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Broader Lessons from Infosys \$34 Million Settlement of Government Immigration Claims

Authors: Robert C. Divine

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An IT giant's huge immigration fine brings some lessons to all companies in the U.S. using foreign workers directly or indirectly.

Last week India-based Infosys agreed to pay \$34 million to the U.S. Departments of Justice, State, and Homeland Security to settle civil and criminal law claims that it had made misrepresentations in the process of misusing the B-1 business visitor classification (claiming that workers were coming for "meetings and business discussions" when in reality they would perform coding and programming) and H-1B classification (failing to obtain LCA approvals for each location where an employee would work and misrepresenting that they were traveling only to approved locations) and failed to properly use Form I-9 to verify the employment authorization of such workers.

Other companies should learn vicariously from the settlement:

- The enforcement arms of the U.S. immigration agencies, including CBP port inspection officers, don't particularly like the "B-1 in lieu of H" concept that allows some travelers who remain paid from abroad to use the "business visitor" B-1 classification (with a visa or on a visa waiver from certain countries) to engage in certain professional work or training in facilitation of international commerce, and they particularly don't like a failure to be up front about a visitor's particular purposes. Travelers seeking to do more than true meetings on B-1 should present to port inspectors clear letters that detail what they will be doing, despite the risk of being placed in secondary inspection and even being refused admission. If real work is involved, maybe other visa classifications should be used.
- The enforcement arms of the U.S. immigration agencies don't like the use of H-1B by staffing companies to send workers around to different customer sites, particularly if separate LCAs have not been filed for each location (which should also involve postings even at customer worksites), and even if LCAs have been filed but new I-129 petitions have not been filed to cover new locations. Employers who use H-1B workers, either as employees or by contract with staffing vendors, should make sure that H-1B filings and postings are made for each location of work.
- Consular officers and especially port inspectors aware of this highly publicized settlement have become increasingly aware that even some major companies may be misrepresenting facts to them, and they may tend to ask more and harder questions and take negative action when they feel or find they have been lied to. Individuals could become sent back on the next flight from the port of arrival, possibly with a finding of misrepresentation that gives rise to permanent inadmissibility to the U.S. Companies associated with incidents might be placed on secret watch lists for special scrutiny of their associated travelers.
- Companies should impose internal controls on the types of visas used for different purposes and on the types of representations that can be made to immigration authorities. This may include corporate compliance programs with hotlines for employees to report violations even anonymously.
- Companies should be prepared to cooperate fully with federal investigations. Cooperation (in addition to some ambiguities in the law) clearly made the difference for Infosys between the civil fines paid and the potential debarment and criminal enforcement it had faced.

How We Can Help

The Immigration Group at Baker Donelson assists potential business visitors, businesses they are connected to abroad, and entities they will be visiting to decide whether the B-1 (or waiver) will be appropriate. If so, we can help gather and prepare documents that will help persuade the consulate and/or U.S. immigration inspector that the situation qualifies. We can present arguments to consulates and to U.S. immigration inspectors to overcome skepticism, citing and attaching legal authorities and internal agency manuals and memos to demonstrate the legitimacy of the planned activities. We can help present the alien's nonimmigrant intent. We can represent the alien in Immigration Court in exclusion hearings if not admitted. We can help decide if another classification is attainable that might be more appropriate for the purpose with less risk and more dependability, and we can prepare papers to pursue the chosen alternative classification. We can prepare applications to extend visitor stays, obtain new visas, change status to other classifications within the U.S., and even work toward permanent residence.

Baker Donelson's Immigration Group has knowledge and experience in all the immigration options and processes. We "wrote the book" for other immigration lawyers and keep writing it each year, making sense of the innumerable tweaks and major changes to the rules and processes that Congress and several agencies make constantly. Our attorneys can, with a minimum burden on the time and effort of our busy clients, obtain the necessary information to help decide which is the best option to pursue. Then we quickly gather, create, organize and file the requests in the manner best calculated to accomplish the desired immigration status at each stage, whether temporary visit, several-year assignment, or permanent residence. We are mindful of the individual complications and the important family members of international workers and take care of them. We know that these matters are urgent and important, and we keep the clients informed of the status through letters or emails at each stage and through real-time status reports via the Internet at all times.

Baker Donelson's Immigration Group regularly counsels employers on I-9 compliance. We perform private audits of I-9 documents, prepare compliance programs, and train managers and workers in implementing those programs. We evaluate particular questionable documents and situations. We help employers decide whether and how to create or store I-9 forms electronically, to use Social Security Administration's Number Verification System, or to participate in the Department of Homeland Security's "E-Verify" program. We defend sanctions actions by ICE for paperwork and "knowingly hire" violations of I-9 rules. We work with our strong Litigation Department to bring and defend claims against competitors based on employment of unauthorized aliens. We advise and defend employers and managers in the increasingly common criminal investigations and proceedings relating to employment of aliens. We coordinate our Group's services closely with our firm's well-respected Labor and Employment Law Department and with our firm's White Collar Crime and Government Investigations Group. We provide advice and coordinate with U.S. and foreign preparers concerning U.S. taxation of international companies doing business in the U.S., and concerning the U.S. taxation of international workers placed in the U.S. and abroad.