



The Uncertainty of the Future of H-1B Visas Deepens

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UPDATE: Resources are now reporting that U.S. Citizenship & Immigration Services (USCIS) is not considering a regulatory change to the H-1B extension rules, and specifically, that USCIS will not change its interpretation of section 104(c) of AC21. This is expected to be a result of forceful pressure from business and technology communities. It is also reported that USCIS is considering a number of policy and regulatory changes, including a thorough review of employment-based visa programs. We will continue to closely monitor this issue and any other prospective changes to related immigration policies and regulations.

As part of President Trump's "Buy American, Hire American" initiative, the Department of Homeland Security (DHS) is reportedly considering new regulations that would eliminate the ability of certain H-1B workers who are in the green card process to receive H-1B extensions beyond the normal six-year H-1B limit. This directly affects certain H-1B workers who are subject to lengthy backlogs on green card availability due to per country limitations. Current law (AC21) allows H-1B workers who have reached certain milestones in the green card process to obtain extensions of their H-1B status while navigating the backlogs.

The relevant statutory language in the American Competitiveness in the Twenty-First Century Act (AC21) currently states that DHS "may grant" such an extension. The contemplated regulation would reinterpret that language to mean that such an extension is merely discretionary and thus, give officers at United States Citizenship and Immigration Services the authority to deny such an extension.

While no formal proposals or announcements have been made, such a change would seriously affect thousands of H-1B workers and their families in addition to the companies that rely on these workers' skills. Nonetheless, if DHS implements this change, the proposed regulation would be required to undergo the notice-and-comment rulemaking procedures set forth in the Administrative Procedure Act, which would take months. We will continue to closely monitor this potentially major change in policy.

Please **click here** for previous news on the H-1B visa program.

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