

Business Immigration Weekly for January 27, 2014

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Practices: Immigration

USCIS BEGINS TO IMPLEMENT FDNS SITE VISITS IN THE L-1 PROGRAM

U.S. Citizenship and Immigration Services (USCIS) has begun to expand its administrative site visit program conducted by the USCIS Fraud Detection and National Security (FDNS) unit into the L-1 program. Prior to this expansion, the USCIS FDNS conducted administrative site visits in the H-1B program. Last year, in response to a U.S. Department of Homeland Security's (DOS) Office Inspector General (OIG) report on the L-1 program, USCIS indicated that it would be expanding its administrative site visit program to the L-1 program in fiscal year 2014.

It appears that FDNS is currently conducting random site visits to confirm information contained in L-1 extension petitions after the petition has been approved. Similar to the H-1B program, the site visits occur at the work location indicated on the L-1 petition and are unannounced. During the site visit, the FDNS officer has broad discretion to verify information which was contained in the L-1 petition. Many FDNS officers will verify the duties being performed by the L-1 nonimmigrant. Most FDNS officers will also want to verify that the L-1 nonimmigrant is being paid at least the salary contained in the petition. Some FDNS officers will also take photographs of the work location. If an issue is identified, a Notice of Intent to Revoke (NOIR) may be issued months after the site visit. The employer in response to the NOIR will have to present documentation addressing the issues being raised in the NOIR. If the employer does not provide satisfactory information and documentation addressing the issues raised in the NOIR, the petition may be revoked and then the L-1 nonimmigrant will lose his/her employment eligibility to work for the employer.

Additional information about the continued expansion of the FDNS administrative site visit program will be contained in our firm's future Immigration Updates when it becomes available.

ICE SEVP PROVIDES STATISTICS ABOUT THE F, M AND J NONIMMIGRANT PROGRAMS

Immigration and Custom Enforcement's (ICE) Student and Exchange Visitor Program (SEVP) recently provided a statistical summary regarding the number of nonimmigrants and schools using the F, M and J programs. SEVP stated that since the inception of the Student and Exchange Visitor Information System (SEVIS) program, the total volume of data in SEVIS continues to grow. However, SEVP indicated that the total number of SEVIS records has decreased approximately 2.4% since October 2013. SEVP also indicated that there has been a 2.6% decrease in the number of active F, M and J nonimmigrants in the last fiscal year. Additionally, the number of F and M certified schools in the SEVIS system has decreased by 3.2%. However, the number of active J-1 programs increased approximately 1% in the past fiscal year.

SEVP indicated that Chinese nationals account for almost 29% of all F, M and J nonimmigrant students. India is second, contributing almost 11%. California, New York, Texas, Massachusetts, Florida, Illinois and Pennsylvania host 54% of all active F and M nonimmigrant students. The top five F-1 approved schools based upon the number of active students is the University of Southern California (10,487), Purdue University (9,873), University of Illinois (9,805), New York University (9,247) and Columbia University in New York (9,201). 73% of active students are enrolled in Bachelor's, Master's or Doctoral programs. Business continues to be the most popular major for international students in the United States with engineering being the second most popular major.

DOL RELEASES INFORMATION ABOUT AUDIT TRIGGERS IN THE PERM PROGRAM

The U.S. Department of Labor (DOL) recently released information about potential audit triggers in the PERM program. The DOL stated that it was releasing this information in response to a Freedom of Information Act (FOIA) request. The DOL stated that these potential audit triggers were deliberately chosen to ensure that it is carrying out its statutory responsibilities while also recognizing the evolving nature of program integrity and quality control.

The following are some potential audit triggers as indicated by DOL:

1. The primary requirements for the offered position are less than a Bachelor's Degree, excluding dairy workers.
2. It appears that the DOL has identified certain public schools for whom their PERM applications will receive additional scrutiny. However, as part of the release, the DOL did not provide the list of these public schools.
3. Applications where the offered position requires a degree with no experience.
4. Applications where the employer has indicated that they have had a layoff.
5. Resubmitted applications after denial within the same calendar year. It appears from the information provided by the DOL, this category may also have a greater chance of being selected for Supervised Recruitment.
6. Resubmitted applications after withdrawal of an audit case within the same calendar year. It appears from the information provided by the DOL, this category may also have a greater chance of being selected for Supervised Recruitment.

Additional information about the PERM program and audits within the program will be contained in our firm's future Immigration Update.

OCAHO SIGNIFICANTLY REDUCES I-9 VIOLATION FINES FOR A SMALL RESTAURANT

The U.S. Department of Justice's (DOJ) Office of the Chief Administrative Hearing Officer (OCAHO) recently reduced a proposed fine by Immigration and Custom Enforcement (ICE) against a restaurant for 283 Form I-9 violations including failure to retain Forms I-9 for the required period and to properly complete the Forms I-9. OCAHO acknowledged that Form I-9 penalties are not meant to force employers out of business or result in the loss of employment for workers. In this case, ICE's proposed fines would amount to more than half of the

company's income for 2011 which OCAHO concluded is an excessive fine for a relatively small business. Therefore, OCAHO decided to reduce the penalty from \$264,605 to \$88,700.

USCIS ANNOUNCES THAT MORE THAN HALF A MILLION COMPANIES ARE NOW PARTICIPATING IN THE E-VERIFY PROGRAM

The USCIS recently indicated that more than 500,000 companies are now participating in the E-Verify program. The USCIS indicated that since it was established, E-Verify has experienced exponential growth, increased accuracy and high customer satisfaction ratings. The USCIS indicated that 98.8% of work-authorized employees are automatically confirmed instantly or within 24 hours through the E-Verify program, requiring no further employee or employer action. The USCIS also stated that that users gave E-Verify a score of 86 out of 100 on the 2012 American Customer Satisfaction Index (ACSI) survey. This contrasts to an average score of 67 for all governmental agencies. During fiscal year 2013, USCIS stated that employers used E-verify more than 25 million times.

Masuda Funai News

Masuda Funai Hosts Complimentary Immigration Seminar on Wednesday, February 12 – Registration to Close Shortly

The Immigration Practice Group of Masuda, Funai will be hosting its complimentary immigration seminar on Wednesday, February 12 at the Arlington Heights Doubletree Hotel. This year's topics will include the following:

- Next H-1B Quota Open on April 1st: Is Your Company Ready?
- Lost in Space: How to Troubleshoot New I-94 System to Prove Lawful State in U.S.
- L and L Blanket Visas – More of the Same in 2014
- E-Visas – Maintaining Status in Times of Mergers, Acquisitions and Foreign Investment
- What Everyone Ought to Know About the Green Card Process
- Immigration Audits on the Rise – Get Prepared Today Instead of Being Sorry Tomorrow

Similar to previous years, there is no charge to attend the seminar. However, due to seating limitations, pre-registration for the seminar is required. If you plan to attend the seminar, we would encourage you to register for the seminar as soon as possible before registration closes due to the fact that the event is fully booked. Additional information about the seminar is available on the Masuda Funai website at www.masudafunai.com. Additionally, you can register for the seminar on the Masuda Funai website.

For more information about this or any other immigration law topic, please contact Bob White, at 847.734.8811 or via email at rwhite@masudafunai.com.