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New Development: USCIS To Conduct Unannounced Site Visits on H-1B Employers

The United States Citizenship and Immigration Services (“USCIS”) has announced that its Office of Fraud Detection and National Security (“FDNS”) has begun an audit of employer compliance with H-1B nonimmigrant visa requirements. As part of the audit process, FDNS will conduct site visits at employers who file or have previously approved H-1B petitions. Employers who file other types of immigrant or nonimmigrant visa applications may also be subject to a site visit. These site visits are unannounced and, according to FDNS, do not require a subpoena or warrant for the investigators to enter and examine an employer’s facility.

The USCIS Vermont Service Center, which has jurisdiction over H-1B petitions for workers located in Connecticut and surrounding states, reportedly has referred approximately 20,000 H-1B cases to the FDNS as part of the audit program. Out of the

estimated 20,000 cases reportedly referred to the FDNS, it is a safe bet that at least some of the targeted H-1B employers that can expect an unannounced site visit are located in Connecticut. The latest scuttlebutt indicates that site visits at Connecticut employers have already commenced within the past two weeks.

As part of the site visit, an FDNS investigator will ask to interview a representative of the sponsoring employer as well as the H-1B beneficiary employee and, potentially, the H-1B beneficiary’s supervisor. The investigator will ask questions relating to the information provided in the H-1B petition and may request a tour or even take photographs of the employer’s facility. The purpose of the visit is to confirm that the employer is engaged in the business stated in its H-1B petition and that the H-1B beneficiary is performing the professional job on which the H-1B petition is based. If



the H-1B petition indicates that the H-1B beneficiary will work at a location other than the employer's principal place of business, such as at the facility of the sponsoring employer's customer or client, FDNS may attempt to conduct its investigation at the H-1B beneficiary's work location, even though that location is controlled by the client and not the H-1B employer.

If an agent of USCIS arrives at your doorstep asking to speak with you or another representative of your company regarding an immigrant or non-immigrant visa petition, you should consider first informing the FDNS inspector that you request the presence of an attorney, and then call your attorney immediately. While it is possible that the FNDS inspector will not postpone the visit to allow an attorney to be physically present during the site visit, the attorney should at least have the opportunity to participate by telephone in the interviews.

You should prepare now for the possibility of a site visit by reviewing your H-1B approved and pending H-1B petitions to verify that the information attested to by the sponsoring employer continues to be accurate, including information about the H-1B beneficiary's current job function and work location. If any term, condition, job function or work location has changed

since the filing of the petition, it may be necessary to file an amended petition with USCIS. You should consult with an immigration attorney to determine whether you are required to file an amended H-1B petition.

The penalties resulting from an unfavorable audit may include the denial of pending petitions or revocation of previously approved petitions. In addition, in cases of suspected fraud, FDNS will refer the case to Immigration and Customs Enforcement for investigation, which could result in civil penalties or a formal criminal investigation into unauthorized employment and/or visa fraud. H-1B visa sponsorship should not be taken lightly by Connecticut employers, who are now facing a real and significant risk of having the accuracy of their H-1B attestations scrutinized by way of unannounced FDNS audits and site visits.

QUESTIONS OR ASSISTANCE?

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