



AILA Member Talking Points on H-1B Computer Programmer Memo

AILA Doc. No. 17040334 | Dated April 3, 2017

1. The policy memo issued on Friday, March 31, 2017, offers clarity on USCIS's approach to determining whether the position of "Computer Programmer" is deemed a "specialty occupation" that would be eligible for an H-1B visa.
2. The memo rescinds an existing 17-year-old memo that was issued by the Director of the USCIS Nebraska Service Center and was directed to employees of that service center. The reality is that due to shifting workloads, the Nebraska Service Center for many years hadn't even been handling H-1Bs until very recently when it resumed a portion of the H-1B workload.
3. In addition, the December 22, 2000 memo that was based on Department of Labor materials from the late 90s and early 2000s, needed to be updated. The high-tech industry has evolved significantly since 2000, as have the occupations within the industry.
4. Though the memo focuses on Computer Programmers, the message is clear. In order to qualify for an H-1B, the employer must show that the position requires theoretical and practical application of a body of highly specialized knowledge, which requires the attainment of bachelor's degree or higher in a specific specialty. This is true for all H-1Bs.
5. Toward this end, the memo supports the proposition that a position cannot simultaneously have a job classification and pay rate at the low end of the industry salary range, while at the same time listing specific job requirements and skills that are more complex and specialized.
6. According to information and cases shared by AILA members, for at least the past several years USCIS has not taken the approach that a "Computer Programmer" is a slam-dunk H-1B.
7. The new policy memo would appear to offer transparency and clarity regarding the approach USCIS has taken on these cases for the past several years. To the extent that it memorializes existing policy, the memo offers guidance to employers and notice as to how USCIS adjudicates these cases.
8. However, the true test of this memo, like any other, will be in how it is interpreted by adjudicators in the field, when the rubber meets the road over the next few months as H-1Bs are adjudicated.

9. USCIS has acknowledged that a 17-year old memo offering guidance on positions in the technology sector is more or less obsolete. Congress should take this as a cue to once and for all, update our legal immigration system which hasn't been changed in almost 25 years.
10. For the good of our economy, our nation needs a system that better reflects the realities facing U.S. businesses today and provides flexibility and options, including an increase in permanent visas and H-1Bs, for U.S. employers seeking to build a competitive workforce.

Cite as AILA Doc. No. 17040334.

American Immigration Lawyers Association 1331 G Street NW, Suite 300 Washington, DC 20005

Copyright © 1993-2017 American Immigration Lawyers Association.