

JANUARY 20, 2014 BULLETIN TO ALL IMMIGRATION CLIENTS

USCIS Expansion of Site Visit Program to L-1 Employers

In the first quarter of 2014, the USCIS Fraud Detection and National Security (FDNS) Unit will expand its "site visit" program to certain L-1 intracompany transfer petitioning employers. USCIS is primarily targeting "new office" (doing business in the U.S. for less than twelve months) L-1 petitions because there is a perception that "new office" L-1 petitioners are often fraudulent "paper companies," but any L-1 employer should be prepared.

Because Blanket L cases are filed directly with the consulate without the need for a petition approved by USCIS, it would seem that the site visits would not include Blanket cases. We do not yet know whether individual L-1 petitioners outside of "new office" cases will be visited.

While the geographic-specific Labor Condition Application is not required for an L-1 petition as it is for an H-1B petition, the employer must indicate the transferee's work location on Form I-129. Whether an amended H-1B visa petition is required when the employee's place of work changes is a contentious issue. USCIS has promised clarification for years, but has not issued any guidance. If L-1 site visits lead to Notices of Intent to Revoke because the transferee has moved to a new location, this issue (i.e., when amended L-1 petitions are required) will suddenly become critical.

Also, when an L-1B employee is not stationed on the premises of the petitioning employer, employers must ensure that the L-1B worker is not (and does not become) "...controlled and supervised principally by such unaffiliated employer." If an L-1B worker is located with the L-1 petitioner's customer, the USCIS inspector is likely to ask him/her: "Who is your supervisor?" If the L-1B worker identifies the customer's manager as the supervisor, a Notice of Intent to Revoke could follow. It is essential that L-1B workers be supervised by the petitioner's manager, which often requires the petitioner to place a Project Manager at the customer's facility.

Many of our clients have already experienced H-1B site visits and situations where the H-1B site visit investigator asks for information/documentation not relevant to whether the H-1B worker is performing the correct (stated) activity at the correct location for the correct compensation. Often, the investigator asks for irrelevant financial and headcount data. L-1 site visits open the door for requests for documentation about the parent-subsidary or affiliate-affiliate relationship to confirm that a "qualifying relationship" exists. Requests could also be made for proprietary documents like contracts with customers. L-1 site visits have the potential to be very burdensome.

We strongly recommend that L-1 employers utilize their H-1B site visit protocol if/when they have an L-1 site visit so as to ensure an organized and efficient response. If you have never had a site visit and/or wish to implement such a protocol, please contact a member of the Cohen & Grigsby Immigration Department for assistance.

Please also contact any member of the Cohen & Grigsby Immigration Department if you have any questions regarding the above at 412.297.4900. To receive future bulletins by e-mail, please send an e-mail to info@cohenlaw.com.

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