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LEGAL ALERT



Legal Alert: USCIS Commences H-1B Audit Program

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The U.S. Citizenship and Immigration Service (USCIS) Office of Fraud Detection and National Security (FDNS) has initiated an H-1B audit program to assess employer compliance with H-1B requirements. FDNS will make unannounced Administrative Site Visits to H-1B employers and their clients, whereby the investigator will collect information regarding the legitimacy of an employer's business and the accuracy of the representations made in filed H-1B petitions. The purpose of this audit program and the associated site visits is to detect, deter, and combat immigration benefit fraud. USCIS has already sent tens of thousands of cases to FDNS, so it is important for H-1B employers to know what to expect and how to respond if FDNS comes knocking.

The Anatomy of an H-1B Administrative Site Visit and What to Expect

1. The H-1B site visit will take place at either the employer's principal place of business or at the H-1B employee's physical worksite location, if it is different.

2. An FDNS officer will ask to speak with the employer's representative. This will normally be the individual who signed the H-1B petition. However, if that person is not available, FDNS will ask to speak with another representative, such as an HR manager.

3. FDNS will ask specific questions or request the following information to verify the representations made in the H-1B petition.

- Employer's business, locations, and number of employees;
- Copy of the company's tax returns, quarterly wage reports, and other company documentation to establish that the business is legitimate;
- Confirmation that the signature on the H-1B petition is genuine;
- The H-1B employee's job title, job duties, work location, and salary;
- Copy of the H-1B employee's recent pay stub and Form W-2;
- Number of H-1B petitions that the employer has previously filed.

4. FDNS may request a tour of the facilities. A representative of the H-1B employer should accompany the FDNS officer during his/her review of the facilities and during the interviews of any employees.

- FDNS may take photographs of the facility;
- FDNS may request to interview the H-1B employee about his job title, duties, responsibilities, employment dates, position location, requirements for the position, academic background and previous employment experience, current address, and information about dependents, if any;
- FDNS may request to talk with a colleague or manager of the H-1B employee.

5. The H-1B site visit will usually last less than one hour.

How to Respond to an H-1B Administrative Site Visit

1. Notify the FDNS officer that you would like the presence of your immigration counsel, whether in person or by phone.
2. Request the name, title, and contact information for the FDNS site investigator. If the investigator introduces him or herself as a "contractor" of USCIS FDNS, request a business card with a toll-free number to confirm his or her credentials before you provide any information.
3. Have a witness present who prepares detailed notes of the visit.
4. Keep complete copies of the H-1B petitions and supporting documents in confidential files and be familiar with and ensure the accuracy of the representations made.
5. If you have placed the H-1B employee at a client's worksite, you should notify the end client about the potential for an H-1B site visit.
6. If you are unsure of the answer to a question posed by the FDNS officer, do not guess. Rather, state that you will follow up with the officer after obtaining the information.

The Bottom Line

With USCIS' increased scrutiny of the H-1B program, it is more important than ever for H-1B employers to diligently collect and provide accurate information to support any H-1B petitions they file. An adverse assessment by FDNS could lead to adverse consequences for the H-1B employer – from the revocation of the H-1B petition to potential further investigation by ICE, which could lead to civil penalties and even criminal prosecution.

If you use immigration counsel to prepare H-1B petitions on behalf of your company, you must be sure to carefully review the entire petition prior to filing to confirm the accuracy of all statements. While the ultimate purpose of the H-1B audit program is to ferret out those employers who truly abuse the H-1B program to obtain immigration benefits for employees, even compliant employers are at risk for a site visit and must, therefore, take steps to ensure the truth and accuracy of all statements.

If you have any questions regarding H-1B audits or other business immigration issues, please contact the author of this Alert, Geetha Nadiminti, gnadiminti@fordharrison.com, 404-888-3940 or any member of Ford & Harrison's Business Immigration practice group.