

## **CLIENT ALERT**

### **WHAT H-1B EMPLOYERS SHOULD EXPECT DURING USCIS SITE VISITS**

*October 19, 2009*

#### ***Introduction***

In an effort to eliminate fraud, the United States Citizenship and Immigration Services (USCIS) is expanding its number of unannounced visits to the worksites of employers that sponsor H-1B visa holders. These site visits, conducted by the USCIS Fraud Detection and National Security Unit (FDNS), may occur at the H-1B employer's principal place of business and/ or at the H-1B employee's work location(s). The purpose of the site visit is to verify the existence of the employer and the information the employer provided in its immigration filings.

Investigators will also be determining whether sponsored foreign nationals are working in compliance with the terms and conditions specified in the H-1B filing made by employers on their behalf. Once the investigators collect the relevant information, they provide it to the USCIS adjudicator who is handling the petition so that a decision on the petition can be issued. In some instances, the investigators are verifying the employment of an employee whose H-1B petition has already been approved.

#### ***Who is Conducting These Visits?***

Employees of the USCIS Fraud Detection and National Security Unit, as well as outside contractors that were hired solely to conduct these investigations, conduct administrative site visits. Site visits may also be conducted by investigators from other government agencies, including Immigration and Customs Enforcement and the Department of Labor, but are much less common currently.

#### ***How Will the Investigator Identify Him- or Herself?***

Employees of USCIS-FDNS will normally present a badge or other identification credential issued by the Department of Homeland Security. Contractors will normally present a business card with a 1-800 number for an FDNS hotline the employer may call to verify that the contractor is conducting site visit for FDNS.

#### ***To Whom Will the Investigator Ask to Speak?***

The investigator will normally ask to meet with the signatory of the petition or another employee whom the USCIS believes to be an appropriate company representative. In some cases, the investigators may ask to meet with the employee sponsored in the H-1B petition.

### ***What Will the Investigator Ask?***

The investigator will come with a list of questions about the company, the employee's position and the employee's qualifications to determine the accuracy of the information contained in the H-1B filing.

Clients have reported being asked for specific information about the company, including:

- Information regarding the employer's business operations, locations and total number of employees;
- Copies of company financial documents including annual reports, tax returns and quarterly wage reports;
- Information on the number of H-1B petitions that the company has filed and the current number of H-1B employees on staff;
- Verification of the authenticity of the employer's signature on the H-1B petition;
- Specific information about one or more H-1B employees, including their job duties, credentials, salary, work location(s) and title; and
- Copies of employee's W-2s and paystubs to verify that they are working for the employer and being paid appropriately.

Investigators may also ask to speak with the H-1B employee to verify their position, duties, the requirements of the position, their start date, work location, and salary. Investigators may question the employee about their qualifications including previous work experience and educational credentials.

After speaking with the designated company representative and/ or the employee, investigators may ask to tour the company facility, the employee's department or to visit the employee's workspace. Designated company representatives are advised to accompany the investigators at all times. If investigators request or insist on access to non-public parts of the employer's business operations, company representatives should refer the request to corporate counsel.

The investigator may ask to review certain documents, including a copy of the H-1B petition, the employee's paystubs or the company's annual or financial reports. Providing such information is voluntary, and in the event that the information requested is non-public or extensive, company representatives should refer the request to corporate counsel.

### ***What Documents Are Employers Required to Maintain?***

In preparation for these site visits, employers should maintain easily accessible copies of all H-1B petitions filed with the USCIS. We recommend maintaining copies of H-1B petitions in a central location so that they are easily accessible to the Human Resources representative. Large employers should consider keeping copies of H-1B petitions at their central location as well as with a designated representative at the employee's worksite(s). Remember, FDNS investigators can visit either corporate headquarters and/or the employee's work location(s).

### ***Will We Be Given Advance Notice of the Visit?***

Generally, investigators arrive unannounced. However, in some cases they may contact a company representative ahead of time to inform of the visit.

