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New Questions About Foreign “Specialty Occupation” Visas

Posted: August 3rd, 2010

In January of this year, Donald Neufeld, the Associate Director for Service Center Operations of the U.S. Citizenship and Immigration Services (the “USCIS”) issued a memorandum of guidance on the standards for **foreign worker visa** petitions applicable to those working in qualified “specialty occupations.”

The memo was primarily concerned with the need to establish an employer-employee relationship pursuant to H-1B regulations for “specialty occupation” workers. According to the Neufeld memo, the USCIS must now focus on whether an employer petitioning to sponsor a foreign worker has sufficient “control” over the worker to create the necessary relationship.

As a result of the new guidance, H-1B petitioners must now include information on their foreign worker visa petitions that will satisfy all or most all of the 11 detailed and rigorous “right to control” tests enunciated by the Neufeld memo.

This not only creates another set of documents that must be prepared properly as part of each H-1B filing, it also casts some doubts on past practices that were considered valid.

For instance, entrepreneurial foreign nationals could previously start their own businesses and obtain their own H-1B visas by setting up a corporation and becoming an employee of the corporation, a fact acknowledged by the memo.

But a footnote in the Neufeld memo now argues that a sponsored foreign employee who owns a majority of the sponsoring company might not be able to establish an “employer-employee” relationship due to lack of necessary “control.”

In order to expedite review of any H-1B petition for foreign workers in specialty occupations, it is now wise to have a careful legal edit of such a petition prior to submission to the USCIS. Any “red flags” raised by the



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petition documents, or lack thereof, pertinent to the issue of employee "control" could kill or severely delay the success of your petition.

For more information about foreign specialty worker visas, please call our offices at (847) 564-0712 and check out the section of our Website on [H-1B applications](#).