

## FRAUD DETECTION AND NATIONAL SECURITY (FDNS) SITE VISITS

As part of its overall efforts to review and improve the integrity of the H-1B program, the U.S. Citizenship and Immigration Services' (USCIS) Office of Fraud Detection and National Security (FDNS) has been conducting unannounced site visits to H-1B employers. While these visits have been ongoing for several years, recently, USCIS has bolstered its efforts, which has increased the incidents of H-1B employers receiving unannounced site visits. **CSMC has had eight such site visits since September 2010, with four of them in the month of December 2011.** Visits often begin in Academic HR/VISA. However, FDNS officers might also directly contact an H-1B individual, their department, or simply show up at the work site indicated on the petition filed by CSMC.

While it may be unsettling to receive an unannounced visit from a government officer, these visits are random and considered routine, **there is no need for alarm.** A site visit does not necessarily indicate that something is “wrong.” Nevertheless, it can be intimidating when an officer unexpectedly visits. Listed below are helpful tips and information to prepare you if you are notified or approached by an FDNS Officer.

### If You, Your Department or Your Division Receives a Visit...

- Call or email your Immigration Partner (**Renata Giron ext. 3-2427 or Diem Hao Nguyen ext. 3-1907**) immediately about the site visit. Melissa Baker, Academic HR Manager, or Tara O'Shea, Academic HR Director may also be contacted at ext. 3-5539.
- As with any government officer, ask to see their badge and/or identification. Please take note of their name and ID number, if applicable.
- If you are unable to immediately answer any particular question, explain to the FDNS officer that you need additional time to contact with your Immigration Partner, since we will have the information that they are seeking.
- If the investigator asks to speak to a specific H-1B employee from your department before we are contacted, provide them with the person's contact information. However, request that an Immigration Partner be present either in person or by telephone during the site visit at that location. Then contact the employee to let him or her know that they might hear from a FDNS officer.

### What Will Happen During a Standard FDNS Site Visit?

During the H-1B site visit, the FDNS officer will normally verify information contained in a *specific* immigration petition, and will normally have a copy of this specific petition. H-1B site visits usually last for less than an hour. During the visit, the FDNS officer may review the work premises, speak with various parties (employer representative, H-1B beneficiary, colleagues/manager) and request documentation.

FDNS officers typically work from a standard script of questions, and primarily seek to compare information provided in petitions to that received at the worksite. Questions primarily focus on issues of whether there is a legitimate employer, whether the employer knows it filed the petition, whether the beneficiary is actually working at the designated location, is receiving the prevailing wage and is performing the job duties listed in the H-1B petition filed with USCIS.

### Employer Representative Interview

The FDNS officer will usually request to speak with the employer's representative who signed the Form I-129. However, because the site visit is unannounced, if this representative is not available, the FDNS officer will then ask to speak with another

employer representative, such as a Human Resources Manager. When speaking with the employer's representative, the FDNS officer may:

- Ask for specific information about the company, including, but not limited to, the employer's business, locations, and number of employees.
- Request to review a copy of the company's tax returns, quarterly wage reports, and/or other company documentation to evidence that it is a bona fide business.
- Request confirmation that the signature on the Form I-129 petition is genuine.
- Request detailed information about the H-1B nonimmigrant's title, job duties, work location, and salary.
- Request to review a copy of the H-1B nonimmigrant's most recent paystub and last Form W-2 (may also ask to review the Labor Condition Application (LCA) Public Access File.)
- Request information about the number of H-1B petitions that the employer has previously filed and information about the employer's immigration counsel.
- May ask about the number of Permanent Resident petitions the employer has previously filed
- Request a tour of the employer's facility. During the tour, the FDNS officer may take photographs of the facility or specific work location of the beneficiary.

### **H-1B Beneficiary (Employee) Interview**

The FDNS officer will normally request to interview the H-1B beneficiary, and will ask the beneficiary to provide government issued identification. During this interview, the FDNS officer may ask the beneficiary about his/her:

- Job title, job duties, responsibilities, requirements for the position.
- Employment dates, hours of work and position location.
- Academic background and previous employment experience.
- Current address.
- Dependents family members, if any.

The FDNS officer may ask to speak with the H-1B beneficiary's colleagues and/or the manager. When speaking with these individuals, the FDNS officer will again request information about the beneficiary's position title, the position duties, and the requirements for the position.

Please note that any derogatory information obtained during the site visit could be used to deny a petition, could result in revocation of a previously approved petition in the post-adjudication process, and/or could be referred to ICE for further investigation, which could lead to civil penalties or criminal prosecution.

### **...As a Reminder...**

When the VISA office submits an H-1B petition to USCIS, we are making specific statements about the position: the title, salary, hours, duties, degree requirements, and location. If any of the aspects of the H-1B employee's work changes, the VISA office may need to file a new petition and receive USCIS approval before the changes are instituted. If this is the case with any of your H-1B employees, please contact VISA immediately.

Please feel free to inform your staff and H-1B employees about the possibility of these site visits. If your staff or H-1B employees have additional questions, they should feel free to make an appointment with their perspective Immigration Partner.

*Some information provided is extracted from Practice Pointer: USCIS' FDNS Commences Audit of H-1B Program, Including Unannounced Site Visits to H-1B Employers and Their Clients provided by AILA's Verification and Documentation Liaison Committee (AILA InfoNet Doc. No.: 09100123 (Posted 10/01/09))*

***Disclaimer: This advisory is solely informational and does not constitute direct legal advice.***