

Management Alert



USCIS Employer Site Visits: Expanding to L-1 Petitioners

This Management Alert is intended to alert employers to a new development related to the Administrative Site Visit and Verification Program (ASVVP) administered by United States Citizenship and Immigration Services (USCIS). While site visits to H-1B employers by USCIS' Fraud Detection & National Security (FDNS) division have become routine, USCIS has announced that the program will be expanded to include site visits to L-1 employers. The expansion of the site visit program comes in response to an August 2013 report released by the U.S. Department of Homeland Security's Office of Inspector General (OIG) analyzing USCIS' L-1 intracompany transferee program and suggesting ways to reduce fraud and standardize adjudications across the program.

Background

FDNS is responsible for managing procedures and policies governing USCIS' fraud detection and prevention efforts. FDNS Officers are located in every domestic USCIS office and in certain overseas locations. They conduct administrative investigations focused on immigration benefit fraud as well as matters of national security and public safety.

The FDNS Administrative Site Visit and Verification Program began in July 2009 in an effort to enhance the integrity of the immigration benefit process. Under ASVVP, FDNS Officers conduct random unannounced pre- and post-adjudication site inspections to verify information contained in certain visa petitions. USCIS provides petitioning employers an opportunity to review and address the information before denying or revoking an approved petition based on information obtained during a site inspection. In fiscal year (FY) 2011, FDNS performed more than 17,000 ASVVP site visits, an increase of over 2,000 visits from the previous fiscal year.

What Happens During a Typical Site Visit

During a typical visit, an ASVVP site inspector will usually visit the employer unannounced (although some inspectors make arrangements with the employer in advance). Upon arrival, the site inspector will request to speak with the company representative who signed the I-129 petition and/or the nonimmigrant employee. During the course of the visit, the inspector will verify certain information represented within the petition, particularly the existence of the petitioning entity. The inspector will speak with the company representative and perhaps the foreign national to confirm the work location, employment workspace, hours, salary and duties. The inspector may also wish to take digital photographs of the worksite and review documents confirming the foreign national's identity and salary.

After reviewing the information gathered during the site visit, if FDNS cannot verify the information on the petition or finds the information to be inconsistent with the facts recorded during the site visit, an Immigration Service Officer (ISO) may request additional evidence from the petitioner or initiate denial or revocation proceedings. When indicators of fraud are identified, FDNS may conduct additional administrative inquiries or refer the case to U.S. Immigration and Customs Enforcement (ICE) for criminal investigation.

Expanding the Administrative Site Visit and Verification Program to Include L-1 Petitioners

The expansion of the ASVVP to include L-1 petitioners appears to be in response to a recent report released by the U.S. Department of Homeland Security's OIG titled *Implementation of L-1 Visa Regulations*. The report contains recommendations aimed at improving the L-1 visa program, including increased efforts by USCIS to verify the legitimacy of L-1 "new office" petitions.

The L-1 visa classification in the "new office" context allows a foreign company with no U.S. presence to transfer employees to the U.S. in order to start up a new office. The L-1 new office regulations grant L-1 status to eligible beneficiaries for a one-year period during which the beneficiary's responsibilities may include renting office space, buying furniture and equipment, and hiring workers. At the end of the one-year period, some beneficiaries may not qualify for continuing L-1 status if they are not performing executive, managerial, or specialized knowledge duties.

According to the OIG report, ISOs have expressed some concerns about the vulnerabilities associated with L-1 new office petitions. The report concluded that new office petitions and extensions are "inherently susceptible to abuse because much of the information in the initial petition is forward-looking and speculative." Therefore, the report recommended requiring a site visit before extending an L-1 new office petition.

Who is Affected

Evidence suggests that USCIS is focusing this expanded ASVVP effort on extensions of individual L-1 new office petitions originally filed with USCIS Service Centers. It is unclear whether USCIS will conduct these site visits for more traditional L-1 petitions as well as L-1 extensions. At this time, site visits are not expected for foreign nationals who obtained L-1 status using their employer's L-1 Blanket petition because such applications are made directly to the U.S. consulate without the need for a petition approved by USCIS.

Preparing for a Site Visit

Employers should take these visits seriously and contact an immigration attorney as soon as a site visit is announced. Identify procedures in advance to prepare for an unannounced FDNS worksite visit and notify all personnel of these procedures. Always provide complete and accurate information whether requested to do so onsite or subsequently via email. An attorney can help prepare a timely and thorough response.

Employers should conduct an internal review of the employment of all H-1B and L-1 employees to ensure that their job duties, worksites and salaries are consistent with the immigration petitions filed on their behalf. Retain complete copies of all I-129 petitions and paperwork. Ensure that foreign national employees and their managers are aware of the content of the I-129 petition and supporting documentation.

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