

**FOR IMMEDIATE RELEASE**

June 8, 2010

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## **TechServe Alliance Sues Feds; Challenges Policy Restricting IT Staffing Firms Access to H-1B Visa Program**

**Alexandria, VA (June 8, 2010)** — TechServe Alliance, the national trade association representing the IT services industry, filed a lawsuit today in U.S. District Court in and for the District of Columbia against U.S. Citizenship and Immigration Services (USCIS), Alejandro Mayorkas, Director of USCIS, the Department of Homeland Security (DHS), and Janet Napolitano, Secretary of Homeland Security.

The five count Complaint charges that the government improperly and without any valid legal basis altered long-standing policy that has allowed IT staffing firms to obtain H-1B visas on the same basis as other companies. In an abrupt reversal of its policy without any notice or opportunity for comment and contrary to well settled law, the government now erroneously contends IT staffing firms are not “U.S. employers” and are therefore ineligible to serve as petitioners for H-1B visas. Since implementing this new policy, the agency has been improperly denying petitions of IT staffing firms on that basis. Along with the complaint, TechServe Alliance filed a motion seeking entry of a preliminary injunction barring the agency from continuing to enforce this policy as it was adopted in violation of law.

“USCIS’s actions are a thinly veiled attack on the IT staffing industry and its business model,” observed Mark Roberts, CEO of TechServe Alliance.

In a Memorandum dated January 8, 2010 by Donald Neufeld, Associate Director of Service Center Operations at USCIS ("Neufeld Memo"), USCIS reversed well settled policy, determining that IT staffing firms are not "U.S. employers" under U.S. immigration law and are therefore ineligible to access the H-1B visa program. USCIS arrived at this erroneous determination by arguing that IT staffing firms fail to exercise control over their consultants; summarily concluding there is no employer-employee relationship---an element of the definition of U.S. employer. In doing so, USCIS ignores the fact that IT staffing firms hire, fire, pay and supervise; activities which the applicable regulation as well as other areas of law have long recognized as establishing an employer-employee relationship.

In Count I of the Complaint, TechServe Alliance contends the Neufeld Memo amends an existing legislative rule allowing the Secretary of Homeland Security to issue the rule only after a notice-and-comment rulemaking process has been properly conducted in accordance with the Administrative Procedure Act (APA). The APA requires federal agencies to provide notice and an opportunity for interested parties to comment and have those comments considered prior to issuing final rules and regulations. Because USCIS failed to conduct such a process in accordance with the APA, TechServe Alliance seeks entry of a preliminary injunction barring the agency from enforcing its rule and vacating the Neufeld Memo. Count II sets forth a claim under the Regulatory Flexibility Act in light of the government's failure to conduct the required analysis of the rule's impact on small entities, Count III sets forth a claim that the regulations exceeds USCIS's statutory and regulatory authority, and Counts IV & V assert the Neufeld Memo is arbitrary and capricious and not authorized by law.

"IT staffing is a lawful business model that greatly benefits the U.S. economy, U.S. businesses and U.S. workers. The government should not be allowed to attack the industry by circumventing the rulemaking process and reversing long-standing policy by decree. Because of their vast power to destroy lives and businesses, government institutions should be required to rigorously comply with

applicable law and process. USCIS, DHS and its leadership failed to meet the most minimal standards of compliance with the law. Despite wide spread objection and outrage over the policy enunciated in the Neufeld Memo on both substantive and procedural grounds, USCIS and DHS have failed to rescind this policy. Accordingly, we were left with no choice but to defend the industry against these unfair, ill-conceived, and unauthorized actions and seek equitable relief from the Courts," stated Roberts.

Alongside TechServe Alliance, the American Staffing Association and IT staffing firms Broadgate, Inc. Logic Planet, Inc. and DVR Softek Inc. are also plaintiffs in the action.

### **About TechServe Alliance**

TechServe Alliance is a collaboration of IT services firms, clients, consultants and suppliers dedicated to advancing excellence and ethics within the IT services industry. Hundreds of IT staffing, IT solutions and IT consulting firms and tens of thousands of affiliated professionals, count on TechServe Alliance to keep their leadership informed, engaged and connected. TechServe Alliance serves as the voice of the industry before policymakers, the national media and trade press. By providing access to the knowledge and best practices of an entire industry and tapping the "collective scale" of hundreds of companies, TechServe Alliance supports its members in the efficient delivery of best-in-class IT services for clients and exceptional professional opportunities for every IT consultant.

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