

BURR ALERT

Federal Government Expands Enforcement of Immigration Laws through Site Inspections and Employee Interviews

Anna Scully and Anton Mertens, June 2014

USCIS's Fraud Detection and National Security (FDNS) Directorate is expected to begin full-scale implementation of an L-1 site inspection program in the near future. FDNS conducts unannounced administrative site visits regarding approximately 15,000 H-1B petitions each year, and is now expanding to the L-1 program as well. The purpose of site inspections is to verify the information that employers provide in their immigration petitions and to make sure that sponsored workers are complying with the terms of their admission. These unannounced site visits are yet another federal government step toward increasing enforcement of immigration laws.

An L-1 visa is a nonimmigrant visa, which facilitates the transfer of executive, managerial, and key technical personnel of multinational businesses for long-term temporary U.S. assignments for up to seven years for executives/managers and five years for employees with specialized knowledge. To qualify, the U.S. company must have an operating history of a year or more and must have affiliated companies abroad for whom the L visa employee has worked recently.

FDNS has been making employer site visits for several years under its Administrative Site Visit and Verification Program (ASVVP) and its Benefits Fraud and Compliance Assessment (BFCA). The purpose of the ASVVP is to verify that the employer and foreign beneficiary are complying with the terms of the approved nonimmigrant worker petition. BFCAs are initiatives that review the H-1B and L-1 programs to determine the incidence of fraud that lasts for several months. During this review, USCIS *randomly* selects a large number of applications to be assigned to FDNS officers. The FDNS officers then visit the worksites of sponsoring employers to verify the existence of the employer, the validity of the information the employer has provided in an immigration petition, and whether sponsored L-1 employees are doing the type of work that qualifies as L visa caliber employment. Furthermore, FDNS officers gather information collected during site visits to help USCIS develop a fraud detection database and to build profiles of the types of companies that have records of good faith use of immigration programs and records of immigration compliance.

FDNS officers will typically arrive at the worksites unannounced and spend 15 to 90 minutes conducting the inspection. During the site visit, the FDNS officer will typically ask to speak to an employer representative (e.g., a human resources manager), the employee who holds the visa, and his or her direct supervisor or manager. The officer is likely to ask questions about the nature of the employer's business, the L-1 employee's job duties and salary and the employer's use of other immigration programs. The officer may ask for a tour of the employer's worksite and the L-1 employee's work area, and may want to photograph the premises. Employers may be asked to provide documents such as payroll records or paystubs for the L-1 employees, or an organizational chart.

After the inspection, the FDNS officer may contact the employer and L-1 employee(s) by phone or email to request additional information. Any perceived discrepancy between the information provided in an immigration petition and the situations at the worksite will prompt USCIS to notify the employer of its intent to revoke the petition and provide the employer with an opportunity to explain any inconsistencies.

Employers of L-1 employees are advised not to refuse site access to FDNS officers, as employers are considered to have consented to these inspections through filing L visa petitions in the first place. Rather, you should have response policies and procedures in place in preparation of a FDNS site visit. Petition signatories, human resources departments, and administrative staff should be aware of the potential for an unannounced site visit and the employer's response plan. The employer's counsel should be notified of the site visit immediately so that counsel can be present during the visit either in person or over the telephone. The employer should request the name, title, and contact information for the FDNS site officer to ensure that any post-visit communication is directed toward the appropriate agency. Additionally, employers should not answer questions about which they are unsure, nor should employers guess or speculate in response to a visiting officer's question. Instead, the employers should follow up with the officer once additional information is obtained.

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