



GMS Flash Alert

Immigration Edition

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United States – Update on Extensions for H-1B Holders, Working Spouses

A primary objective of the Trump Administration has been to protect the U.S. labor market for Americans and potentially create more jobs for U.S. workers. Many of President Trump's goals were set out in his "Buy American, Hire American" Executive Order signed in April 2017.¹

In December 2017 and January 2018, press reports² indicated that the U.S. Department of Homeland Security (DHS) was considering a reinterpretation of existing law to sharply limit H-1B extensions beyond a worker's first six years in H-1B status. This policy seems consistent with the administration's belief that the H-1B program may be negatively affecting the job prospects of U.S. workers, and that if H-1B workers left the U.S., it would potentially create opportunities for American workers. However, apparently in the face of criticism from the business community and advocacy organizations, the administration subsequently disavowed that it was considering this proposal.

WHY THIS MATTERS

The proposed approach would likely have resulted in certain H-1B employees leaving the country due to their inability to extend their H-1B status, which would have implications for families, children in school, and employers with such visa-holding employees. This would likely have caused considerable disruption and instability for both visa holders and their employers.

Additionally curtailing the ability of spouses of H-1B visa holders to seek employment, could affect an employee's decision to take an assignment to the United States and could frustrate U.S. employers' efforts to achieve their business goals.

Latest Developments

Stepping Back from Rescinding Policy of Extensions of H-1B

Initial reports had suggested that the U.S. administration was seeking to limit H-1B extensions beyond a worker's first six years in H-1B status. However, as reported more recently by McClatchy, the USCIS chief of media relations told that news organization, "USCIS is not considering a regulatory change that would force H-1B visa holders to leave the United States by changing our interpretation of section 104(c) of AC-21, which provides for H-1B extensions beyond the 6 year limit... Even if it were, such a change would not likely result in these H-1B visa holders having to leave the United States because employers could request extensions in one-year increments under section 106(a)-(b) of AC21 instead."³

Spouses of H-1B Visa Holders and Their Ability to Work Under Threat

In another H-1B development, the U.S. Department of Homeland Security had stated that it will end current regulations allowing H-4 dependent spouses of H-1B visa holders (awaiting permanent residence) to obtain employment authorization.

The DHS said it intends to rescind that regulation. The proposed rule terminating employment authorization for thousands of H-4 workers is scheduled to be announced in February, according to the regulatory agenda published by the Department on December 15.⁴

KPMG NOTE

Although the current policy on extensions for H-1B visa holders remains unchanged, the recent actions taken by the Trump administration demonstrate that there continues to be skepticism around the H-1B program by policy-makers in the White House.

The administration has previously expressed support for prospective legislation that would impose restrictions upon the H-1B program. How the H-1B program may ultimately be reformed remains an open question.

KPMG Law LLP will continue to provide updates regarding both the administration's and Congress' approach to the H-1B program.

FOOTNOTES:

1 See: <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-buy-american-hire-american/> .

2 See F. Ordoñez, "DHS Weighs Major Change to H-1B Foreign Tech Worker Visa Program," *McClatchy* online, December 30, 2017 at: <http://www.mcclatchydc.com/news/politics-government/white-house/article192336839.html> . Also see C. Da Silva, "H-1B Visa Rules: U.S. Lawmakers Oppose 'Draconian' Proposed Changes That Will 'Tear Families Apart,'" *Newsweek* online, January 5, 2018, at: <http://www.newsweek.com/h1b-visa-rules-us-lawmakers-oppose-draconian-changes-772085> . Please note that this is a 3rd party (non-governmental, non-KPMG) Web site. Provision of this URL does not represent an endorsement by KPMG Law LLP.

Also see, F. Ordoñez, "Under Pressure, Trump Team Backs Off Proposal to Cull Foreign Tech Workforce," *McClatchy* online, January 8, 2018 at: <http://www.mcclatchydc.com/news/politics-government/white-house/article193665104.html> . Also, see T. Hatmaker, "H-1B Visa Extensions for Workers Waiting on Green Cards Are Safe for Now," *TechCrunch* (online), January 9, 2018, at: <https://techcrunch.com/2018/01/09/h-1b-visa-extension-green-card-policy-change-uscis/> . Please note that this is a 3rd party (non-governmental, non-KPMG) Web site. Provision of this URL does not represent an endorsement by KPMG Law LLP.

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4 See: https://www.reginfo.gov/public/jsp/eAgenda/StaticContent/201710/Statement_1600.html and <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1615-AC15> .

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Contact us

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



Beth Nanton
Senior Manager
U.S. Immigration

KPMG Law LLP – Tax + Immigration,
Canada

Tel. +1-604-691-3316

bnanton@kpmg.ca



Charles Gillman
Senior Manager/Senior Attorney,
U.S. Immigration

KPMG Law LLP – Tax + Immigration,
Canada

Tel. +1-416-943-7882

cgillman@kpmg.ca

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