

ALBANY
 AMSTERDAM
 ATLANTA
 AUSTIN
 BOSTON
 CHICAGO
 DALLAS
 DELAWARE
 DENVER
 FORT LAUDERDALE
 HOUSTON
 LAS VEGAS
 LONDON*
 LOS ANGELES
 MIAMI
 NEW JERSEY
 NEW YORK
 ORANGE COUNTY
 ORLANDO
 PALM BEACH COUNTY
 PHILADELPHIA
 PHOENIX
 SACRAMENTO
 SAN FRANCISCO
 SHANGHAI
 SILICON VALLEY
 TALLAHASSEE
 TAMPA
 TYSONS CORNER
 WASHINGTON, D.C.
 WHITE PLAINS

*Strategic Alliances with Independent Law Firms***

MILAN
 ROME
 TOKYO
 ZURICH

CBP Joins ICE and USCIS in Effort to Reduce Fraud and Misuse of the H-1B and L-1 Visa Programs

Since the end of last year, there have been several reports that Customs and Border Protection (CBP) officers have placed increased scrutiny on individuals entering at U.S. ports in H-1B status. Reports of CBP officers questioning individuals regarding the specifics of the employee's job duties and the validity of the job offer circulated throughout immigrant communities as it was reported that individuals were actually detained at airports and refused entry. Until recently, CBP refused to comment on the specifics of these incidents, leading to widespread rumors circulating via Internet postings. Finally, following numerous inquiries and meetings from the professional bar to CBP in Newark, NJ, and to CBP headquarters in Washington, D.C., limited feedback and specifics are now available.

The reported incidents described interviews where individuals seeking to enter the United States in H-1B status were asked a number of questions, including: *who they worked for, how their pay was computed, who paid their salary, and what they were paid.* Normally, these types of questions and issues are addressed at the time the U.S. Citizenship and Immigration Service (USCIS) approves the company's petition for the H-1B worker, and then reviewed at the time the individual applies for an H-1B visa stamp with the U.S. Department of State U.S. at the embassy or consulate abroad.

In some cases, following the interviews, individuals were subjected to expedited removal and visa cancellation. CBP headquarters has now confirmed several of these cases involved companies that were under investigation by Immigration and Customs Enforcement (ICE) and/or USCIS for ongoing H-1B program fraud. CBP also confirmed that the agency uses as much advance information as possible to target specific individuals who warrant additional inspection and that recent enforcement cases ranged from simple documentary deficiencies to visa/petition fraud. This appears to be another example of increasing inter-agency cooperation within the Department of Homeland Security, as well as with other government offices.

Newark Airport's New Policy to Verify L-1 and H-1B Employees

During a recent meeting with CBP officers in Newark, immigration attorneys were also advised of Newark Airport's newest policies in randomly selecting foreign nationals seeking to enter the United States in H-1B, L-1 or other employment-based visa categories for further questioning. Based upon an initial random selection, if the individual's admissibility is questionable, he or



February 16, 2010

she is directed to secondary inspection for further questioning. Under the new policy, if officers discover discrepancies in previously-filed petitions, the applicant may be asked to withdraw his application for admission into the United States or be subject to expedited removal, i.e., the foreign national agrees to leave the United States immediately.

CBP headquarters confirmed that Newark CBP is working closely with USCIS' Fraud Detection and National Security (FDNS) Directorate,¹ as well as the Department of Labor, Office of Inspector General's Office of Investigations. According to CBP headquarters, individuals selected for additional review and questioning are offered the opportunity to contact their Consulate. Although CBP guidelines do not allow an applicant to be represented by an attorney during this stage of the inspection process, they do allow for, at the CBP officer's discretion, a relative, friend, or representative to have access to the inspection area to provide assistance. When the validity of the job offer and petition are in question, in addition to seeking clarification from the foreign national at the port of entry, CBP officers also contact the sponsoring petitioner and/or current employer if appropriate. Although rumors indicate that Indian nationals are being targeted, CBP headquarters states all employment-based visa holders are screened regardless of nationality.



