



News & Types: Immigration Update

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Practices: Immigration

USCIS REWRITES MISSION STATEMENT

On February 22, 2018, the U.S. Citizenship and Immigration Services (USCIS) rewrote its mission statement, removing the phrase "USCIS secures America's promise as a nation of immigrants." The USCIS Director L. Francis Cissna emphasized that the new statement clearly defines the USCIS' role in administering the lawful immigration system in the U.S. and renews its commitment to the American people. Director Cissna stated that the old mission statement referred to applicants and petitioners as "customers" which led to the erroneous belief that USCIS served them and not the American people. He stated that the new mission statement protects the integrity of the immigration system and serves as a reminder that the USCIS works for the American people, not prospective immigrants.

USCIS' new mission statement:

U.S. Citizenship and Immigration Services administers the nation's lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values.

USCIS' previous mission statement:

USCIS secures America's promise as a nation of immigrants by providing accurate and useful information to our customers, granting immigration and citizenship benefits, promoting an awareness and understanding of citizenship, and ensuring the integrity of immigration.

USCIS ISSUES POLICY MEMORANDUM ON H-1B PETITIONS FOR THIRD-PARTY WORKSITES

Effective February 22, 2018, the U.S. Citizenship and Immigration Services (USCIS) issued a policy memorandum relating to H-1B petitions for workers at one or more third-party worksites. Unless specifically exempted, the guidance applies to all USCIS officers adjudicating H-1B petitions.

The memorandum makes clear that USCIS may request detailed documentation to ensure a legitimate employer-employee relationship is maintained while the employee is working at a third-party worksite. Specifically, the employer must provide contracts and itineraries for employees who will work at a third-party location.

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

- The beneficiary 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.

During third-party worksite placement, petitioners must also demonstrate that they have specific and non-speculative qualifying assignments in a specialty occupation for that beneficiary for the entire time requested on the petition. Although an H-1B petition may be approved for up to three years, USCIS may limit the approval period to the length of time demonstrated that the beneficiary will be placed in non-speculative work and during which the petitioner will maintain the requisite employer-employee relationship.

BALCA Overturns PERM Denial Where Foreign Language Requirement Was Not Listed in Ads

On January 26, 2018, the Board of Alien Labor Certification Appeals (BALCA) overturned a PERM labor certification application denial. The Certifying Officer had denied the application based on two grounds: (1) the Employer failed to include “must be able to read, write, and speak the Korean language” in its advertisements or list the primary and secondary requirements; and (2) the Employer failed to list the same special skill in its job order. As a result, the Certifying Officer claimed that the Employer had not provided U.S. applicants with a sufficient understanding of the job opportunity to make an informed decision as to their qualifications.

After the Employer filed a Request for Reconsideration, BALCA found the Employer’s advertisement provided “enough detail to sufficiently apprise U.S. applicants of the job opportunity as a sales representative, including those who can read, write, and speak Korean.” The Employer’s print advertisement omitted the special skill requirement that the applicant be able to read, write, and speak Korean. The Board analogized this case to recent cases where Employers merely omitted information, and did not overstate or mischaracterize the job requirements. The Board emphasized that an Employer may be more specific but is not obligated to do so, as the regulations do not require enumeration of every job requirement in advertisements. The requirement is to apprise applicants of the job opportunity. The Board then found that the omission did not “chill” potentially qualified candidates’ interest in the job opportunity because it believed qualified U.S. workers with the ability to read, write, and speak Korean would not be dissuaded or discouraged from applying to the job opportunity based on the text of the advertisement.