Employer Responsibility: Pay attention to what Petitions "you" are filing

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Beginning April 1, 2011, USCIS began accepting H-1B applications for the fiscal year of 2012, i.e. a start date of the visa/employment on October 1, 2011. H-1B visas are employer specific. Employers must participate in the process and have full and complete knowledge of what they are directing "their" immigration attorneys to file on behalf of their employees. No exceptions.

We are reminded of the above by the U.S. Department of Labor's (Wage and Hour Division) April 4, 2011 press release wherein it briefly described the $4.2 million in back wages to be paid to over a thousand school teachers and the $1.7 million in civil fines assessed against the petitioning school district, Prince George County Public Schools in Maryland.

Presumably, the school district relied upon attorneys provided to it by a job or placement agency that presented it with the foreign teachers to begin with. What was presented to the school district as a turn-key opportunity for little or no out-of-pocket costs coupled with the opportunity to hire a highly skilled and qualified foreign worker to teach amounted to a costly and illegal endeavor. As our grandmothers used to warn us, "if it sounds to good to be true, it is". Whether the foreign hires were the product of a job placement agency or a direct hire, one thing is for sure: the school district—the petitioning employer— should have known better.

Questions/issues that commonly arise in the preparation and processing of an H-1B application often revolve around the calculation of/payment of actual or prevailing wage, whether recruitment must be done to justify a shortage of local American employees and the filing of a Labor Condition Attestation Application with the Department of Labor. Additionally, with the fairly recent creation of the Office of the Fraud Detection and National Security (FDNS)—borne by H-1B filing fees—FDNS officers resolve background check information and other concerns that surface during the processing of immigration benefit applications and petitions. FDNS officers may visit employer's work sites to verify that the petitioning employee has a place to work and the employer is actually aware of the petition that it filed. In other words, your employee should not be the one hiring an attorney to do the petition for you, the employer. You must be involved and the attorney should be yours.

Because it is H-1B season again, employers must be aware. Be aware that this is your petition, not your employee's. Be aware that you must pay the filing fees, not your employee. Be aware that the cost of the proper presentation and filing of an H-1B application pails in comparison to the cost of defending against Department of Labor investigations let alone the payment of back wages and fines.