

USCIS Fraud Detection Program Shifts Into High Gear

Program of unannounced site visits at employer work sites is designed to detect, pursue, and deter the filing of fraudulent petitions for H-1B employees. Employers need to be prepared to respond without notice.

The U.S. Citizenship and Immigration Services (USCIS), through its Office of Fraud Detection and National Security (FDNS), has instituted a program of unannounced site visits to employers who have petitioned for H-1B status on behalf of one or more employees. The primary purpose of the H-1B Benefit Fraud and Compliance Assessment Program is to detect, pursue, and deter fraud within the H-1B program. FDNS currently consists of approximately 650 Immigration Officers, Intelligence Research Specialists, and Analysts located in field offices throughout the United States. Additionally, FDNS has contracted with multiple private investigation firms to conduct site visits on behalf of FDNS. FDNS' budget is derived from the \$500 fraud fee, paid by employers with each initial H-1B petition.

As noted, the FDNS site visits are typically unannounced. The FDNS inspectors will identify themselves with credentials issued by the USCIS. They will also provide you with a business card with information on who to contact should you have any questions or concerns. An employer may request that its immigration attorney be present during the site visit. If the attorney is not immediately available, the site visit will be terminated. An employer may request that its immigration attorney appear via telephone.

During the site visit, the FDNS officer will seek to verify information contained in a specific H-1B petition.

The FDNS officer will normally have a copy of the petition and will usually ask to speak to the company representative who signed the petition. If this representative is not available, the FDNS officer may request to speak with another designated company official, such as a Human Resources Manager. If a designated company official is not available to meet with the FDNS officer, the officer may request to reschedule the site visit.

The FDNS officer will ask for specific information about the company, such as the employer's business locations, number of employees, and the number of employees in H-1B status. The FDNS officer may also request to review the company's tax returns and other company documentation to confirm that it is a bona fide business. The FDNS officer may also wish to tour the employer's facility and review copies of the H-1B worker's most recent pay stub and Form W-2.

The FDNS officer will also typically ask to interview the H-1B nonimmigrant worker directly about his or her job title, responsibilities, hours of duty, dates of employment, work location, academic background, previous employment, current address, and current salary. The H-1B site visit usually takes less than an hour, and reports are that the officers are generally polite and respectful.

We expect these site visits to continue and increase in numbers. In fact, the

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USCIS recently confirmed that one Service Center has transferred over 20,000 cases to FDNS for investigation. The purpose of the site visits is to uncover fraud, so employers who have filed good faith petitions on behalf of H-1B workers should not be at risk. Nevertheless, to help prepare for a potential site visit employers can do the following:

1. Contact immigration counsel immediately upon an FDNS site visit.
2. Advise personnel responsible for greeting visitors that it is company policy not to admit any unauthorized person to the private areas of the business, including government agents or contractors, without the approval of a designated company official. The designated company official should be knowledgeable of the petitioner's immigration program and the conditions under which the beneficiaries are employed.
3. Request the name, title, and contact information for the site investigator.
4. If the investigator identifies himself or herself as a USCIS FDNS contractor, request a business card with a toll free number and call to obtain confirmation of his or her credentials prior to providing any information.
5. Do not speak with government agents or contractors without a witness present.
6. Retain copies of the H-1B petitions and supporting documentation in a confidential file maintained by the designated company official; retrieve this documentation and review it prior to meeting with the FDNS officer.
7. Accompany an FDNS officer during his or her review of the facilities and request to be present during the interviews of any of the company's employees. Note that this latter request may be denied in order to obtain the most candid responses from the employees.
8. Prepare notes of what transpired at the interview, label them "Privileged and Confidential/Prepared at the Direction of Counsel" and submit them to counsel following the site visit. Additionally, keep a record of any documentation provided to the FDNS officer during the site visit.

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