

H-1B Admissions at Newark, NJ Airport – Port Of Entry (POE)

The AILA U.S. Customs and Border Protection (“CBP”) Liaison Committee received reports from AILA members that CBP inspectors at the Newark, New Jersey airport port of entry were apparently assisting in an investigation involving certain H-1B nonimmigrants from India and certain H-1B petitioner companies. The inspectors’ questions focused on who the individuals worked for, how their pay was computed, who paid their salary, their job duties, and what they were paid. In some cases, the individuals were subjected to expedited removal and visa cancellation.

After inquiring with CBP headquarters (“HQ”) about these incidents, the CBP Liaison Committee was advised by HQ that several of these cases involved companies under investigation by U.S. Immigration and Customs Enforcement (“ICE”) and/or U.S. Citizenship and Immigration Services (“USCIS”) for ongoing fraud. CBP HQ noted that they use as much advance information as possible to target specific individuals who warrant additional inspection. HQ also noted that recent enforcement cases reviewed ranged from simple documentary deficiency to visa/petition fraud. Upon an inadmissibility finding, the determination to either allow the applicant to withdraw his or her application for admission or to subject the applicant to expedited removal is based on “the totality of the circumstances and reviewed on a case by case basis.” In the Newark enforcement actions, CBP Newark worked closely with USCIS – Fraud Detection and National Security (“FDNS”) and the Department of Labor – Office of Investigations. CBP HQ stated that those questioned were offered the opportunity to contact their consulate and that CBP officers contacted the petitioner and/or current employer when clarification was needed. CBP HQ confirmed that they screen ALL employment-based visa holders to determine admissibility and ensure compliance with entry requirements.

In addition, on January 27, AILA members attending a CBP meeting in the Newark, New Jersey area were informed that a new policy has been instituted at Newark Airport. This policy involves conducting random checks for returning H-1B, L-1, and other employment-based visa holders. Based upon the initial check, if the person’s admissibility is questionable, then he or she will be sent to secondary inspection for further interview. In some cases, if CBP discovers discrepancies in previously filed petitions, then the applicant may be asked to withdraw his/her application for admission into the United States or be subject to expedited removal.

During that same local CBP meeting, attendees were advised that if CBP discovers that a returning Lawful Permanent Resident has a post-1998 conviction, the Lawful Permanent Resident may be detained. The Newark airport port of entry has adopted a mandatory detention policy for crimes that were committed after 1998. In the event that CBP cannot get a copy of the conviction record in twenty-four hours, the person may be released. The only exceptions are that CBP will release a Lawful Permanent Resident for humanitarian reasons; extenuating circumstances such as if the foreign national is traveling with

children and there is no one to pick up the children; or when the person is a sole provider for United States Citizen or Lawful Permanent Resident children.

Individuals with pending I-751 petitions returning to the United States via the Newark airport port of entry, who have a I-751 filing receipt documenting that an I-751 has been properly filed or an ADIT Legal Permanent Resident stamp, will be sent to secondary inspection for further interview to verify the validity of the I-751 Petition. It is unclear if CBP will undertake a substantive review of the I-751 Petition.

In all cases, attorneys should remind their clients to thoroughly prepare for their trip to the United States and their inspection upon application for admission by reviewing all pertinent documents to their petition and to consider carrying evidence to support the assertions made in the petition filed on their behalf by their employer. Similarly, employers must be prepared for telephone inquiries from CBP officers at ports of entry to confirm the assertions made in any nonimmigrant petition and supporting documentation. Finally, employers must be advised that the government may review information in any public venues such as websites and other media for consistency with petition content. Thus, keeping such public information accurate and current is essential.

Note the new fraud related language added to I-797 approval notices –

NOTICE: Although this application/petition has been approved, DHS reserves the right to verify the information submitted in this application, petition, and/or supporting documentation to ensure conformity with applicable laws, rules, regulations, and other authorities. Methods used for verifying information may include, but are not limited to, the review of public information and records, contact by correspondence, the Internet, or telephone, and site inspections of businesses and residences. Information obtained during the course of verification will be used to determine whether revocation, rescission, and/or removal proceedings are appropriate. Applicants, petitioners, and representatives of record will be provided an opportunity to address derogatory information before any formal proceeding is initiated.

Please do not forget to contact the CBP port director to follow up on case problems at a particular port. In addition, as needed, file complaints through the CBP complaint process.

Learn more... About Nachman & Associates, P.C.

When traditional immigration approaches do not work, we analyze a candidate's resume and determine if they may qualify for various nonimmigrant or temporary work permits or permanent immigrant visa transfer options such as outstanding researcher classification, TN under NAFTA or E-3 classification for Australia. Now that the H-1B nonimmigrant visa has become more difficult to obtain, we work closely with our clients who are seeking to transfer highly-skilled foreign national workers to the U.S. to determine if there are other nonimmigrant options for such

transfers. No matter what the situation, our attorneys work hard to provide a variety of visa options to support their needs.

Contact Us.

Our staff of immigration lawyers and professionals are sensitive to the needs of our clients and the members of their families. Many members of our staff are themselves foreign born and have family and/or friends who have gone through the immigration process. As a result, our staff of business immigration lawyers and professionals have a personal and unique approach to processing visas and for dealing with our foreign national clientele. Our legal team can clearly explain how to process temporary and permanent work permits in the U.S. The PERM Labor Certification Process is time-consuming and complex and our staff of business immigration law professionals can clearly explain the process in Spanish, French, Japanese, Korean, Tamil, Hindi, Slovak, Czech, Russian, Chinese, German and English.

To schedule a consultation, please feel free to contact Nachman & Associates by e-mail or call 1-866-599-3625. Please contact our offices at 201-670-0006 (x100) or e-mail to us at info@visaserve.com.

Website: <http://www.visaserve.com>

Nachman & Associates, P.C.
David H. Nachman
Managing Attorney
E-mail: david_nachman@visaserve.com