

MARCH 06, 2018

USCIS IMPOSES STRICTER REQUIREMENTS FOR THIRD-PARTY WORKSITE H-1B PETITIONS

On February 22, 2018, U.S. Citizenship and Immigration Services ("USCIS") 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. Effective immediately, the new guidance aligns with President Trump's Buy American and Hire American Executive Order and the directive to protect the interests of U.S. workers.

UPDATED GUIDANCE

According to the policy memorandum, in order for an H-1B petition involving a third-party worksite to be approved, the employer must show by a preponderance of evidence that, among other things:

- The H-1B worker will be employed in a specialty occupation; and
- The employer will maintain an employer-employee relationship with the beneficiary for the duration of the requested validity period.

To establish that the beneficiary will be employed in a specialty occupation, the employer must demonstrate that the beneficiary has a specific work assignment, the petition is supported by a Labor Condition Application and the actual work requirements imposed by the third-party worksite will be in a specialty occupation. As evidence, the employer may submit contracts with the third-party worksite and work orders detailing the H-1B worker's assignment. Additionally, the employer may submit itineraries detailing the date, location and type of work the H-1B worker will perform at each worksite.

To establish that the employer will maintain an employer-employee relationship with the beneficiary for the duration of the requested validity period, the employer must outline how it will maintain control over the beneficiary at the third-party worksite. As evidence, the employer may submit contracts or other evidence of legal arrangements with the third-party worksite detailing the relationship between the parties.

In its discretion, USCIS may limit the approved H-1B validity period to the length of time the employer has demonstrated that the H-1B worker will be employed in a specialty occupation and that the requisite employer-employee relationship will be maintained.

ITINERARIES AS REGULATORY REQUIREMENT

In addition to the updated guidance, the policy memorandum also reminds employers that 8 CFR 214.2(h)(2)(i)(B) requires itineraries to be included with all H-1B petitions where services will be performed in more than one location. The itineraries must include dates and locations of the services to be provided. While this requirement is not new, according to USCIS, some adjudicators have incorrectly interpreted prior guidance as excusing petitioners from submitting an itinerary as required by 8 CFR 214.2(h)(2)(i)(B). The policy memorandum clarifies that there is no exemption from this regulatory requirement.

PRACTICAL TAKEAWAYS

When an H-1B worker will provide services at a third-party worksite, employers should be prepared to provide detailed documentation to establish that the H-1B worker will be employed in a specialty occupation and that a legitimate employer-employee relationship will be maintained throughout the duration of the H-1B validity period. This may include contracts between the employer and the third-party worksite, as well as itineraries outlining the dates and locations of the services to be provided by the H-1B worker. Uncorroborated statements from the employer are typically insufficient to meet the burden of proof established by the new guidance. Employers should also remember that itineraries must be included with all H-1B petitions where services will be performed in more than one location.

For more information, please contact:

- Michael L. Kim at (317) 977-1418 or mkim@hallrender.com;
- Lindsay C. Ramsey at (317) 429-3637 or [lramsey@hallrender.com](mailto:lr Ramsey@hallrender.com);

- Charlotte M. Fillenwarth at (317) 977-1476 or cfillenwarth@hallrender.com;
- Grace E. Shelton at (317) 429-3620 or gshelton@hallrender.com; or
- Your regular Hall Render attorney.