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TRUMP'S RESHAPING OF THE H-1B VISA IN THE MANNER HE CHOOSES IS FURTHER DEMONSTRATION OF AUTHORITARIANISM

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On September 24, 2025, the Department of Homeland Security (DHS) promulgated a new proposed rule to introduce a "weighted selection" system for H-1B cap-subject petitions. The new proposed system is aimed at favoring the "allocation of H-1B visas to higher skilled and higher paid aliens".

Pursuant to the proposed rule, each H-1B lottery registration would be categorized based on the Department of Labor (DOL)'s Occupational Employment and Wage Statistics (OEWS) wage levels and entered into the lottery accordingly:

- Wage Level IV entries would be added to the selection pool four times
- Wage Level III, three times
- Wage Level II, twice
- Wage Level I, once

The proposed rule makes clear that "each unique beneficiary would only be counted once toward the numerical allocation projections, regardless of how many registrations were submitted for that beneficiary or how many times the beneficiary is entered in the selection pool."

The system outlined in the proposed rule would have a devastating impact on U.S. employers and H-1B beneficiaries alike. Wage levels for some industries are much higher than others, so U.S. employers who are unable to pay a level IV wage for a Software Developer (SOC Code 15-1252), for example, which exceeds $100,000 in many geographic areas, will have a lower chance of

candidates being selected in the H-1B lottery. Candidates in fields that tend to be lower-paying, such as Acupuncturists (29-1291.00) will have a greater chance of being selected, as employers may be better positioned to offer a Level IV wage if it is still relatively modest. This measure is also likely to deter U.S. employers from sponsoring new graduates for H-1B employment, as a level I wage is often the one that applies to an entry-level position.

This proposed rule is one of a number of measures aimed at eviscerating the H-1B visa program, together with the new $100,000 fee that applies to certain H-1B workers, detailed in our prior blog. This fee will have the effect of pushing many H-1B workers out of the U.S. labor market. Industries like information technology, which depend heavily on H-1B workers because there is not enough U.S. talent to fill open positions, will be impacted the most severely.

These measures are not only detrimental to the U.S. economy and H-1B workers alike, but are also a further example of the Trump administration's disregard for laws enacted by Congress, like his imposition of tariffs, firing of federal employees, including Immigration Judges whose decisions he does not like and taking revenge on former government officials he does not like, as with the indictment of James Comey. Trump has likely overstepped his authority as president by unilaterally imposing the new $100,000 fee, which is arbitrarily high and not authorized by the statute. Although Trump is proposing a rule to skew selections in favor of H-1B candidates who will be paid higher wages, there is nothing in the INA that authorizes weighting H-1B selections based on the amount of the offered wage.

CNN's Fareed Zakaria cited the proclamation implementing the $100,000 fee as evidence that the "America is moving down the path of illiberal democracy." We agree.

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