LABOR AND EMPLOYMENT LAW
INFORMATION MEMO
JANUARY 2, 2025

Major Updates to H-1B Program and Other Nonimmigrant Visa Classifications

On Dec. 18, 2024, the U.S. Citizenship and Immigration Services (USCIS) announced a final rule introducing significant changes to the H-1B nonimmigrant visa program. This rule aims to modernize the H-1B process, improve program efficiency, offer new benefits and flexibilities, and implement enhanced integrity measures. While the changes primarily affect H-1B specialty occupation workers, other nonimmigrant classifications, including H-2, H-3, F-1, L-1, O, P, Q-1, R-1, E-3 and TN categories, will also see impacts.

Key Updates

The new H-1B eligibility requirements and accompanying changes will apply to petitions filed on or after **Jan. 17, 2025**. At that time, USCIS will require a revised **Form I-129** for all filings. A preview of the updated form is currently available on the USCIS website.

In response to public comments, USCIS highlighted several key revisions and removals from the proposed rule (NPRM) in the final regulation. One significant change involves the definition of "specialty occupation." The proposed rule previously specified that if a petitioner required only a general degree, such as "business administration" or "liberal arts," without further specialization, the occupation would not qualify as an H-1B "specialty occupation." References to these degrees were removed in the final rule. This change shifts focus to the "beneficiary's actual course of study" rather than solely the degree title, emphasizing the relevance of the education to the job.

Under the final rule, a position qualifies as an H-1B "specialty occupation" if it requires the theoretical and practical application of highly specialized knowledge and mandates at least a bachelor's degree in a "directly related" specific specialty or its equivalent. A "directly related" degree is defined as one with a "logical connection between the required degree and the duties of the position."

For positions where a bachelor's degree in a specific specialty is "normally" the minimum requirement, petitioners do not need to prove that it is always the minimum. DHS clarified that "normal" is interpreted as "usual, typical, common, or routine," and rejected a proposal to use the preponderance of the evidence standard ("more likely than not") for this determination.

When petitioners specify a range of acceptable degree fields, they must demonstrate that each field is "directly related" to the job's duties. Each degree must equip the beneficiary with the specialized knowledge required to perform the job. The petitioner bears the burden of proving how each field of study represents a "specific specialty" directly connected to the position's responsibilities.

USCIS has also updated the requirements for H-1B cap exemptions. Nonprofit and governmental research organizations must now demonstrate that research is a "fundamental activity" rather than their primary mission.

To qualify for the ACWIA fee exemption, a nonprofit organization must now be recognized by the Internal

Revenue Service (IRS) as tax-exempt under sections 501(c)(3), (c)(4) or (c)(6). Previously, regulations required that nonprofits not only be tax-exempt under these IRS sections but also have specifically obtained IRS approval for tax-exempt status for research or educational purposes.

USCIS has removed the requirement for detailed itineraries covering the full validity period of the petition. However, petitioners must still establish that the position will exist as of the start date. For third-party placements, specialty occupation requirements will now be based on the job criteria of the third-party organization. Supporting evidence such as contracts, statements of work, or client letters will remain necessary.

Expanded authority for site visits will allow USCIS to inspect not only petitioner worksites but also third-party locations and private residences where remote work occurs. Refusal to cooperate during site visits may lead to petition denial or revocation.

Amended petition requirements have been clarified to codify existing guidance, including when new Labor Condition Applications (LCAs) are unnecessary (e.g., for short-term placements). USCIS has also codified its deference policy, meaning prior determinations involving the same parties and facts will generally be deferred to, barring material errors, changes or new adverse information.

Under the new rule, H-1B Cap-Gap extensions may continue until April 1 of the fiscal year for which the non-frivolous petition was filed or until the start date of the H-1B petition if approved, whichever occurs first. Previously, H-1B Cap-Gap extensions lasted until Sept. 30, the day before the start of the fiscal year associated with the petition.

The new rule under 8 CFR 214.2(h)(9)(ii) adds a provision for H-1B petitions approved after the requested validity period. USCIS may issue an RFE allowing petitioners to amend the dates. If the new dates exceed the Labor Condition Application (LCA) validity, a new LCA must be submitted. Changes to employment dates or wage increases are not considered material changes if the position remains the same. If no amendment is requested or no RFE is issued/replied to, the petition is approved for the original period without status changes or extensions.

Action Items

We recommend that clients review current and planned filings in light of these new rules. For those with upcoming H-1B or other nonimmigrant petitions, it is critical to prepare for the changes to eligibility requirements, updated forms and enhanced compliance measures.

If you have any questions, please contact Kseniya Premo, any attorney in the firm's immigration or labor and employment practices, or the Bond attorney with whom you have regular contact. We are here to help ensure a smooth transition and compliance with the new regulations.

BOND SCHOENECK & KING ATTORNEYS