nonimmigrant classification. This rule is intended to allow USCIS to more efficiently manage the intake and lottery process for these H-1B petitions.¹⁰ The second regulation will propose to revise the definition of specialty occupation, consistent with INA § 214(i), to increase focus on obtaining the best and the brightest foreign nationals via the H-1B program, and to revise the definition of employment and employer-employee relationship to better protect U.S. workers and wages. In addition, DHS will propose additional requirements designed to ensure employers pay appropriate wages to H-1B visa holders.¹¹

We are also drafting a proposed rule to remove the International Entrepreneur Rule (IER), as announced in the regulatory agenda. Due to the court order which invalidated the IER delay rule, the International Entrepreneur Final Rule is currently in effect.¹² We have not approved any parole requests under the International Entrepreneur Final Rule at this time.

USCIS always stands ready and appreciates the opportunity to provide appropriate technical assistance on legislative proposals for the H-2B program as well as any other area of our responsibility. More details about how our agency is implementing E.O. 13788 can be found on our website.¹³

If you have questions or would like additional information, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Respectfully,



L. Francis Cissna
Director

¹⁰ See Unified Agenda of Federal Regulatory and Deregulatory Actions, 83 Fed. Reg. 1872 (January 12, 2018).

¹¹ See <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1615-AC13>

¹² On July 11, 2017, DHS published a final rule with request for comment to delay the effective date of the IE Final Rule to March 14, 2018. See 82 Fed. Reg. 31887. On December 1, 2017 the U.S. District Court for the District of Columbia vacated the July 11, 2017 rule.¹² See *Nat'l Venture Capital Assoc. v. Duke*, No. 17-1912 (D.D.C. December 1, 2017).

¹³ See <https://www.uscis.gov/legal-resources/buy-american-hire-american-putting-american-workers-first>.