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Judge Rules Against Another Attempt by Trump to Restrict Legal Immigration

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The courts dealt another blow to the Trump administration's continued efforts to restrict immigration this week, providing relief for companies looking to fill and retain critical positions with foreign talent. On Tuesday, the US District Court for the Northern District of California issued an order setting aside the US Department of Homeland Security (DHS) interim final rule, "Strengthening the H-1B Nonimmigrant Visa Classification Program", and the U.S. Department of Labor (DOL) interim final rule, "Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States."

Last month the Northern District Court of California also issued a preliminary injunction of Presidential Proclamation 10052, which would have added restrictions on temporary visa issuance.

Following last month's preliminary injunction of Presidential Proclamation 10052's restrictions on temporary visa issuance, wherein the presiding judge stated that Pres. Donald Trump is not a monarch, the US District Court for the Northern District of California has issued another blow to the Trump Administration. The court issued an order Tuesday setting aside the US Department of Homeland Security (DHS) interim final rule, "Strengthening the H-1B Nonimmigrant Visa Classification Program", and the U.S. Department of Labor (DOL) interim final rule, "Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States."

The court found that the government failed to show good cause to excuse public notice and comment for the two rules. The court recognized the contributions of immigrants concluding:

> The COVID-19 pandemic has wreaked havoc on the nation's health, and millions of Americans have been impacted financially by restrictions imposed on businesses, large and small, during the pandemic; the consequences of those restrictions has been a fiscal calamity for many individuals. However, "[t]he history of the United States is in part made of the stories, talents, and lasting contributions of those who crossed oceans and deserts to come here. The National Government has significant power to regulate immigration. With power comes responsibility, and the sound exercise of national power over immigration depends on the Nation's meeting its responsibility to base its laws on a political will informed by searching, thoughtful, rational civic discourse." Arizona v. United States, 567 U.S. 387, 416

(2012).

This is another victory for regulatory process compliance and supporters of employment-based immigration. The Plaintiffs, which include the Chamber of Commerce of the United States of America, National Association of Manufacturers, Bay Area Council, National Retail Federation, American Association of International Healthcare Recruitment, Presidents' Alliance On Higher Education and Immigration; California Institute of Technology, Cornell University, The Board of Trustees of the Leland Stanford Junior University, University of Southern California, University of Rochester, University of Utah, and Arup Laboratories, filed a Complaint for Declaratory and Injunctive Relief from the DOL IFR effective Oct. 8 and the DHS IFR effective Dec. 7, claiming harm and prejudice to hundreds of thousands of American-based workers and disruption to US employers' ability to hire and retain critical high-skilled talent. (Chamber of Commerce, et al., v. DHS, et al., 20-cv-07331-JSW, 10/19/20.) Due to inflated salary requirements, employers would be forced to sever relationships with existing foreign national professionals as well as be precluded from hiring and sponsoring new candidates for temporary work and immigrant visas.

In advance of the Nov. 23 hearing, the presiding judge, the Honorable Jeffrey S. White published specific questions to determine whether the Defendants, the DOL and DHS, properly relied upon the good cause exception to the notice and comment period that is required before a new federal regulation can be implemented. In the matter before the court, the Defendants took seven months to issue the IFRs that are the subject of this litigation, calling into question their claim that exigent circumstances precluded the need for a notice and comment period.

The DOL IFR at issue changed how prevailing wage levels are calculated resulting in higher wages at every wage level and occupation. Overnight, entry level wages jumped from the 17th to the 45th percentile. So, for example, the annual salary of $58,802 allocated to a mechanical engineer position in Charleston, South Carolina on Oct. 7 increased to $91,749 overnight.

The DHS IFR among other things: would have revised the regulatory definition of and standards for an H-1B specialty occupation; added definitions for "worksite" and "third-party worksite"; revised the definition of "US employer"; clarified how US Citizenship and Immigration Services (USCIS) will determine whether an "employer-employee relationship" exists between the sponsoring employer and worker; limited the validity period of third-party placements to one year; and codified USCIS' H-1B site visit authority as well as the consequences of refusing such a visit.

The Defendants are expected to appeal the ruling, although any subsequent decisions may not occur until after the Presidential inauguration.

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