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DHS Withdraws H-1B Selection Final Rule

Legal Update

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By Immigration Group

This article was prepared with the assistance of ABIL, the Alliance of Business Immigration Lawyers, of which Loan Huynh, Fredrikson Immigration Department Chair, is a member.

The Department of Homeland Security (DHS) published a final rule on December 22, 2021, that withdrew the “Modification of Registration Requirement for Petitioners Seeking to File Cap-Subject H-1B Petitions” final rule, also known as the H-1B Selection Final Rule, issued January 8, 2021. That rule was vacated by the U.S. District Court for the Northern District of California.

On September 15, 2021, the court in *Chamber of Commerce of the United States of America et al. v. United States Department of Homeland Security, et al.*, No. 4:20-cv-07331 (N.D. Cal. March 19, 2021) vacated the H-1B Selection Final Rule. The rule would have changed the way USCIS selects H-1B registrations (or petitions, if registration is suspended) submitted by prospective petitioners seeking to file an H-1B cap-subject petition by ranking and selecting registrations based generally on corresponding wage levels.

DHS’s action follows a similar final rule from the Department of Labor, effective December 13, 2021.