

USCIS Site Visits – Expanding to L-1 Petitioners

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The United States Citizenship and Immigration Service (USCIS) created and implemented the Administrative Site Visit and Verification Program (ASVVP) in July 2009, under which it conducts unannounced site inspections at the offices of U.S. employers to verify information contained in pending and approved visa petitions.

Today, site visits to H-1B employers by USCIS's Fraud Detection & National Security Division (FDNS) have become routine. In fiscal year (FY) 2011, USCIS statistics show that 17,307 site visits were completed, compared to 14,433 completed in FY 2010, and the number continues to rise in the years since. The high number of inspections demonstrates USCIS' increased effort to root out what they believe is "widespread fraud." The visits are funded by the mandatory antifraud fee of \$500 that U.S. employers must pay the USCIS when filing H-1B and L-1 visa petitions for temporary foreign workers. It is interesting to note that the USCIS visits to H-1B employer sites seem to occur regardless of whether the employers are large well-known corporations, nonprofit institutions or smaller companies, and often there are repeat visits to companies who have already established that they are in compliance.

A new development in connection with site visits is USCIS' plans to begin conducting post-approval site visits of L-1 petitions in the beginning of 2014. This new phase of site visits comes in response to a recent report released by the U.S. Department of Homeland Security's Office of Inspector General (OIG) entitled *Implementation of L-1 Visa Regulations*. The report analyzes USCIS' L-1, intercompany transferee program, and suggests ways to make the program more fraud-proof, and adjudications more uniform. Specifically, the OIG report recommends mandatory site visits by USCIS prior to the approval of a new office extension petition to confirm the legitimacy of the petition. It remains uncertain whether USCIS will conduct site visits only for all new office extension petitions, or whether these site visits will extend to other L-1 petitions as well. We will keep you updated as we learn additional details.

By way of background, these visits are unannounced and begin with an FDNS site inspector (SI) or contractor inspector (nongovernment employee) showing up at the work location stated on the petition (form I-129). For FY 2011, USCIS claims less than 20% of the visits were conducted by contract employees, and that the default policy continues to be unannounced visits, although there have been reports of some SIs (in New York in particular) sending an email in advance of the visit to provide notification and a list of information/documentation that will be requested during the visit.

Upon arrival, the inspector typically requests to see the company representative who signed the I-129 petition and/or sometimes requests to see the nonimmigrant employee(s). While at the employer's site, the SI uses a USCIS mandated checklist to verify the information submitted in the petition including the existence of the petitioner; takes digital photos; reviews documents; and confirms the beneficiary's work location, workspace, hours, salary and duties.

If the SI meets with the foreign worker employee, the employee often is requested to provide his/her driver's license for identification purposes, a recent pay stub, and a business card. The SI typically asks the foreign worker questions such as how many hours they work and their job duties; who paid the costs associated with the H-1B petition; confirmation of location and who is the end client; and their current title and pay rate. Sometimes the SI requests to meet with multiple employees at the same time; however, USCIS has advised that, in the future, this will become rare as it fine-tunes its selection process so that multiple visits to the same employer at the same job site are eliminated unless fraud is suspected.

The inspector reports the results of the visit to an FDNS officer who determines whether the petitioner and beneficiary are in compliance with information provided in the approved petition. If the FDNS officer cannot verify the information on the petition or finds the information to be inconsistent with the approved petition, he/she provides an Immigration Services Officer (ISO) a Summary of Findings (SOF). The ISO uses the SOF to either request additional evidence from the petitioner; move to deny or revoke the petition; conduct additional administrative inquiries; or to refer the case to Immigration and Customs Enforcement (ICE) for criminal investigation for fraud.

Although USCIS' questions and requests are not very difficult, they are perceived as being invasive and frequently cause considerable stress and anxiety for both the petitioner and employee. Certain situations can be particularly nerve-racking. For example, when there is a change in an employee's job location within normal commuting distance of the place (address) of employment (and no other material change), employers now often feel compelled to file an H-1B amendment to advise the USCIS of the move, in fear of a possible site visit where they could be deemed to be noncompliant with the approved H-1B petition. Although an amendment is not necessarily required in this situation, some employers feel that simply providing notice to workers at the new worksite, and/or even filing and posting a new Labor Condition Application (LCA) at the new worksite prior to the employee's move does not sufficiently protect them from being found noncompliant during a site visit because LCAs are filed with the Department of Labor (DOL) only. Thus, USCIS is not notified of the change and visits the worksite indicated in the Form I-129.

Initially, USCIS took a harsh approach in this circumstance and moved to revoke H-1B approvals where an employee had changed work locations. However, recently employers are receiving emails from USCIS requesting additional information to verify the bona fides of the petition, such as:

- An explanation of why the employee no longer works at the facility;
- Copies of the foreign worker's three pay stubs and latest Form W-2;
- Beneficiary's current job title and duties;
- Beneficiary's present work location, along with a copy of the LCA for that location if the location has changed; and
- If the beneficiary is working for an end client, a letter from the end client attesting to beneficiary's employment at the site.

Employers should take these site visits seriously and contact their attorney as soon as soon they are notified that an inspector will be conducting a visit. Employers should be sure to provide complete and accurate information to USCIS, whether requested to do so on-site or subsequently via email. Your attorney can help you prepare a timely and thorough response.

The objective of the USCIS visits is to confirm the validity of the petitioning U.S. employer, verify the identity of the foreign worker beneficiary, and ensure the H-1B or L-1 foreign worker is in compliance with the terms of the approved petition. Nonetheless, without statutory or regulatory authority, search warrants, or subpoenas, USCIS is reliant on an employer's consent to enter the premises, conduct the site visit, and review the H-1B/L-1 files and interview the H-1B/L-1 foreign worker.

Previously we advised how an employer can best prepare for a site visit and it is reiterated below for your convenience:

- Designate a lead employee to serve as the "go to" for any such visits. It also may 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.
- With regard to H-1B foreign workers, the Labor Condition Application ("LCA") files should be ready for presentation to USCIS and Department of Labor agents, if requested. With regard to L-1 foreign workers, the executive, managerial, or specialized knowledge nature of the job duties should be clear in the petition documentation and correspond with the job duties of the individuals at the worksite. In addition, the corporate structure detailed in the petition should continue to meet L-1 visa requirements.

As a broader precaution, employers may want to perform regular internal audits of their immigration compliance documentation, including Forms I-9 and H-1B Public Access files. With the assistance of immigration attorneys, employers can correct any technical violations discovered and ensure full compliance with immigration regulations and I-9 requirements in case of an I-9 audit by Immigration Customs Enforcement (ICE), an H-1B or L-1 site visit by the USCIS, or an H-1B (LCA) audit by the U.S. Department of Labor.