

To VIBE or not to VIBE? Employers could avoid RFEs, NOID, 221(g).

MJ went up to the window at the US Consulate. He was there for an H1B interview. The process normally takes about 5- 10 minutes at the window. Behind him were more nervous interviewees, waiting their turn.

The consular officer (CO) went through the application, “who is your employer?” he asked. MJ replied, “XYZ”. The CO checked his database, he did not find XYZ, so he ‘Googled’ the name; still no information. The CO believed the applicant was employed by the company, but since the new Neufeld Memo, issued last year, he had to make sure the applicant was actually ‘employed’ by XYZ and that XYZ really existed. He could find no corroboration; CO felt there was insufficient documentation in the application, so the CO issued a request under INA 221(g) to the applicant.

Applicant was required to produce more employer tax records, payroll records and other information that would corroborate the employer’s self attestations in the application. Until that time, the applicant was in administrative processing overseas, which could take up to 6 months. In the meanwhile, the company was out a valuable resource and was losing money on their project, because MJ was delayed overseas.

Unfortunately for MJ, his employer’s information was not included in VIBE, a web-based tool, Validation Instrument for Business Enterprises (VIBE) designed to enhance USCIS’s adjudications of certain employment-based immigration petitions. VIBE uses commercially available data from an independent information provider (IIP) (Dun & Bradstreet) to validate basic information about companies or organizations petitioning to employ certain foreign workers.

USCIS may also send an RFE or NOID or Notice under 221(g) because of the information in VIBE. Petitioners MUST respond to these RFEs or NOIDs or Notice under 221(g); failure to respond may result in the denial of the petition.

Currently, the information in the VIBE program includes: Business activities, such as type of business, NAICS codes (North American Industry Classification System code), trade payment information, and status (active or inactive); Financial standing, including sales volume and credit standing; Number of employees, both on-site and globally; Relationships with other entities, including foreign affiliates; Type of office. (Examples include single entities, branches, subsidiaries and headquarters.); Type of legal entity: For example, LLC, partnership or corporation; Company executives; Date of establishment as a business entity; Current physical address.

Adjudicators use the information from VIBE to verify the petitioner’s qualifications. For example, if a petitioner is seeking L-1 status for a beneficiary, VIBE will help adjudicators confirm that the petitioner has a foreign affiliate, which is a requirement for granting L-1 status. Information from VIBE will help confirm petitioners’ financial viability in cases where petitioners must establish ability to pay.

Generally, USCIS will issue an RFE or a Notice of Intent to Deny (NOID) if it is necessary to resolve relevant inconsistencies or other issues that emerge upon review of VIBE-supplied information that are material to the benefit requested, and an immigration services officer (ISO) will make a final decision based on the totality of the circumstances.

Updating VIBE is easy. If you are a US based company employing foreign nationals, create, verify and correct the Company's D & B's information via [D&B's iUpdate](http://fedgov.dnb.com/webform.). This link is minus the direct marketing appeals from D & B. This is a fee free service. This link is also only for US companies that are government contractors. For other U.S.-based publicly traded companies, government entities and foreign companies wishing to create, update or view their report with D&B, may use www.dnb.com; however, they may be subjected to direct marketing from D&B.

Immigrant Classifications included in VIBE are:

E12, outstanding professor or researcher

E13, multinational executive or manager

E21, member of professions holding an advanced degree or an alien of exceptional ability (with the exception of National Interest Waiver petitions)

E31, skilled worker

E32, professional

EW3, unskilled/other worker

Additionally, the following I-360 (Petition for Amerasian, Widow[er] or Special Immigrant) employment-based immigrant classifications are included in VIBE:

SD1, minister of religion

SR1, nonminister in a religious occupation or vocation

Nonimmigrant Classifications Included in VIBE

The following I-129 NIV employment-based classifications are also included in VIBE:

E-1, treaty trader

E-2, treaty investor

E-3, member of specialty occupation who is a national of the Commonwealth of Australia

H-1B, specialty occupation worker

H-1B1, specialty occupation worker from Chile or Singapore

H-1B2, worker performing services related to a Department of Defense cooperative research and development project or coproduction project

H-1B3, fashion model of distinguished merit and ability

H-2A, temporary or seasonal agricultural worker

H-2B, temporary nonagricultural worker

H-3, trainee or special education exchange visitor

L-1A, intracompany transferee in a managerial or executive position

L-1B, intracompany transferee in a position utilizing specialized knowledge

LZ, blanket L petition

Q-1, international cultural exchange visitor

R-1, religious worker

TN, NAFTA professional from Canada or Mexico

Not included in VIBE are the following:

CW-1, Commonwealth of the Northern Mariana Islands (CNMI)-only transitional worker

E-2C, long-term foreign investors in the CNMI

E11, individuals of extraordinary ability

E21, national interest waiver

EB-5, immigrant investor

O, individuals with extraordinary ability or achievement (including essential support personnel)

P, internationally recognized athletes and entertainment groups, performers under a reciprocal exchange program, and artists or entertainers under a culturally unique program (including essential support personnel)

See you in my next blog,

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