

# Client Alert



A report for clients and  
friends of the Firm

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## Frequently Asked Questions on USCIS Site Visits

### **I have been hearing about USCIS site visits to employers who file immigration petitions. Is this a new policy?**

Recently, the Department of Homeland Security has announced—and companies have reported—an increase in site visits by USCIS representatives to the facilities of companies petitioning for temporary work visa classification on behalf of employees. In the past, these visits took place but were not common and were largely limited to religious institutions petitioning for religious worker classification for employees. Under the new policy, however, site visits occur more regularly and can affect any type of employer that petitions for a foreign worker.

### **Who is conducting these site visits?**

The visits are primarily conducted by personnel of the Office of Fraud Detection and National Security (FDNS) at United States Citizenship and Immigration Services (USCIS). FDNS was established in 2004 to combat immigration benefit fraud. In addition to FDNS personnel, outside contractors, who are not employees of FDNS, often conduct these site investigations.

### **What are they looking for?**

In most cases, the investigators are attempting to verify that the facts contained in a petition that is currently pending before USCIS are true. They want to confirm that the employer exists, that the employer knowingly filed the petition, that the facts submitted regarding the job duties and salary are accurate, and that the employee is qualified for the position. Once they collect the relevant information, they provide it to the USCIS adjudicator who is handling the petition so that the adjudication can be completed.

### **How does a company get selected for a site visit?**

In some cases, the site visit can be triggered by information in the petition or information from an outside source, but in many instances, companies and organizations are selected randomly for these investigations.

### **What will the investigator ask for?**

He or she will usually ask to meet with a specific employee who USCIS believes to be an appropriate company representative, and, in some cases, the investigator will ask to meet with the foreign national employee. The investigator will come prepared with a list of questions about the employer, the job, and the employee in order to verify the accuracy of the petition. The investigator may also ask to tour the premises or visit the employee's workspace. He or she may also ask to review certain company records or documents.

### **How much notice will we get before an investigator shows up at the door?**

In many cases, the investigator will arrive completely unannounced. In some situations, the investigator will call in advance.

### **What should we do if an investigator arrives at our offices?**

- First, try to determine the identity of the visitor and the agency he or she represents. The visitor could be an employee or contractor of FDNS who has come to gather facts relevant to a petition. However, the visitor could also be a representative of Immigration and Customs Enforcement, the enforcement arm of the Department of Homeland Security, whose visit may have more serious implications for the employer or the employee. Keep in mind that the visitor could also be representing a completely different branch of the government that has no connection to the

immigration petition or could even be an unauthorized impostor.

- Second, contact the Proskauer attorney with whom you work. (If the person does not answer the phone, dial zero and explain to the operator that the person you are looking for must be urgently located and interrupted.) You can explain to your visitor that it is essential that your lawyer be present or at least participate telephonically in the visit in order to ensure the requested information and documentation is fully provided.
- If the investigator does not allow the attorney to participate or refuses to wait for the attorney, try to ascertain what information and documents are being requested. If the documents are not readily available or if you are not sure whether a certain document is appropriate to release to a third party, you should ask for more time to respond to the request of the investigator. The investigator will understand if documents are not immediately available at the time of an unexpected site visit. In unique circumstances, particularly where the documents do not seem to be related to the petition and are highly confidential or relevant to an ongoing or future litigation with a government agency or third party, it may be appropriate to ask for a subpoena before providing documents.
- Respond to the investigator in the spirit of cooperation. Keep in mind that, in most cases, the site visit is a prerequisite to the successful adjudication of the petition, and it is in the employer and employee's interest to conclude it as quickly and smoothly as possible.

### How can we better prepare for a site visit?

There are a few steps you can take to be prepared:

- Designate a lead employee to serve as the “go to” for any such visits. It may also be appropriate to designate a back-up employee.
- Inform reception staff and other personnel who may first encounter the visitor or be called upon in the event of a site visit to direct inquiries to the “go to” person.
- Maintain immigration documentation in a manner that leaves the petition materials readily identifiable and accessible to the go-to person in the event of a site visit.

The expansion of the site visit program serves as a reminder that immigration petitions, like many applications for government benefits, carry potential liability for the employer and the employee. It is therefore important to ensure that the immigration petition process is monitored through the compliance lens of the organization and the petition preparation and document maintenance procedures are consistent with the organization's standard compliance protocol.

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