

USCIS Initiates Expanded Employer Site Visit Program

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The US Citizenship and Immigration Services (“USCIS”) has initiated a significantly expanded version of its Site Visit Program in an effort to uncover fraud in the H-1B temporary worker program. Because of a funding increase, USCIS is increasing the number of employer site visits, and, in the coming months, many employers who have sponsored foreign nationals for employment-based nonimmigrant petitions will be the subject of an investigation.

The site visits are conducted by representatives of the Office of Fraud and Detection and National Security (“FDNS”) of USCIS. Employers typically receive no advance notice of the site visit, and, in most cases, the investigation is random. However, a site visit may be triggered by information in the petition or information from an outside source. Although each investigation will vary, here is a snapshot of a typical investigation:

- The site visit will be related to a single H-1B employee
- The investigator will normally ask to see the individual who signed the H-1B petition, but will speak with any appropriate company representative
- The primary goal of the visit is to verify the accuracy of information contained in the underlying H-1B petition
- The investigator will seek to confirm that the employer exists, the employer knowingly filed the petition, the job duties described in the petition are accurate, the employee is qualified for the position, and the employee is paid the offered wage
- Typically, the site visit will take about 30 minutes

We understand that virtually every H-1B employer, regardless of size, will be subject to at least one site visit during the next fiscal year. Despite the lack of advance notice, employers can take steps to ensure that they are prepared for a USCIS site visit. Employers should designate a specific employee to serve as the “coordinator”, and front desk personnel should be trained to contact that individual in case of a site visit. Employers also should notify H-1B employees that they may be interviewed by USCIS as part of a site visit. Finally, employers should ensure that materials relating to H-1B petitions are in good order and accessible. USCIS takes the position that its broad investigatory authority allows it to enter an employer’s premises without notice and without a subpoena, so advance preparation is essential to a smooth site visit and minimizing the risk of liability.