

District Court Sets Aside DOL and DHS H-1B Regulations

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On December 1, 2020 the U.S. District Court for the Northern District of California set aside two regulations that had been issued by the Department of Labor (DOL) and the Department of Homeland Security (DHS), each of which significantly impacted H-1B visas.

As described in our prior [alerts](#), these interim final rules issued by DHS and DOL narrowed the definition of “specialty occupation” for H-1B classification, and changed the way DOL calculates Prevailing Wages for both the H-1B, H-1B1 and E-3 Labor Condition Application (LCA) program and the PERM Labor Certification program, which had resulted in dramatically higher prevailing wages.

In *Chamber of Commerce v. DHS*, the District Court struck down these two rules and held that neither DOL nor DHS had a justification to rush the publication and implementation of these regulations without following the required notice and comment periods as required by the Administrative Procedures Act (APA). Finding that there was no rational relationship between the unemployment caused by the COVID-19 pandemic and the employment of H-1B workers, the court found that DHS did not demonstrate a “dire emergency” to justify bypassing the APA’s required notice and comment period. Similarly, the court struck down DOL’s immediate implementation of the new Prevailing Wages calculations, based on DOL’s violation of the notice and comment requirement.

The decision sets aside the DHS rules and DOL rules, and reverts to the rules in place before October 8. This is welcome news for employers who sponsor foreign nationals for H-1B, H-1B1, and E-3 employment visas as well as PERM Labor Certification applications. The decision has an immediate impact on the processing of H-1B petitions and LCAs. At this time, we are awaiting DOL’s update to its wage data to revert to the agency’s pre-October 8, 2020 data. USCIS will continue to adjudicate H-1B petitions according to the current regulatory standard, which has long been in effect.

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