



Preparation For An

H-1B FRAUD INVESTIGATION

and

SITE VISIT

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Practice Advisory on H-1B Fraud Investigations

In light of the commencement of an assessment by the U.S. Citizenship and Immigration Service' (USCIS) Office of Fraud and Detection and National Security (FDNS), the following practice advisory contains information for employers in dealing with site visits.

Please note

This advisory does **not** take into account any issues or duties the employer may have that arise out of state or federal employment law or private contractual issues. This advisory is meant to address only immigration related issues. This advisory offers only general guidance regarding appropriate strategies and procedures for dealing with H-1B fraud investigations and does not take into account the specific factual circumstances of any particular site visit; it should **not** be constituted as legal advice.

I. Overview

When employing an H-1B nonimmigrant, employers are required to submit a Fraud Fee payment with each initial petition. The fees obtained from these petitions have been used by the USCIS to set up the FDNS whose mission is to detect, deter, and combat immigration benefit fraud and to strengthen USCIS' efforts ensuring benefits are not granted to persons who threaten national security or public safety. In order to carry out this mission, FDNS representatives are visiting, generally unannounced, the sites of employers who have petitioned for H-1B workers.

Typical features of a site visit include:

- photographs
- establishment of identities
- interviews (of both employer representative and the beneficiary)
- request for documents such as identification and paystubs
- tour of the office or work location

II. Suggested HR Procedures to Complete in Advance of H-1B Fraud Investigations

In order to respond effectively to questions that FDNS investigators may pose during a site visit, employers should take the following actions prior to any site visit.

- 1) Ensure all immigration files are up to date and accurate. The better organized your files are the easier it will be to quickly review a particular file before meeting any site investigator. At a minimum, ensure you are familiar with the following information:
 - a. Beneficiary's job title, job duties, work location, salary, hours worked per week
 - b. Length of time the beneficiary has worked at the company

Given that is not always possible to remember the job details of each H-1B applicant you employ, we suggest you create a one page file summary to be placed on top of each file. This summary should contain all the relevant information mentioned above allowing you to obtain all of the necessary information without having to page through various forms and pages contained in an H-1B petition. In addition to petition related details, you may also be asked to provide paystubs and/or W-2 forms for the beneficiary.

- 2) If any discrepancies are noticed during the review of your files regarding correct job information, contact ISS to determine if any action needs to be taken to amend the H-1B petition(s).
- 3) Ensure beneficiary has a copy of all H-1B petitions filed on his or her behalf. If you have created a one page summary of the file as suggested above, you may want to provide a copy of it to the beneficiary. Since the beneficiary is usually interviewed, he or she will need to be able to address questions related to at least the following:
 - a. Job title, job duties, work location, salary, hours worked per week
 - b. Type of educational degree held, name of institution attended, major field of study, number of years attended, and when the degree was earned
 - c. Whether they paid for any of the filing fees associated with the petition (if so, this must not bring them below the applicable prevailing wage level as shown on the LCA)
- 4) Ensure the beneficiary's manager is aware of the possibility of a site visit and is prepared to answer any relevant questions. If you have created a one page summary of the files as suggested above, you may want to provide a copy of it to the manager.
- 5) Ensure that your reception personnel are aware of the potential for such an unannounced site visit and know:
 - a. Whom to contact within the office in the event of such a site visit,

- b. Not to guess at any information, but simply to refer the investigator to the appropriate employer representative who knows the relevant information,
 - c. Any company policy as it relates to such unannounced site visits.
- 6) Notify any client sites where a beneficiary is located of the potential for a site visit. Site visits are not limited to an employer's headquarters location but could also take place on the premises of your employees' work locations. Any client sites may also need to be provided with any and all applicable information to address questions raised in the site visit.
- 7) Be prepared to address questions about the company business and H-1B statistics. You may be asked questions relevant to the following:
- a. Indicate the product and/or service the company provides
 - b. Number of employees
 - c. Number of H-1B employees that work full time and part time
 - d. Number of employees working on-site at this location or off-site
 - e. Name and location of company where your H-1B employees are working
 - f. Number of employees that are either nonimmigrant aliens or lawful permanent residents
 - g. Length of time the organization has been in business
 - h. List of other locations where the organization is located

It would be advisable to maintain all of this documentation in the H-1B employee's personnel file and/or Public Access File (PAF).

III. Suggested Procedures to Follow During an Investigation

During a site visit, which typically lasts less than an hour, there are a number of things that usually occur. The FDNS officer will normally verify information contained in a specific immigration petition and will normally have a copy of such petition. The officer generally asks to speak with the employer's representative who signed the I-129 Form; however if this representative is unavailable they will then ask to speak with another employer representative. The officer will then ask questions relevant to the employer's business and may request to review a copy of the corporate tax returns, quarterly wage reports or other documentation to evidence it is a bona fide business. They may also ask if the signature on the I-129 Form is genuine. The officer will usually request detailed information about the H-1B employee and the employee's job and may request a copy of the most recent pay stub or W-2 Form.

After speaking with an employer representative the officer will likely request interview with the H-1B beneficiary. The beneficiary will be asked information such as his or her job, academic background, previous employment experience, current address, and any information about dependents. The officer may also request to speak with a colleague or manager of the H-1B employee to discuss details related to the H-1B employee's job.

An officer may also request to have a tour of the facility and take pictures.

In order to ensure a smooth a site visit the following are some suggestions to take into consideration:

- 1) Obtain information about the identity of the site investigator (e.g. business card, name and contact information) and follow up with the USCIS to verify that the individual does in fact work for the agency.
- 2) Have a "witness" present for the site visit and prepare dated notes after the investigation.
- 3) Do not guess on accuracy of information. If you do not know an answer to question, offer to find out and contact the investigator at a later date.
- 4) If a request is made to tour secure areas of a facility which are not accessible to the public, explain the secure nature of those areas and possibly suggest less sensitive areas to conduct the site visit and/or tour.

After the site visit call ISS and tell us about the details of the visit.

If you have further questions, please contact us via email or phone (800-437-7313).