



GMS Flash Alert

Immigration Edition

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United States – Revised Policy on Burden of Proof and Nonimmigrant Extension Petitions

Under updated policy guidance issued on October 23, 2017, U.S. Citizenship and Immigration Services (USCIS) is instructing its officers to apply the same level of scrutiny to both initial nonimmigrant petitions and extension requests for nonimmigrant visa categories.¹

WHY THIS MATTERS

- The burden of proof in establishing eligibility for the visa petition extension is placed on the petitioner, *regardless* of whether USCIS previously approved a petition.
- Companies with employees in nonimmigrant status should expect that USCIS will exercise greater scrutiny of nonimmigrant extension petitions, which may increase the likelihood of employers receiving requests for evidence (RFEs).

Background

Previously USCIS officers would give deference to prior determinations of eligibility when deciding whether to grant an extension of stay as long as the key elements remained the same, and no material error or fraud was found in the prior determination. The updated policy guidance rescinds this policy.

More Details on the Guidance

According to the USCIS Policy Memorandum of October 23, 2017, the prior guidance had the effect of:

- shifting the burden of proof to the U.S. authority, which was counter to Congress' intention , and
- "...appeared to place the burden on USCIS to obtain and review a separate record of proceeding to assess whether the underlying facts in the current proceeding have, in fact, remained the same...and was also impractical and costly to properly implement, especially when adjudicating premium processing requests."

Additionally, the Memorandum notes that the updated policy is "more consistent with the agency's current priorities and also advances policies that protect the interests of U.S. workers" as described in the President's April 2017 Executive Order to "Buy American and Hire American."²

KPMG NOTE

If you have any questions about how this policy revision may affect your company or employees, please contact a qualified immigration attorney.

KPMG Law LLP's immigration practice will continue to provide updates about this topical issue as developments arise.

FOOTNOTES:

1 "Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status" (October 23, 2017) at: <https://www.uscis.gov/laws/policy-memoranda> .

2 White House Press Release on "Buy American and Hire American" Executive Order (April 18, 2017) at: <https://www.whitehouse.gov/the-press-office/2017/04/18/president-trump-promotes-buy-american-and-hire-american> .

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Contact us

For additional information or assistance, please contact your local GMS or People Services professional* or the following professional with the KPMG International member firm in Canada:



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