Communications Workers of America Local 4250/CTU#16, Chicago IL
18225 Burnham Ave. Suite 11, Lansing, IL 60438

Published: April 4, 2017

American Victims of H-1B Get Their Chance ,Will They Take It? (By Norm Matloff) Combating Fraud and Abuse in the H-1B Visa Program - (USCIS)

Combating Fraud and Abuse in the H-1B Visa Program

The H-1B visa program should help U.S. companies recruit highly-skilled foreign nationals when there is a shortage of qualified workers in the country. Yet, too many American workers who are as qualified, willing, and deserving to work in these fields have been ignored or unfairly disadvantaged. Employers who abuse the H-1B visa program may negatively affect U.S. workers, decreasing wages and opportunities as they import more foreign workers.

Protecting American workers by combating fraud in our employment-based immigration programs is a priority for USCIS. USCIS continuously works to deter and detect fraud in all immigration programs and we are furthering our efforts by enhancing and increasing site visits, interviews, and investigations of petitioners who use the H-1B visa program. These efforts will help assist in the prosecution of program violators and ensure that American workers are not overlooked or replaced in the process.

Reporting Suspected H-1B Fraud or Abuse

We have established an email address dedicated to receiving information about suspected H-1B fraud or abuse. Anyone (including both American workers and H-1B workers who suspect they or others may be the victim of H-1B fraud or abuse) can email ReportH1BAbuse@uscis.dhs.gov to submit tips, alleged violations, and other relevant information about potential H-1B fraud or abuse. When submitting information to ReportH1BAbuse@uscis.dhs.gov, please provide the following information in the email:

- The name of the H-1B petitioning employer/company
- The address of the employer/company or location of the H-1B worker(s), including the city and state
- A description of the alleged violation, abuse, or suspected fraud
- Your email address
- Your name and phone number (optional)
- Any other information that may be useful to investigate the alleged fraud or abuse

Individuals are also encouraged to report allegations of employer fraud and abuse by submitting a Form WH-4 to the Department of Labor's (DOL) Wage and Hour Division. The public may also contact U.S. Immigration and Customs Enforcement (ICE) by completing the HSI Tip Form.

H-1B Fraud and Abuse Indicators

Examples of H-1B fraud indicators may include:

- The H-1B worker is not or will not be paid the wage certified on the Labor Condition Application (LCA).
- There is a wage disparity between H-1B workers and other workers performing the same or similar duties, particularly to the detriment of U.S. workers.
- The H-1B worker is not performing the duties specified in the H-1B petition, including when the duties are at a higher level than the position description.
- The H-1B worker has less experience than U.S. workers in similar positions in the same company.
- The H-1B worker is not working in the intended location as certified on the LCA.

Protections for H-1B Workers Who Report Suspected Fraud or Abuse

If an H-1B worker reports suspected fraud or abuse, immigration law may provide certain protections to these workers. If an H-1B worker:

- applies to extend their H-1B status or change their nonimmigrant status,
- indicates that they faced retaliatory action from their employer because they reported an LCA violation, and
- lost or failed to maintain their H-1B status,

we may consider this situation to be an instance of ‘‘extraordinary circumstances’’ as defined by sections 214.1(c)(4) and 248.1(b) of Title 8, Code of Federal Regulations. Normally, H-1B workers are not eligible to extend or change their status if they have lost or failed to maintain their H-1B status. However, if they can demonstrate ‘‘extraordinary circumstances,’’ we may use our discretion to excuse this requirement on a case-by-case basis.

Expansion of Site Visits

Since 2009, we have conducted random administrative site visits to ensure that employers and foreign workers are complying with requirements of the H-1B nonimmigrant classification. We verify H-1B workers’ wages, job duties, and work locations during site visits. This action is not meant to target nonimmigrant employees for any kind of criminal or administrative action but rather to identify employers who are abusing the system.

We seek to determine if workers are not being paid while in the United States as they wait for projects or work, a practice known as “benching” which violates U.S. immigration laws. We also conduct site visits in cases where there are suspicions of fraud or abuse and refer many of the cases to our counterparts at U.S. Immigration and Customs Enforcement (ICE) for further investigation.

100 TYPOGRAPHICAL UNION LABEL ®

Starting this month, we will take a more targeted approach focusing on:

- H-1B-dependent employers (those who have a high ratio of H-1B workers as compared to U.S. workers, as defined by statute);
- Cases where we cannot validate the employer's basic business information through commercially available data; and
- Employers petitioning for H-1B workers who work off-site at another company or organization's location.

Targeted site visits will also help us determine whether H-1B-dependent employers who normally must meet H-1B recruitment attestation requirements are actually paying their workers the statutorily required salary to qualify for an exemption from these requirements. These site visits will assist in determining if these employers are evading their obligation to make a good faith effort to recruit U.S. workers and to not displace U.S. workers.

Targeted site visits will allow us to focus resources where fraud and abuse of the H-1B program may be more likely to occur. We will also continue to make unannounced and random visits to *all* H-1B employers across the country, both before and after any petition is adjudicated.

Promoting Transparency

Transparency about how the H-1B program is being used is vital to ensuring accountability for employers and improving policies and practices that protect American workers. After the H-1B cap filing season for fiscal year (FY) 2018 concludes, USCIS plans to publish a report on the H-1B visa petitions submitted for FY 2018 along with data about the petitions. We also plan to create a web-based, searchable platform for the public to better understand how H-1B visas are being used.

Link To Read Norm Matloff Article Below And Under Article Links:

http://bit.ly/2nyo8cT

