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Federal court rules against Administration's two controversial H-1B rules

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We reported in October about two new rules that were issued by the **U.S. Department of Homeland Security** and the **U.S. Department of Labor** that would affect H-1B specialty occupation visas. The DOL rule significantly raised required wages for H-1B visas and green cards, and the DHS rule would have fundamentally changed the definition of “specialty occupations” that determined who might be qualified for an H-1B visa. The DOL rule took effect immediately, and the DHS rule would have taken effect on December 7. The Administration claimed that this expedited process was justified because of the COVID-19 emergency and increased rates of unemployment.

Generally, the Administrative Procedure Act requires that regulations be issued only after the issuing agency provides notice and an opportunity for comment from the public, followed by a period in which the agency reviews and considers the comments received before issuing a final rule.

On Tuesday, a federal court in San Francisco ruled that the rules violated the APA and are therefore invalid. In ***Chamber of Commerce of the United States v. DHS***, the court concluded that the DHS and the 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.”

Although the court’s decision is welcome news to employers of H-1B workers, the Administration could appeal the decision to the U.S. Court of Appeals for the **Ninth Circuit** and also seek to stay the decision while the appeal is pending. The DHS and the DOL are likely to maintain the *status quo* for a short period while they decide on their next steps. But even if the Administration chooses to appeal, the Biden Administration is likely to drop the appeal after January.

The *Chamber of Commerce* decision is the first ruling on the H-1B visa restrictions issued in October, but other lawsuits challenging the rules are pending before federal judges in New Jersey and the District of Columbia.



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