



Immigration Update

USCIS discretion to issues denials formally expanded

August 7, 2018

US Citizenship and Immigration Services (USCIS) issued a new policy memorandum that empowers USCIS adjudicators to apply their discretion as to whether to deny a petition or issue a Notice of Intent to Deny (NOID) without first issuing a Request for Evidence (RFE).

Background

In 2013, USCIS published guidance regarding the issuance of RFEs and NOIDs when evidence submitted to USCIS at the time of filing did not fully establish eligibility. Until the release of the memorandum on July 13, 2018, USCIS was limited in its discretion to deny petitions without first issuing an RFE or NOID in cases where there was “no possibility” of approval.

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Overview of impact

- The new memorandum rescinds the 2013 policy memorandum titled “Requests for Evidence and Notices of Intent to Deny”.
- The new memorandum is effective September 11, 2018 and applies to all applications, petitions and requests (except for Deferred Action for Childhood Arrivals (DACA) adjudications received after that date).
- The new memorandum restores the ability of adjudicators to use their discretion as to whether to deny applications, petitions and requests without first issuing an RFE or a NOID.
- USCIS will continue issuing denials when appropriate without first issuing an RFE or NOID when the applicant, petitioner, or requester has no legal basis for the benefit/request sought, or submits a request for a benefit or relief under a program that has been terminated.

Will these changes affect your organization?

- It may be advisable to consult with immigration counsel regarding cases to be filed post September 11, 2018, in order to determine potential risks when filing cases that may be adversely impacted by this memorandum.
- Given these pending changes, now is a good time to review and assess current corporate immigration protocols to determine what, if any, modifications may be required as a result of this memorandum.

If you have any questions regarding the information contained in this alert, please speak to your Garson LLP contact or one of the individuals listed below.

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