This shift to greater enforcement and fraud detection has been in effect for some time, as we can see from new language added to the I-797 approval notices that USCIS issues:

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.

What Does this Mean for Companies and Foreign Nationals?

Although, to date, CBP confirmed that the new policy is in effect only at Newark Airport, one can reasonably expect for the same policy to be instituted at other ports of entry as fraud detection efforts continue to increase and interagency cooperation becomes more sophisticated. It is crucial for both employers and sponsored foreign nationals in H-1B or L-1 status to properly and comprehensively prepare for their entry into the United States, regardless of the port of entry. All foreign nationals should review their petitions to ensure the accuracy of information previously provided to USCIS. When warranted, employers should file amendments with USCIS to

¹ The mission of FDNS is to enhance the quality, integrity, and security of the U.S. legal immigration system. FDNS's primary mission is to detect, deter, and combat immigration benefit fraud and to strengthen USCIS's efforts aimed at ensuring benefits are not granted to persons who threaten national security or public safety, see www.uscis.gov.

February 16, 2010

notify of a change in job duties or location, and file new H-1B labor condition applications with the Department of Labor. Foreign nationals should also consider carrying evidence to support the assertions made in the petition, such as degrees or job verification letters. In addition to site visits being made by the [FDNS division](#), employers must be prepared to receive telephone inquiries from CBP officers at ports of entry to confirm the assertions made in any petitions and supporting documentation submitted to USCIS.

Employers should also be advised that any government agency, such as USCIS, CBP, or ICE, can utilize public information, including websites and other media, to confirm and verify consistency and bona fides of a petition. Ensuring that public information and records are consistent with petitions being filed with USCIS is essential.

As CBP issues additional information regarding current and future policies, employers should be aware not only of each agency's ability to review and revoke visa approvals, but of agencies' new interest in initiating civil and criminal proceedings. Certainly the growing cooperation among CBP, ICE, USCIS and DOL to combat fraud and misuse of the H-1B and L-1 visa programs is likely to increase as the administration's focus on immigration compliance and general enforcement efforts continues.



This *GT Alert* was written by [Mahsa Aliaskari](#) and [Ganesh Kalyanaraman](#). Questions about this information can be directed to:

- Mahsa Aliaskari (aliaskarim@gtlaw.com; 310.586.7716)
- Ganesh Kalyanaraman (kalyanaramang@gtlaw.com; 703.749.1372)
- Or a [Business Immigration and Compliance Group](#) professional listed below

Greenberg Traurig's Business Immigration and Compliance Group has extensive experience in advising multinational corporations on how to minimize exposure and liability regarding a variety of employment-related issues, particularly I-9 employment eligibility verification matters. In addition to assisting in H-1B (Labor Condition Application) audits, GT develops immigration-related compliance strategies and programs and performs internal I-9 compliance inspections. GT has also successfully defended businesses involved in large-scale government worksite enforcement actions and Department of Labor Wage and Hour investigations. GT attorneys provide counsel on a variety of compliance-related issues, including penalties for failure to act in accordance with government regulations, IRCA anti-discrimination laws, and employers' responsibilities upon receiving Social Security Administration "No-Match" letters.

Dallas

972.419.1250
Peter Wahby

Houston

713.374.3500
Gina Carias

Los Angeles

310.586.7700
Mahsa Aliaskari
Claudia Yerena
Ganesh Kalyanaraman
Jennifer Biloshmi¹

Miami

305.579.0500
Oscar Levin

New York

212.801.9200
Marcela Bermudez
Patricia Gannon
Christina Pitrelli

Tysons Corner

703.749.1300
Kristin Bolayir¹
Patty Elmas¹
Dawn Lurie
Montserrat Miller
Laura Reiff
Glenn E. Reyes¹
Rebecca Schechter
Martha Schoonover

Washington, D.C.

202.331.3100
Laura Reiff

¹Not admitted to the practice of law.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ©2010 Greenberg Traurig, LLP. All rights reserved. *Operates as Greenberg Traurig Maher LLP. **Greenberg Traurig is not responsible for any legal or other services rendered by attorneys employed by the Strategic Alliance firms.*