

THE NEUFELD MEMO CAN CHANGE THE WHOLE H-1B PROFESSIONAL AND SPECIALTY OCCUPATION VISA LANDSCAPE IN THE UNITED STATES.

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As we have recently reported, H-1B "season" for the 2010-2011 Fiscal Year will begin on April 1st 2010. This means that H-1B employers will be able to submit H-1B nonimmigrant professional and specialty occupation worker visa petitions requesting an October 1st 2010 start date. Our offices continue to remain poised to assist U.S. employers to prepare and submit these petitions.

Recently, the U.S. Department of Homeland Security, Citizenship and Immigration Service ("CIS") implemented several important changes to the H-1B "professional and specialty occupation" work visa program in the U.S. The changes have alarmed many H-1B employers. Some of the changes included redefining the employer-employee relationship for third-party worksite placements.

The new guidelines were set forth a January Memorandum from the Associate Director of Service Center Operations, Donald Neufeld (the "Neufeld Memo"). While it may be the case that the Neufeld Memo targets consulting companies that place H-1B visaholders at third-party sites, it appears that the document may have a significant impact on U.S. employers who use H-1B nonimmigrant contract consultants to supplement their full-time workforce.

The use of contract consultants (such as H-1B nonimmigrants), especially in an economic downturn or recession continues to be critical to many organizations. For example, oftentimes, information technologies projects are of a limited nature and duration. Organizations find it to be economically feasible to engage the services of temporary consultants as opposed to creating a full-time position.

If inappropriately applied, the guidelines set forth in the Neufeld Memo can result in (1) denials of H-1B amendments and extensions; and (2) denials of entry to the U.S. of H-1B nonimmigrants who have traveled internationally; and (3) increased propensity by CIS for H-1B site visits and H-1B enforcement actions.

The issues raised in the Neufeld Memo are of great concern for H-1B employers as well as H-1B nonimmigrants. The ripple effects of the Neufeld Memo are still spreading. We will continue to monitor any new developments as they surface. For more information about the H-1B nonimmigrant visa or the Neufeld Memo, please feel free to contact our offices at 201-670-0006 (X100) or by e-mail at info@visaserve.com.