



U.S. Citizenship
and Immigration
Services

HQ 70/35.2

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Memorandum

TO: Field Leadership

FROM: Donald Neufeld 
Acting Associate Director, Domestic Operations

SUBJECT: H-1B Anti-Fraud Initiatives – Internal Guidance and Procedures in Response to Findings Revealed in H-1B Benefit Fraud and Compliance Assessment

In February 2005, U.S. Citizenship and Immigration Services (USCIS) developed and implemented the Benefit Fraud and Compliance Assessment (BFCA) program to evaluate the integrity of various nonimmigrant and immigrant benefit programs that require the adjudication of an application or petition. The findings contained in the resulting assessment reports, which supplement other anti-fraud initiatives of USCIS, often serve as the basis for changes to agency processes, policies and regulations. In 2006, a BFCA related to the H-1B program was initiated. USCIS has issued the completed H-1B BFCA and, as required under the Fiscal Year 2008 Department of Homeland Security Appropriations Act (P.L. 110-161), reported the results of the assessment and any recommendations to Congress.

This memorandum provides guidance on process and policy changes that USCIS will implement in response to the H-1B BFCA. The Vermont and California Service Centers will implement these changes in the adjudication and fraud referral process associated with H-1B petitions.

I. Emphasis on Coordination between various USCIS Components

To improve fraud detection efforts in the H-1B Program, an increased emphasis will be placed upon the interaction between Adjudication Officers (AOs), Center Fraud Detection Operations (CFDO), and District Fraud Detection and National Security Immigration Officers (FDNS IOs). Adjudication Officers will be responsible for reviewing an H-1B petition and the accompanying documents to determine if there are indicators of fraud as outlined in this memorandum which would prompt referral to the CFDO. The CFDO will accept referrals that are based on documented and articulated indicators.

II. Identification of Fraud Indicators: Additional Scrutiny and Potential Fraud Referral of H-1B Petitions that Meet BFCA Criteria

The statistical findings of the H-1B BFCA revealed that petitioners which had one or more of the following attributes were more likely to have engaged in fraud or committed technical violation(s). These petitioner attributes or fraud indicators include:

- petitioners with a gross annual income of less than \$10 million;
- petitioners which employ 25 employees or less; or
- petitioners whose business was established within the last 10 years.

No single indicator or combination of these indicators is necessarily determinative of the merits of an H-1B petition. However, an AO who identifies a petitioner that has **two or more** of these indicators (the "10/25/10" formula for ease of reference) should review the H-1B petition with an awareness of the heightened possibility for fraud and/or technical violations and take the following action:

(a) Fraud Referrals to CFDO

When a petitioning organization has two or more of the three attributes or fraud indicators ("10/25/10") referenced above, and the AO identifies the presence of **one or more** of the following misrepresentations and/or investigations in an H-1B petition, the AO should refer the H-1B petition to the CFDO for further scrutiny:

- (1) presence of fraudulent information relating to the petitioner or beneficiary, and/or any forged documentation;
- (2) reported business was non-existent (e.g. a review of independent sources reveals fictitious or inconsistent address(es) in the petition, a questionable organizational chart is present in the record, there are photos of the purported business in a staged setting, there is evidence either present in the record or otherwise uncovered which point to business zoning inconsistencies, or the petitioner's website contains information that is inconsistent with information in the petition); or
- (3) inconsistent or otherwise questionable evidence regarding the proposed job duties and/or the alien's qualifications to perform such duties (e.g. the actual job duties are significantly different from the position listed on the Labor Condition Application (LCA); work experience letters without signatures; missing addresses and/or telephone numbers for the company; required skills, age, or education discrepancies or mismatches).

It is important to remind AOs that in all instances where a petitioner has been referred for ICE investigation, or system records show that the petitioner and/or alien is the subject of an active and ongoing ICE investigation, the petition must be referred to the CFDO and/or the Background Check Unit.

When fraud indicators or misrepresentations are identified within the context of this memorandum the AO will record all that apply on a USCIS fraud referral sheet. The AO will need to complete the fraud referral sheet which will have a comprehensive breakdown of the fraud indicators and misrepresentations outlined in this memo prior to referring a case to the CFDO. Any departure from this referral process such as listing fraud indicators or misrepresentations not mentioned in this memorandum must be approved by a Supervisory Adjudications Officer (SAO).

(b) Additional Review to Identify Violations of Law and Regulations

The BFCa also identified the most prevalent ways in which H-1B petitioners failed to comply with existing laws. Potential violations of current law (whether it be a statute or regulation) must be resolved before any H-1B petition may be approved. In cases involving H-1B petitions filed by petitioners who meet the "10/25/10" BFCa fraud indicators identified above, AOs should keep in mind that there is a heightened possibility that a violation of existing laws and/or regulations may have occurred. Therefore, AOs should pay particular attention to the presence of the following:

- (1) the physical job location is not listed on the Form I-129 petition and/or LCA;
- (2) the beneficiary is not receiving the prevailing wage as listed on the LCA (e.g. salary discrepancies and/or mismatches);
- (3) any misrepresentation(s) regarding the beneficiary's current or prior immigration status (e.g. passport, Form I-94 or visa discrepancies);
- (4) any evidence that the beneficiary paid the ACWIA fee associated with filing the H-1B petition;
- (5) any conflicting information about the business and/or its operation;
- (6) the facility would not be appropriate for the type of work to be performed (e.g. petitioner claims to have 100 employees and the worksite is zoned as a residential apartment); or
- (7) the job offered is inconsistent with the normal activities of the business.

AOs should seek to resolve any and all issue(s) through a Request for Evidence (RFE), Intent to Deny (ITD), or Intent to Revoke (ITR). While the majority of the violations were identified through the BFCa, some were identified through experience analyzing prior fraud investigations involving H-1B petitions because the BFCa was limited in scope.

The indicators and attributes discussed in this memorandum are by no means exclusive. As new fraud trends are identified by AOs, they should be incorporated into the evaluation of a petition as well as the referral process. Furthermore, new fraud trends should be communicated to USCIS Headquarters through established channels for review so that official agency guidance may be updated as appropriate.

USCIS also plans to use the new Administrative Site Visit Verification Program to conduct post-adjudication reviews in an effort to augment our ability to evaluate cases.

IV. Conclusion

Finally, AOs, SAOs and FDNS IOs are reminded that it is imperative that all time spent associated with the adjudication and administrative investigation of H-1B petitions and cases be recorded. The accuracy, completeness, and quality of such data are of significant importance. FDNS officers are directed to record the hours of time spent on such activities in FDNS-DS.

Questions regarding this memorandum may be directed to the USCIS Headquarters Office of Service Center Operations through appropriate supervisory channels.

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