

Stricter H-1B Evidence Requirements and Eligibility Standards to be Imposed The U.S. Citizenship and Immigration Services (USCIS) through a recent memo has issued guidance and clarification as to what constitutes a valid employer-employee relationship to qualify for the H-1B 'specialty occupation' classification. The memo also discusses the type of evidence H-1B petitioners may have to provide to establish that an employer-employee relationship exists and will continue to exist with the beneficiary throughout the duration of the requested H-1B validity period. Although

the new USCIS guidance does not change any of the requirements for an H-1B petition, it establishes enhanced evidence requirements on employers who will be filing H-1B petitions. This means employers will be required to provide more detailed documentation than before. The employer petitioning for an H-1B visa will not only have to show that a valid employer-employee relationship exists between itself and the employee but will continue to comply with all the requirements for an H-1B petition including:

- Establishing that the beneficiary is coming to the United States temporarily to work in a specialty occupation;
- Demonstrating that the beneficiary is qualified to perform services in the specialty occupation; and
- Filing of a Labor Condition Application (LCA) specific to each location where the beneficiary will perform services.

So for instance, if you are an employer who will be employing an H-1B visa holder to perform services in more than one work location, you will have to submit a complete itinerary of services or engagements as well as file an LCA specific to each work location for the H-1B visa holder

The guidance also means that H-1B petitions for independent contractors, third-party placements and self-employed workers may not qualify for the H-1B classification if the employer is not able to show that an employer-employee relationship exists and it has a right of control. Instances of demonstrating control over the employee include the employer's ability to show it has control over that H-1B visa holder's assignment, daily tasks, and progressive reviews.

As a result of the guidance offered by USCIS, employer can expect to see an increase in documentation required as part of new, transfers and extensions of H-1B petitions.

We will continue to monitor the effect of the new guidance memo so please see our blog at <http://immigrationinfo.wordpress.com/for> updates. We will be holding an informative webinar for employers, HR managers, or employment representatives of companies, on February 23rd from 11 a.m. EST where we will review the new memo and the new documentation requirements. Please email us at [info@mithraslaw to](mailto:info@mithraslaw.com)

reserve your spot now.

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