From:	Nicklaw, Nicole C (b)(6)
Sent:	Thursday, May 31, 2018 8:17 AM
To:	BEST_H1Bfoia@sptaas.dhs.gov
Subject:	FW: Rescission: Guidance Memo On H-B Computer Related Positions

From: Boudreau, Lynn A
Sent: Monday, April 10, 2017 4:49 PM
To: Fierro, Joseph; Doumani, Stephanie M
Cc: Martin, Evelyn M; Campagnolo, Donna P; Crandall, Kristine R; Hutchings, Pamela G; Nicklaw, Nicole C; Violett, Michael D; Zuchowski, Laura B; Brouillette, Bradley J; Whittier, Michelle J
Subject: RE: Rescission: Guidance Memo On H-B Computer Related Positions

Hi Stephanie,

VSC has the following questions which were forwarded last week-

1. Initially, per footnote 6 on page 3, "USCIS officers must also review the LCA to ensure the wage level designated by the petitioner corresponds to the proffered position. If a petitioner designates a position as a Level I, entry-level position, for example, such an assertion will likely contradict a claim that the proffered position is particularly complex, specialized, or unique compared to other positions within the same occupation." This seems to contradict the previous guidance that we cannot address wage leveling in denials/RFEs. According to the new memo, we now MUST review the LCA for the wage level in comparison to the petition/position. Does this mean that SCOPS now wants us to address wage leveling?

2. It's clear from the memo (and past practice) that computer programmer positions should be evaluated on a case-by-case basis. However, are we supposed to now view computer programmer positions as generally requiring only an associate's degree unless evidence presented documents otherwise? Historically, we were reviewing the petitioner's scope/operations and the duties of the position. If they seemed to generally match those described in the entry for computer programmers in the OOH we determined they qualified.

    Per the current online version of the OOH, computer programmers have the following description, "Most computer programmers have a bachelor's degree; however, some employers hire workers who have an associate's degree. Most programmers get a degree in computer science or a related subject." Per the discussion on page 3 of the new memo because the OOH says that some employers hire workers with associate's degrees, "a petitioner may not rely solely on the *Handbook* to meet its burden when seeking to sponsor a beneficiary for a computer programmer position. Instead, a petitioner must provide other evidence to establish that the particular position is one in a specialty occupation." What would this evidence look like? Would it just be a better description of duties?

    Moreover, this thinking doesn't seem to align with our historical interpretation of Prong 1. To qualify as a specialty occupation by prong one, "a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position." I suppose this depends on how we are defining "particular position" and "normally" in the definition of prong 1 and "most" in the OOH. What definitions is SCOPS using in this regard? Historically, VSC has taken this as "the position generally" as described in the OOH. The way the new memo addresses this prong seems to muddy the waters further between prong 1 and prongs 2.2, 3, and 4. Moreover, this may constitute a change in practice, at least at VSC.

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3. Relatedly, this memo appears to conflict with the historical operations at VSC in regards to how we utilize the OOH in the determination of a specialty occupation. In most of our four prong based specialty occupation denials we reference the OOH in regards to prong one. For example, we typically use the OOH saying something like "Most JOB POSITIONS have an associate's degree; however, some employers hire workers who have a bachelor's degree" as our reasoning for why a bachelor's degree is not "normally the minimum requirement" for entry into the position. Obviously, the job may still qualify by the remaining three prongs. However, this is largely the basis for us discounting the petitioner's ability to establish eligibility under prong 1. The memo largely disagrees with this reasoning, as even though the OOH says that "most" computer programmer positions need a bachelor's degree, we aren't concluding that they generally qualify. This may undermine our ability to reference the OOH in this regard in our denials. Do you have any suggested language to address prong 1 in light of the treatment of the OOH in the new memo?

Thanks,

Lynn

From: Fierro, Joseph
Sent: Monday, April 10, 2017 4:39 PM
To: Doumani, Stephanie M
Cc: Boudreau, Lynn A; Martin, Evelyn M; Campagnolo, Donna P; Crandall, Kristine R; Hutchings, Pamela G; Nicklaw, Nicole C; Violett, Michael D
Subject: Rescission: Guidance Memo On H-B Computer Related Positions

Hi Stephanie:

CSC has the following questions:

> There has been a high rate of approval for computer related positions. Does SCOPs anticipate this changing depending on the intent of the memo?

> Cases may require a more in depth analysis to determine if the position meets the specialty occupation definition and criteria, depending on the guidance. Can SCOPs consider this when discussing the intent of the memo?

> While decisions should be made on a case by case basis, this may be challenging in terms of consistency, since decisions could vary on very similarly filed petitions/petitioners for computer related positions due to differing opinions. Consistency may also be challenging since variances in what meets the preponderance of evidence may vary, and individual differences in interpretation of the criteria of what meets the definition of specialty occupation may vary. Can SCOPs consider this as well when discussing the intent of the memo and the guidance?

> Due to the above, does SCOPS see the SCs as needing more time to adjudicate H-1Bs in computer related positions since more time may be needed to review and determine if computer related fields qualify, depending on the guidance?.

We are available if you wish to have a call for any discussion you may wish to have.

Thank you,

Joseph Fierro

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Associate Center Director, Employment Branch 2
California Service Center

[ ] (b)(6)

From: Doumani, Stephanie M
Sent: Thursday, April 06, 2017 2:24:04 PM
To: Boudreau, Lynn A; Fierro, Joseph; Martin, Evelyn M
Cc: Selby, Cara M (Carrie); Campagnolo, Donna P; Crandall, Kristine R; Hutchings, Pamela G; Nicklaw, Nicole C; Violett, Michael D
Subject: Rescission: Guidance Memo On H-B Computer Related Positions

Hi Everyone,

As many of you know, the front office recently issued a Policy Memo titled *Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions"* PM-602-0142. (https://www.uscis.gov/sites/default/files/files/nativedocuments/PM-6002-0142-H-1BComputerRelatedPositionsRecission.pdf).

We understand that as written, this rescission includes language and interpretations that may conflict with current practice at the centers. We also understand that many of you may have specific questions regarding how this memo will impact your adjudication. We will be meeting with our H-1B working group early next week to discuss in detail the intent of this memo. We intend to issue clarifying guidance thereafter. In the interim, we invite each center to submit their questions concerning this memo via email if they have not done so already. When submitting your questions, please be sure to include everyone on this thread. Please submit your questions by COB Monday, April 10th.

Thank you very much for your patience while we look further into this.

Sincerely,

Stephanie Doumani

Branch Chief

Service Center Operations

Business Employment Services Team

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