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## DHS Improperly Delegated H-2B-Related Regulatory Authority to DOL, Circuit Court Rules

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The U.S. Court of Appeals, in Denver, has issued an opinion putting the entire H-2B labor certification and visa process in jeopardy.

The Tenth Circuit found that the U.S. Department of Labor is not a subordinate agency of the U.S. Department of Homeland Security, and, therefore, could not promulgate H-2B regulations. Only DHS, as administrator of the Immigration and Nationality Act, has the authority to propose and implement regulations that govern the issuance of H-2B visas. Because DOL is not a sub-delegate of DHS, it did not have the power to issue H-2B-related regulations.

The Court's decision puts the agency's April 2015 H-2B regulations at jeopardy. The agency has not made any statements about the decision. Industries that rely upon temporary foreign labor (e.g., commercial landscaping, oil-and-gas craft services, and sea farming) should expect stop-gap, then long-term rule-making that will result from the Court's decision. Labor certifications that either have been issued or are in process for the October 1, 2015 visa allotment may be invalid.

We will report on the agency reaction to the Court's opinion.

Jackson Lewis P.C. © 2019

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