

JULY 24, 2018

USCIS ALLOWS ADJUDICATORS MORE DISCRETION IN DECISION TO DENY IMMIGRATION PETITIONS FILED BY EMPLOYERS

The adjudicators who review employer submitted immigration petitions such as H-1B's and I-140's will soon have more discretion available to deny those petitions. Health care employers will be specifically affected by this change as about 25 percent of all physicians practicing or training in the United States are foreign born. On July 13, 2018, U.S. Citizenship and Immigration Services ("USCIS") issued a new policy memorandum titled "Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator's Field Manual ("AFM") Chapter 10.5(a), Chapter 10.5(b)." This new policy changes the level of discretion that USCIS adjudicators have to deny immigration petitions. Adjudicators can now act as they see prudent when any required initial evidence was not submitted, and they can do so without first issuing a Request for Evidence ("RFE") or Notice of Intent to Deny ("NOID"). This change is intended to limit frivolous petitions and is in line with the current administration's review and change of policies on immigration.

OVERVIEW

The previous policy came from a policy memorandum issued in 2013, which addressed policies for the issuance of RFEs and NOIDs when the evidence submitted did not establish eligibility. The 2013 memo limited outright denials by stating that RFEs should be issued to petitioners unless there was "no possibility" of approval on the face of the petition. That memo has been rescinded in its entirety.

The policy implemented in this new guidance gives adjudicators complete discretion to deny applications, petitions and requests if any of the required evidence is not submitted. USCIS states that this new policy is intended to discourage frivolous or substantially incomplete filings being used as "placeholder" filings and encourage applicants, petitioners and requestors to be diligent in collecting and submitting all required evidence.

This new policy is effective starting on September 11, 2018 and will apply to all petitions, except for Deferred Action for Childhood Arrivals ("DACA") adjudications, received after that date.

PRACTICAL TAKEAWAYS

Employers should take this new discretion standard into account when providing documentation for employee immigration filings. While Hall Render has always counseled submitting a completed and accurate filing to USCIS, employers should be aware of the heightened possibility of denial and need for accuracy when gathering and submitting immigration documentation.

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