DHS’s Proposed H-1B Visa Selection Process Prioritizes Higher-Skilled; May Disadvantage IT Staffing Firms

The Department of Homeland Security announced today that Proposed Rules creating an H-1B electronic registration system and implementing a selection reversal process will be published on December 3, 2018. Comments would be due on January 2, 2019.

The proposed rules would initiate several changes. While some are intended to increase efficiency and reduce backlogs at USCIS, and reduce costs for employers, others are specifically crafted to prioritize H-1B visas to those with a masters or higher degree from U.S. universities. This may result in limiting access to talent for some IT staffing firms depending upon the types of skill sets placed.

We are in the process of fully reviewing the 139-page proposed regulation and gauging likely impact. Pages 16 and 17 of the Proposed Rule includes a chart of Current and Proposed Provisions and Expected Costs and Benefits. Here is a summary of the most significant changes/consequences:

New Electronic Registration:

- Amends regulations governing petitions filed on behalf of H-1B beneficiaries who may be counted toward the 65,000 “H-1B regular cap” or beneficiaries with advanced degrees from U.S. institutions of higher education who are eligible for the 20,000 “advanced degree exemption”.
- Requires petitioners to electronically register with USCIS for both H-1B regular cap and advanced degree exemptions during a designated time-period. This mandatory registration process is intended to reduce administrative burdens on USCIS service centers, which would no longer receive hundreds of thousands of petitions and documentation before conducting the current selection process.
- USCIS would then randomly select from among the registrations timely received a sufficient number projected as needed to meet the applicable H-1B allocations. Selection would take place in the new order described below, and only the petitions and applications accepted at this stage would move forward. DHS “proposes this new process to reduce costs for petitioners who currently spend significant time and resources preparing petitions and supporting documentation for each.”

New Selection Process:

- “USCIS would randomly select registrations for the H-1B regular cap first, including registrations for petitions eligible for the H-1B advanced degree exemption.”
- “Then USCIS would randomly select registrations for the H-1B advanced degree exemption. Changing the order in which USCIS counts these separate allocations would likely increase the number of beneficiaries with a master’s or higher degree from a U.S. institution of higher education to be selected for further processing under the H-1B allocations.”
The agencies intend to implement this new procedure for the 2019 H-1B lottery. However, the Proposed Rule notes that if the electronic registration system is not ready for use, the proposed selection reversal process would still take place.

This Proposed Rule was drafted to implement the Buy American/Hire American Executive Order which directed DHS and other agencies to “suggest reforms to help ensure that H-1B visas are awarded to the most-skilled or highest-paid petition beneficiaries.”

The TechServe Government Affairs Team will continue to work with our coalition partners, provide our members with additional information, and seek your input for comments. In the meantime, please send any questions to staff@techservealliance.org.