

US District Court (NDC) Halts DHS/DOL H-1B Interim Rules

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To the relief of many seeking temporary employment in the US, US employers, vital critical infrastructure-related industries, immigration advocates, and immigration lawyers, on December 1, 2020, the US District Court for the Northern District of California set aside the following interim rules:

- The US Department of Homeland Security's (DHS) [Strengthening the H-1B Nonimmigrant Visa Classification Program](#); and
- The US Department of Labor's (DOL) [Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States](#).

In the [District Court's decision](#), the Court stated that the interim rules were “*promulgated in violation of 5 USC section 553(b)*,” and that DHS and DOL “*failed to show there was good cause to dispense with the rational and thoughtful discourse that is provided by the APA's notice and comment requirements*.” The case was filed by US Chamber of Commerce, the National Association of Manufacturers and other trade groups and universities and is likely to face a speedy government appeal that could impact the decision's implementation.

The interim DHS rule, which was championed by the Trump administration and published in the *Federal Register* on October 8, 2020, significantly revised the regulatory definition standards for “specialty occupation,” greatly narrowing which beneficiaries and proffered H-1B positions are eligible for the H-1B visa program, including disqualifying general discipline degrees (business, engineering) and positions that require education in one of several disciplines.

In turn, the interim DOL rule, which has drawn the most ire from immigration advocates, immigration lawyers, and industry leaders, dramatically restructured the prevailing wage system, including significant changes to H-1B, E-3, H-1B1, and PERM programs with entry-level wages increasing from the 17th percentile to the 45th percentile of wages for the occupation and geographic location.

For more information on these interim rules, please see [our prior blog](#). The immigration legal team at Moodys Tax continues to stay on the pulse of changes in immigration law and policy. Stay tuned for the latest.