### *What Do We Do if an H-1B Investigator Pays Us a Visit?*

1. Don't panic! H-1B site visits are now going to be a normal part of the application process.

In most cases, these visits will be simply to verify the facts contained in an immigration filing and the existence of the employer. However, if investigators appear to be extensively questioning the answers given or the documents presented to them, corporate or immigration counsel should be contacted. Likewise, if it appears that the investigator is requesting multiple copies of petitions or wants extensive non-public information, notify counsel's office immediately.

2. Ask the investigator to identify his/herself by name, provide their officer number and the agency that she/he works for. Ask the investigator to provide you with a business card for your records. Make sure to note the officer's information on the card, before proceeding with the interview.

Remember, there are many different government agencies that may be conducting investigations, including Immigration and Customs Enforcement and the Department of Labor. If the investigator is not from the USCIS FDNS Unit or a contractor of FDNS and is asking to see the company's Form I-9s, LCAs or Public Access Files, contact the company's corporate or immigration counsel immediately.

3. Guide the investigator into a company conference room or other neutral space. It is not advisable to conduct interviews in employee offices or to leave the investigator unaccompanied. Should the investigator ask to tour the facilities, a designated company representative should accompany them. Note, that investigators can refuse to have a company representative accompany them to meet with H-1B employee. If investigators request or insist on access to non-public parts of the employer's business operations, company representatives should refer the request to corporate counsel.
4. Respond to the questions posed by the investigator as best you can and provide them with copies of the documents requested. Never allow investigators to take original documents. If you are not sure of the answer to one of the investigator's questions or have doubts about whether to release this information to the investigator, refer them to outside counsel or the company representative who prepared the H-1B filing. The investigator should agree to this request. Do not guess any answers.
5. Keep a written record of all questions asked and the responses provided. This record should include the names of all employees with whom the investigator spoke, information on all questions asked and the responses provided, a list of the company documentation provided to the investigator, the locations visited during the site visit and whether pictures of the employer's facility were taken.

If the company representative was not permitted by the investigator to accompany them to speak with the H-1B employee, please have that employee also write down all questions and answers provided to the FDNS investigator.

6. Contact immigration counsel following the site visit to provide them with an overview of the questions asked and the responses given.

### *What Can We Do to Prepare for Site Visits By the USCIS?*

1. Inform all company staff about the possibility of site visits by the USCIS. Make sure that office receptionist and other support staff knows who to contact within Human Resources or the employee's department to respond to the investigator's inquiries.
2. Designate an employee who will act as the main contact person for the investigator. It is also advisable to designate a second contact person in case the main contact person is not available. If you are a large company, it may be worthwhile to designate a person within Human Resources, as well as someone within the employee's department as a designated company contact person with appropriate back-ups.
3. Maintain immigration documents in a central location. This will enable employees to easily identify the H-1B petition in question and provide it to the main contact person for review during their discussion with the investigator.
4. Have counsel's contact information readily available in case the investigator poses questions you cannot answer or you feel that the interview has become adversarial.
5. Notify H-1B employees that they may be required to meet with USCIS agents as part of the H-1B filing and to have documentation on-hand to verify their identity.
6. Human Resources departments coordinating the filing of the application should be sure that they properly coordinate with the H-1B employee's department to ensure that they have an accurate job description for the employee. The creation of a periodic tickler system to check that the accuracy of information contained in the petition including the employee's title, salary, geographical location and work hours is advisable. This will ensure that extensions, amendments and withdrawals of H-1B petitions are timely filed.
7. Remember, that counsel can be invaluable during these times in training Human Resources personnel on applicable H-1B regulations and requirements. For companies that file H-1B petitions in-house periodic audits can help to ensure that your company is in compliance with all immigration regulations. Mock interviews may also help company representatives to prepare for site visits.

With the government's current focus on increased immigration enforcement, it is more important than ever for employers to fully comply with all relevant immigration laws.

At **Klasko, Rulon, Stock & Seltzer, LLP**, our experienced business immigration lawyers and team of professionals assist businesses around the country in preparing corporate policies and programs to ensure full compliance with federal laws and regulations. We have extensive experience in representing employers in USCIS, DOL and ICE investigations.

**WEBINAR:** We will be hosting a free webinar next week to discuss what to expect when "Immigration" comes knocking at your door. More information will be forthcoming.