On-Site Audits of H-1B Employers: A Republication

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In October 2009, Lathrop Gage published the following alert regarding on-site audits of H-1B employers. We are republishing the original alert because of the increasing number of clients who are being visited and are surprised by the experience. Nationwide, U.S. Citizenship & Immigration Services conducted 14,433 H-1B site visits in fiscal year 2010 and 4,548 in the first half of fiscal year 2011.

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The Office of Fraud Detection and National Security ("FDNS") of U.S. Citizenship & Immigration Services ("USCIS") has recently begun conducting site visits to verify the information that appears in H-1B petitions, both pending and already approved. These visits can occur at the principal place of business of the H-1B employer or at the place of employment of the foreign national employee, if different. Visits may be conducted by a USCIS employee or contractor. Often, the visits are **not** announced in advance. FDNS takes the position that it does not have to have a warrant or subpoena to conduct such visits because agency regulations give the government the power to take testimony and conduct broad investigations regarding immigration petitions. This position has not been tested in court.

What to Expect

If an employer is the target of a site visit, it should expect the FDNS representative to verify the data that appears in one or more specific H-1B petitions filed by that employer. Typically, the representative conducting the visit will ask to speak with the person who signed the petition or, if that person is not present, some other representative of the employer. Information sought may include the nature of the employer's business, its location, and the number of employees. The representative may ask to review the employer's tax returns, quarterly wage reports, or the like, and may seek information about the foreign national's job title and duties, work location, and salary, including Forms W-2 and pay statements showing that salary. The representative may ask for a tour of the facility where the foreign national is employed and will probably request an interview with the foreign national and his or her colleagues or manager. During these interviews, the FDNS representative could ask about job titles, duties, and responsibilities, employment dates, where the job is located, job requirements, and the academic background of the foreign national employee. The site visit should end after the FDNS representative has completed his or her interviews and received any documents requested.

If you have questions about how to handle a site visit regarding H-1B employees or any other questions about employment of foreign nationals, please feel free to contact your Lathrop Gage representative or any of the attorneys listed above.