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## PRACTICE AREAS

### BUSINESS

L-1 Visas

H-1B

H-1B Transfers

Visas

TN Visas (NAFTA)

Special Visas for Other Countries

Australia

Chile / Singapore E-1

E-1 Visas

E-2 Visas

PERM Labor Certification

### HOSPITALS /HEALTHCARE

H-1C Visas

H-1B Visas for Doctors

### FAMILY

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Permanent Residence for Family  
Within U.S.

Naturalization / Citizenship

### AMNESTY

## Court Rejects Challenge to Neufeld Memo

Posted: September 8th, 2010

The federal district court in Washington, D.C. recently rejected a challenge to the so-called Neufeld memorandum that the U.S. Citizenship and Immigration Services (the "USCIS") published on January 8, 2010 as a form of "guidance" on determination of employer-employee relationships under H-1B regulations (applicable to specialty occupation workers seeking work visas).

The legal challenge was brought by a group of software developers, Internet technology service firms and technology trade associations that have an interest in access to skilled workers from foreign countries.

The plaintiffs alleged that the Neufeld memo (written by USCIS Associate Director Donald Neufeld) was tantamount to a regulation in the way it was used, and further argued that the USCIS issued the memo in violation of the normal legal requirements for notice and public comment prior to rule-making.

This memo has been of great importance to technology companies that hire H-1B workers because it has further defined the employer-employee relationship, which is a predicate to H-1B worker qualification, and it has also defined when a worker might be a "contractor" rather than an employee.

On August 13, 2010, the federal district court dismissed the case, asserting that interpretive guidelines, such as the memo, do not bind USCIS adjudications and do not formally amend regulations. As a result, the judge found that the memo did not constitute an administrative or legislative rule.

For at least the time being, technology employers should continue to pay close attention to the Neufeld memo, which has been discussed and explained in prior postings on this blog, and which is explained in greater detail at the American Immigration Council's [Legal Action Center](#) site.

For more information about this and other issues pertinent to the H-1B



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visa process, call our offices at (847)564-0712 to schedule a consultation and/or check our the [professional workers visa](#) section of our Website.