

USCIS Settles H-1B Cases Over Policies, Will Withdraw Onerous Guidance

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USCIS has entered into a broad settlement agreement that requires it to withdraw certain H-1B policies.

[H-1B denials have skyrocketed since 2017](#), especially following enactment of the “Buy American, Hire American” Executive Order. In February 2018, USCIS issued further guidance specifically placing additional onerous documentation requirements for H-1B employees working at client sites, disproportionately affecting staffing and consulting companies. As a result, staffing and consulting companies have seen the highest H-1B denial rates.

In response, employers filed cases in federal courts alleging the USCIS denials were arbitrary, capricious, and in violation of the relevant statutes and regulations. After filing, some of those denials were reversed and approved by USCIS without extensive litigation. Those cases (and those that proceeded through litigation) affected specific employers – not USCIS policy.

Now, [summary judgment decisions for the plaintiffs](#) in the [consolidated cases](#) of *ITServe Alliance v. Cissna* and *Serenity Info Tech v. Cuccinelli* have led USCIS to enter into a [broad settlement agreement](#) with ITServe Alliance, an association of IT service organizations.

According to the terms of the settlement:

- Within 90 days of the settlement, [USCIS will withdraw its guidance](#) known as the “Contract and Itinerary Memorandum” that required employers to provide an onerous amount of documentation to prove that beneficiaries would be employed in a specialty occupation throughout the requested period. The guidance required detailed documentation, including evidence of work assignments, copies of all contractual agreements, itineraries with specific dates and locations, and copies of detailed statements of work signed by the end-user client.
- USCIS will broaden its interpretation of what constitutes an employer-employee relationship to conform with the Department of Labor definition, which states that an employer-employee relationship is “indicated by the fact that [the employer] may hire, pay, fire, supervise, or otherwise control the work of any such employee . . .” [emphasis added]

- USCIS will stop its practice of approving petitions for time periods shorter than those requested by the employer without at least a brief explanation of the legal justification.

USCIS will start reopening and readjudicating approximately 200 cases involved in the consolidated case, and, importantly, will not use these overly restrictive standards.

USCIS has not yet issued any specific guidance regarding the ITServe Alliance settlement and how it might be used by other employers with previously denied cases.

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National Law Review, Volume X, Number 157

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