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New USCIS Policy: H-1B Cap “Related-Entity” Filing Bar for Employers with Different Corporate Ownership and Control

Tiyalaw · Thursday, March 29th, 2018



New USCIS Policy: H-1B Cap “Related-Entity” Filing Bar for Employers with Different Corporate Ownership and Control

There is a **new policy on H-1B Cap “Related-Entity” Filing Bar** by U.S. Citizenship and Immigration Services (USCIS). **USCIS will deny or revoke all multiple filings of H-1B Visa Cap Petitions filed without a “legitimate business need” for the same beneficiary by “related entities” for “substantially the same job” in the same H-1B visa fiscal year, even if the petitioners are unrelated through corporate ownership and control, or a duplicate petition is later withdrawn.** For examples, petitioners are considered “related entities” **even if they have separate FEINs, operation locations, management, and ownership.**

The list provided by immigration regulation in 8 C.F.R. § 214.2(h)(2)(i)(G) describing “**related entities**” as “**... (such as a parent company, subsidiary, or affiliate)....**” are examples only and **not an exhaustive list**. **Factors** determining “related entities” and “substantially the same job” will be based on the **totality of the records** including, but are not limiting to: familial ties, proximity of locations, leadership structure, employment history, similar work assignments, and substantially similar supporting documentation.

Each of these “**related entities**” **must separately demonstrate a “legitimate business need”**. Otherwise, all these H-1B Cap Petitions will be revoked or denied.

This USCIS policy is to **increase fairness in the random lottery process for the limited H-1B visa numbers** so that other H-1B Cap Petitions will have a chance of being selected.

A USCIS policy memorandum serves as a guidance only, and does not create any rights to immigration benefits. Each case is adjudicated on a discretionary basis by USCIS.

This USCIS policy memorandum is based on an AAO decision in the *Matter of S- Inc.* For further information on *Matter of S- Inc.*, Adopted Decision 2018-02 (AAO Mar. 23, 2018), please visit: <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-3-23-PM-602-0159-Matter-of-S-Inc-Adopted-Decision-Package.pdf>

The Administrative Appeals Office (AAO) hears appeals for over 50 different types of immigration case, approximately. AAO and USCIS are parts of the U.S. Department of Homeland Security (DHS). Instead of AAO, certain immigration cases are appealed to the U.S. Department of Justice (DOJ) such as the Board of Immigration Appeals (BIA).

Petitioners are eligible to file H-1B Cap Petitions for the Fiscal Year 2019 to be received by USCIS on April 2, 2018.

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This article is intended for informational purposes only, and should not be relied on as legal advice or attorney-client relationship. By **Aik Wan Kok, Lawyer USA Immigration Services, at Tiya**; Tel: 703-772-822four & email to info at tiyaimmigration dot com; Direct dial from abroad: 001-703-7728224; <http://www.tiyaimmigration.com> ; <http://tiyalaw.blogspot.com> ; <http://immigrationresource.net>

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