

# Mobility: immigration alert

March 2018

## United States

### U.S. Citizenship and Immigration Services (USCIS) to require additional evidence for petitions for H-1B workers employed at third-party worksites

#### Executive summary

On February 22, 2018 U.S. Citizenship and Immigration Services (USCIS) instructed its officers to enforce certain evidentiary requirements for H-1B workers who will be employed at one or more third-party worksites. The agency now requires petitioners to prove the employment relationship for H-1B workers with contracts between petitioning employers and any intermediate vendors, as well as end-clients. The policy guidance also requires that detailed itineraries be submitted for each H-1B worker in this class. These requirements apply to both initial and renewal petitions.

Prior to issuing this policy guidance, USCIS generally permitted petitioning employers to provide general statements regarding the dates and locations of an H-1B worker's proposed or possible employment at external client locations. The current policy guidance specifically overturns the prior guidance and institutes a requirement for a specific, detailed itinerary corroborated by contracts covering these employees' work.

#### Summary points

- ▶ Effective February 22, 2018, employers submitting an initial or renewal petition for any H-1B workers who will be placed at one or more third-party client sites during the term of the petition will be required to provide all contracts between the petitioning employer, all intermediary vendors, and all end-clients. Other corroborating evidence of these arrangements may also be submitted.
- ▶ The H-1B workers' assignments must be specific and non-speculative reflecting particular information regarding the actual work to be performed for the entire time requested on the petition. These specific assignments must be negotiated prior to their inclusion in the H-1B petition.

- ▶ USCIS now requires that the pre-negotiated assignments are reflected in a detailed itinerary containing the specific dates of the assignment, the name and address of the ultimate employer, the exact address and telephone number of the work location, as well evidence to corroborate this data.
- ▶ USCIS has also imposed additional requirements for the renewal of any H-1B petition for those placed at third-party client sites. The petitioning employer must now also prove that H-1B program requirements have been met for the entire prior approval period. This includes showing that the worker performed services in the specialty occupation, that the worker was paid the required wage, and that the employer maintained the right to control this employment.

#### Impact and next steps

The impact of this policy memorandum will likely include increased requests for evidence, closer scrutiny of petitions, shortened petition validity dates, and increased denials of initial and extension H-1B petitions. There will, no doubt, be commercial difficulty for H-1B employers to collect the relevant evidence now needed, making placements of H-1B workers at third party locations more onerous and difficult.



Employers should understand that this policy guidance is part of a larger, concerted effort by the current administration to identify and combat perceived fraud and abuse in the H-1B visa program. This effort will also include an expansion of administrative site visits to ensure that employers and foreign workers are complying with requirements of the H-1B nonimmigrant classification.

### How EY Law LLP can help

We recommend a conversation with one of our professionals to help evaluate the evidentiary requirements for any upcoming initial or renewal H-1B nonimmigrant petitions if your organization places H-1B workers at third-party worksites. With these additional requirements, it may be necessary for your organization to develop long-term plans for H-1B workers so that a thorough contractual structure and itinerary are in place for the entire length of assignment. These requirements may also increase the time required to gather the necessary evidence to finalize H-1B petitions that will satisfy the evidentiary requirements contained in this new policy guidance.

We understand that employers may have concerns regarding how these changes will affect not only their key personnel, but also their business relationships with other vendors and clients in regard to this class of H-1B workers. To this end, we can help your organization understand how to identify individuals who may be impacted by this latest policy guidance. We can assist with questions or concerns as to how this may impact your business and advise you on how to strategically address these new requirements.

The potential for significant changes in US immigration policy comes with considerable uncertainty and trepidation for those most directly affected. We encourage you to stay connected to your EY Law LLP legal advisor and reach out to us directly for additional information. We can provide clear advice on what options may be available in these changing times.

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