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Trump admin arms immig officials to outright reject H-1B applications

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The Trump administration has empowered officials to outright reject visa applications under certain circumstances. This step can be taken if the required 'initial evidence' wasn't submitted or it failed to establish eligibility for the visa sought. The revised policy will apply to all applications and requests received by the authorities from September 11 onwards.
In other words, the visa applicants, that include companies sponsoring H-1B employees, are less likely to get a second chance to submit more documentary evidence or provide explanations that would substantiate eligibility for the visa. In some cases, outright denial of the application, say for the extension of an H-1B visa, could even place the employee at the risk of deportation.

United States Citizenship and Immigration Services (USCIS) has issued this revised policy on July 13. "It has rescinded an earlier policy that restricted the official's ability to deny a case without first giving the applicant an opportunity to provide more evidence to prove the case. While the revised policy instructs officials to deny the application, without a Request for Evidence (RFE), only if the case lacks sufficient 'initial evidence', it is not yet clear how this term will be interpreted," states Fragomen, a global firm specialising in immigration laws.

Under the earlier policy, US officials processing visa applications were required to issue RFEs in all cases, unless there was no possibility that the additional document or information could rectify the issue. In its official statement, USCIS attributes the revision as a measure to curb frivolous filings. Immigration experts believe that the revised policy gives subjective powers to officials and could make the immigration process more cumbersome.

Rajiv S Khanna, managing attorney at Immigration.com, explains the nitty-gritty, "The evidence that is submitted falls into two categories, 'required' and 'recommended'. Even earlier, failure to submit the required evidence could result in a denial. However, the discretion now given to officials to dismiss cases for lack of recommended evidence will create problems. The

earlier procedure of issuing an RFE to supplement the recommended evidence was a more practical and benevolent measure."

"Casual dismissals that are likely to ensue under the revised policy will just push the cases into the appellate process," he adds.

For instance, many RFEs dealt with whether or not the occupation was specialised. On the RFE receipt, the sponsoring company could provide additional evidence such as an expert's opinion, on why a particular occupation or job profile was specialised, which should qualify the employee for an H-1B visa.

The going is likely to become tougher for visa applications where the employee is proposed to work at third-party client sites, as in such cases a host of evidence needs to be submitted such as client contracts and itineraries of employees, to substantiate that the H-1B visa holder's assignment will be specific, non-speculative and that it requires specialisation.

"The government's failure to provide internal training can result in numerous denials, which are nothing less than clear 'abuses of discretion' or application of a standard that is 'clearly erroneous'. Based on these grounds, the visa applicant can file an appeal with the 'Administrative Appeals Office' or seek a judicial remedy to reopen the case," says David Nachman, managing attorney at NPZ Law Group.

Immigration experts state that care will have to be taken by applicants to ensure that all evidence to demonstrate eligibility for the visa is collated well in advance. The submission for the visa needs to be of the highest quality to prevent outright rejection.