

PUBLICATION

DHS Site Visits Expand: Employers Be Alert

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The Department of Homeland Security is sending investigators, often private investigators hired by the government, to visit employers of sponsored foreign nationals to confirm that the employer is in business and that the work arrangements are as represented in immigration filings. Employers need to notify their receptionists to route such callers and visitors to appropriate counsel and managers.

U.S. Citizenship & Immigration Services, the part of DHS that adjudicates visa petitions, has increasingly expanded its staffing and efforts to combat fraud. USCIS has created a Fraud Detection and National Security unit (FDNS) which has conducted "Benefit Fraud Assessments," sampling and investigating random cases that have been filed or even approved. Some reports from those assessments have been published in redacted form and have reflected a significant amount of fraud of various types. Some employers filing petitions have not really existed or were less substantial than represented. Some workers have not had the claimed qualifications. Some work assignments have not had the claimed level of sophistication or have involved undisclosed locations.

USCIS cooperates with U.S. Immigration & Customs Enforcement, another component of DHS which has authority to undertake criminal investigations and to seek indictments through U.S. Attorneys offices.

DHS sends out FDNS officers, ICE agents, or privately contracted investigators to verify facts represented in immigration filings and to investigate suspected fraud. Such visits have been focused on religious worker and H-1B cases, both as part of and as result of fraud assessments, but they can involve other types of filings for temporary and permanent status. The visits are increasing in volume, and employers who have filed petitions should expect the possibility of a visit before or after petition approval. While employers who make only accurate representations should not need to fear such visits, they should fear confusion that can result in the absence of careful coordination.

Investigators do not always seek contact for their visits through the contact or counsel who were indicated on the immigration petition. They may call the company's general number or show up in the lobby of any facility, and the receptionist may not be familiar with the sponsored worker or the work arrangements. Employers should instruct receptionists where to route inquiries by government investigators concerning immigration matters. The designated contact person should be at least generally familiar with the institution's immigration filings and know the people to contact concerning specific cases. Managers of sponsored foreign nationals should contribute to and approve the representations made in immigration filings and should of course be familiar with them and be prepared to confirm them to investigators.

When the company was represented by counsel in the immigration petition, the government should contact counsel, but this does not always happen. In any event, we recommend that investigators be directed to knowledgeable legal counsel to coordinate their visit and any investigation.

How We Can Help

Baker Donelson's Immigration Group helps clients prepare all types of immigration filings. In doing so, we elicit accurate information about the proposed work arrangements for sponsored workers and require confirmation from relevant managers to ensure that government filings are accurate. We refuse to make misrepresentations or to be associated with them, protecting the institutional integrity of our clients. We conduct audits of our clients' immigration practices where requested, including I-9 employment verifications, sponsorship filings, labor condition public access files, "PERM" recruitment files, and other required records. We coordinate with our firm's Government Investigations & Litigation Group to respond to civil or criminal investigations that relate to immigration matters.