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Reading Past the Headlines: Computer Programmers Are Still Eligible for H-1B Visas

BY ARIEL G. SULLIVAN • APRIL 28, 2017

Earlier this month, headlines blared that “[Computer Programmers May No Longer Be Eligible For H-1B Visas.](#)” This seems to have been an example of the media sensationalizing, or perhaps just misunderstanding, the actual content of the memorandum issued by U.S. Citizenship and Immigration Services (USCIS) on March 31, 2016, entitled “[Rescission of the December 22, 2000 Guidance memo on H1B computer related positions.](#)” Essentially, the recent memorandum simply says that adjudicators at the Nebraska Service Center (NSC) should not rely on an obsolete memorandum that previously was issued by the NSC in 2000 entitled “Guidance memo on H1B computer related positions.” However, neither the Vermont Service Center nor the California Service Center (the two places where the vast majority of H-1B petitions are filed) have relied on the 2000 NSC memo for years. Moreover, computer programmers and other positions in the technology sector have never been presumed to be H-1B eligible, and employers seeking to sponsor foreign workers for such positions still have to meet the criteria for a specialty occupation every time. In other words, employers must establish that the job duties and responsibilities of the position are complex and require a bachelor’s degree or higher.

Client Tip: *Although the recent USCIS memorandum focuses on computer related positions in the technology industry, the message is clear: 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, regardless of the type of position or sector.*