



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000



U.S. Citizenship
and Immigration
Services

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The Honorable Charles E. Grassley
United States Senate
Washington, DC 20510

Dear Senator Grassley:

Thank you for your September 29, 2009 letter inquiring about various aspects of the H-1B visa program and our efforts at U.S. Citizenship and Immigration Services (USCIS) to prevent, detect, and address fraud in the program. I have set forth below responses to your questions and concerns. The issues you raised are of considerable importance, and I would welcome the opportunity to meet with you to address them in person.

The first issue you raised concerns the quality of USCIS field guidance, specifically whether that guidance fully advises adjudicators to demand from petitioners the information required to satisfy the H-1B criteria and to target the types of fraud we have detected in the program. Since publication of the H-1B Benefit Fraud and Compliance Assessment (BFCA) in September 2008, USCIS has taken discrete steps in this area. On October 31, 2008, our Acting Associate Director for Domestic Operations, Donald Neufeld, issued a guidance memorandum to the field entitled *H-1B Anti-Fraud Initiatives – Internal Guidance and Procedures in Response to Findings Revealed in H-1B Benefit Fraud and Compliance Assessment*. The guidance memorandum:

1. Advised the field of the results of our September 2008 BFCA;
2. Provided parameters for the review and referral of petitions to our fraud detection operations; and,
3. Instructed the field to issue Requests for Evidence, Notices of Intent to Deny, or Notices of Intent to Revoke in cases in which an adjudicator becomes aware of potential violations or non-compliance with the H-1B program.

Further guidance is under consideration on an ongoing basis to inform adjudicators of the evidence they can request when the H-1B petition does not adequately document actual work assignments in place for proposed H-1B beneficiaries. The guidance would instruct our adjudicators to request evidence demonstrating the employer has been paying an H-1B beneficiary the prevailing wage and complying with all other program terms and conditions, including the requirement to file an amended petition, if there is a material change in employment.

We believe that both the guidance we have issued and that which is under consideration equip our adjudicators to receive and evaluate the information needed to consider for approval H-1B petitions for actual, non-speculative employment and to identify a third-party worksite where a beneficiary may be located. We continue to review our guidance to the field and welcome the opportunity to learn of ways in which we can further improve our compliance mechanisms.

In your letter, you further requested an update on expected revisions to the Form I-129, Petition for a Nonimmigrant Worker. We currently are revising the form by adding a request to submit relevant documentation and requiring attestations regarding offsite employment that must be signed by both the petitioner and the beneficiary. The petitioner and beneficiary must specifically attest that:

1. The beneficiary has been advised of the offsite placement and accepts the terms of the H-1B employment, including the job location and possible relocation;
2. Placement of the beneficiary offsite during the period of employment will be in compliance with the statutory and regulatory requirements of the H-1B nonimmigrant classification;
3. The beneficiary will be paid the prevailing rate of pay at any offsite location; and,
4. The work itinerary is attached.

With respect to third-party locations, our service centers advise petitioners on a case-by-case basis that they must submit one or more forms of evidence to establish that a specialty occupation exists at the third-party worksite. This evidence includes, but is not limited to, third-party contracts and verifications. We also commenced operation of the Administrative Site Visit and Verification Program (ASVVP) in July of this year to determine whether the location of employment actually exists and if a beneficiary is employed at the location specified, performing the duties as described, and paid the salary as identified in the petition. The ASVVP utilizes physical on-site inspections. In Fiscal Year (FY) 2009 we initiated 5,191 site visits and we intend to expand up to 25,000 site visits in FY 2010. We are initially focusing the ASVVP on post-adjudication H-1B site inspections, among other select programs.

In your letter, you also inquired about our plan to access independent, open-source commercial avenues to obtain information relevant to the adjudicatory process. On September 30, of this year, we awarded a contract to Dunn and Bradstreet to act as an independent information provider for our new program, Verification Initiative for Business Enterprises (VIBE). The VIBE program is a Web-based service that uses commercially available data from an independent information provider to validate and verify information submitted by organizations that petition to employ an alien worker.

We anticipate implementing VIBE in the spring of 2010. We believe it will provide adjudicators with a tool to accurately verify the financial viability and current level of business operations for employment-based petitions. We will provide you with regular updates as to the progress of the program's rollout.

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Lastly, since I assumed office just over eight weeks ago, I have worked tirelessly to learn of the condition of our anti-fraud efforts and other critical programs in our agency. The thorough agency review that I promised to undertake has indeed begun. I would welcome the opportunity to inform you further about it, and specifically about how I am bringing and plan to further bring my law enforcement experience to bear in the prevention, detection, and prosecution of fraud activity that impairs the effective administration of our immigration system.

Thank you very much.

Sincerely,

A handwritten signature in black ink, appearing to read "Alejandro N. Mayorkas". The signature is fluid and cursive, with a large initial "A" and "M".

Alejandro N. Mayorkas
Director