

USCIS ISSUES A POLICY MEMO ON THE DESIGNATION OF MATTER OF S-P-, INC.

USCIS has issued an important "Adopted Decision" on the eve of the H-1B filing deadline. Matter of S- Inc. addresses the prohibition on multiple H-1B filings by "related entities (such as a parent company, subsidiary, or affiliate)." 8 C.F.R. § 214.2(h)(2)(i)(G). For purposes of the regulatory bar, Matter of S- Inc. clarifies that the term "related entities" includes petitioners, whether or not related through corporate ownership and control, that file cap-subject H-1B petitions for the same beneficiary for substantially the same job. Absent a legitimate business need to file multiple cap-subject petitions for the same beneficiary, USCIS will deny or revoke the approval of all H-1B cap-subject petitions filed by "related entities" for that beneficiary.

Employer demand often exceeds the annual, statutorily capped supply of new visas under the H-1B nonimmigrant classification. To promote the fair and orderly access to H-1B visas, USCIS may conduct a random lottery of cap-subject petitions received by a certain date. Those petitions selected through the lottery proceed to adjudication if otherwise properly filed; USCIS rejects the remainder.

Petitioning employers sometimes try to improve their chances of winning the initial lottery selection by submitting multiple petitions on behalf of the same beneficiary without a legitimate business need to do so. USCIS regulations deter and penalize this tactic by requiring denial or revocation of all petitions for that common beneficiary filed by the same employer, or filed by "related" employers if any of them has not demonstrated a "legitimate business need" to file those petitions.

Some factors relevant to relatedness may include familial ties, proximity of locations, leadership structure, employment history, similar work assignments, and substantially similar supporting documentation.

Link: https://visaserve.com/global_pictures/Matter-of-S-Inc-Adopted-Decision-Package.pdf

If you should have any questions or need more information about the way that the U.S. Immigration and Nationality Laws may impact you, your family, your friends or your colleagues, please feel free to contact the U.S. Immigration and Nationality Lawyers at the NPZ Law Group – VISASERVE – U.S. Immigration and Nationality Lawyers by e-mailing to us at info@visaserve.com or by calling us at 201-670-0006 (x107) or by visiting our Law Firm's website at <http://www.visaserve.com>