

IMMIGRATION LAW

Expert Analysis

## What Employers Need to Know About Site Visits

**W**ith the Trump administration's focus on immigration enforcement, an unannounced workplace visit from authorities is more likely than ever. There are several reasons that an employer could receive an unannounced visit from Immigration and Customs Enforcement (ICE) or the Fraud Detection and National Security (FDNS) unit. A visit from ICE is sometimes referred to as a workplace "raid" and is targeted at employers who hire undocumented workers and at the workers themselves. Media coverage often accompanies ICE raids, along with images of undocumented workers being led out of the workplace in handcuffs. In contrast, as its name suggests, the FDNS unit is charged with finding fraud within the legal immigration system by verifying that the information employers provide with visa petitions is accurate and valid and that sponsored workers are complying with the terms of their admission. This column will focus on FDNS visits and

By  
**Julie  
Muniz**



provide process and best practice recommendations.

FDNS has been making employer site visits for several years, focusing

---

The Trump Administration is expected to increase the scope of the site visit program to cover more nonimmigrant categories.

principally on H-1B visa (a numerically limited specialty occupation visa that permits U.S. employers to hire foreign workers with a related bachelor's degree or equivalent into a job requiring that degree) employment. In 2014, the agency expanded the program to include site inspections of L-1A (multinational transferees) employers. There are indications that the Trump Administration plans to expand FDNS

inspections in the coming months and to broaden the program to other types of employment-based immigration categories beyond the H-1B and L-1A.

### Why Does USCIS Make Visits?

FDNS conducts site visits under two initiatives. Under FDNS's Administrative Site Visit and Verification Program (ASVVP), immigration petitions are randomly selected for inspection. The FDNS inspector may arrive at the worksite unannounced, or contact your organization by email to request responses to questions about the organization, the immigration petition and the organization's immigration program generally. The email inquiry may be followed by an in-person inspection.

Benefits Fraud Assessments (BFAs) are initiatives that review specific immigration programs—such as the H-1B or L-1 program—to determine the incidence of fraud or technical violations in that particular program. A BFA typically lasts for several months. During this time, USCIS randomly selects a large number of petitions or applications for benefits in the particular category being assessed. The agency analyzes the results, and then may issue a public report on the rate of

fraud and program violations in the immigration category under review. The BFA program has been on hold for several years, but is expected to be revived.

In both programs, cases are assigned to FDNS officers, who visit the premises of sponsoring employers to verify the existence of the employer, the validity of the information the employer has provided in an immigration petition, and whether sponsored foreign nationals are working in compliance with the terms of their admission to the United States.

### **Trump's Plans for FDNS Program**

The Trump Administration is expected to increase the scope of the site visit program to cover more non-immigrant categories. The Administration is reportedly planning to issue an executive order on employment-based immigration programs in the near future that would expand the program in several key respects. The draft order would direct DHS to immediately revive the Benefits Fraud Assessment program, which could result in a sharp increase in site inspections. Within six months after the order is issued, the Administration is expected to expand the L-1 site visit program to include L-1B specialized knowledge nonimmigrants. Within two years, expansion of the FDNS program to all immigration categories is expected.

### **FDNS Officers: Cooperation**

In submitting petitions for immigration benefits, employers subject themselves to reasonable inquiries from the government. The regulations governing immigration petitions

expressly allow the government to take testimony and conduct broad investigations relating to the petition. Employers who file nonimmigrant and immigrant petitions on behalf of employees authorize the release of any information from its records that USCIS might need to determine eligibility for the immigration benefit sought. The instructions to the government forms state that USCIS may verify the information submitted in the petition through any means that the agency deems appropriate, including on-site inspections. Thus, it is important to make efforts to cooperate with FDNS officers. When an FDNS officer appears at your company premises, you should ask to see his or her identification and business card and note the site visitor's name, title and contact information for your company's records of the site visit.

This does not mean that there are no off-limits requests. Depending upon all of the circumstances, an employer may conclude that a government request is not sufficiently related to the immigration petition being verified and could decline to respond to a particular request. But it is important to weigh your company's interests before deciding not to respond, because a failure to cooperate fully could jeopardize the specific immigration petition in question and compromise the company's likelihood of success in future filings.

### **What Happens During Site Visits?**

Usually, the officer is making the site inspection to verify information in a specific immigration petition, and will generally have a copy of the petition. The officer may ask to speak to

an employer representative, such as a human resources manager, as well as the foreign beneficiary of the petition in question and his or her direct supervisor or manager. The officer may ask for a tour of the employer's premises and the foreign national's work area, and may want to photograph the premises. Employers may be asked to provide documents like W-2 forms, payroll records or paystubs for the foreign national, or an organizational chart. The visit should last around 60 to 90 minutes.

Sometimes, the officer will email the company and request written responses to questions, as well as relevant documents. Depending on the responses, the officer may elect not to make an in-person visit to the worksite.

The FDNS officer typically conducts the site visit at the worksite of the foreign beneficiary of an immigration petition, whether the worksite is the employer's own premises or the premises of a client. If your company has a foreign employee stationed at a client site—for example, to perform services for a client pursuant to a contract with your company—an FDNS officer could seek to conduct a visit at the client site. Likewise, if a foreign national employee of another company is stationed at your company's worksite, FDNS could seek to visit your premises to interview the employee.

Therefore, employers should communicate with vendors and/or clients to discuss the possibility of FDNS visits at either premises. Your clients should be asked to contact your organization immediately if an FDNS officer appears for a site visit pertaining to one of your

employees, so that a representative from your company can be present in person or by phone during the visit. Similarly, if your organization receives a site visit pertaining to a vendor's employee, you should immediately contact the vendor.

### Representative Questions

During a visit or in an email request, the FDNS officer usually works from a standard list of questions used for all employers. The officer may ask about:

- The employer's business, annual revenue and the number of employees at a particular location, in the United States or worldwide;
- Whether the employer or its representative actually signed and filed the immigration petition, to make sure that it was not filed fraudulently;
- The organization's immigration program in general, including the number of foreign nationals sponsored for nonimmigrant programs and employment-based green card;
- The foreign worker's job title, responsibilities, salary and work schedule, as well as those of other employees in similar positions; and
- The foreign national's education, previous employment, residence, and family members in the United States.

The officer may also ask for documents pertaining to the company and the foreign national, including:

- The foreign national's paystubs and W-2 forms;
- Paystubs for employees supervised by the foreign national, if any;
- Organizational chart for the U.S. organization;
- Organizational chart for the related foreign organization (L-1 site visits);

- Company wage and tax documentation; and

- Contracts, statements of work and/or agreements between the petitioner and an end-client, if the foreign national is placed offsite.

If you can't give an exact answer to the question without reviewing company records or if you need the assistance of outside immigration counsel to obtain the data, let the officer know. The officer may be satisfied with an approximate answer. If the officer asks for exact information, you can request a reasonable amount of time to gather the information sought and follow up with the officer.

### Company Policy Considerations

In each worksite where a sponsored foreign national is employed, your organization should designate a point of contact, such as an HR manager, to receive FDNS officers. Make sure to instruct receptionists and security personnel of the possibility of a site visit and whom to contact when an officer arrives. Instruct them to request the officer's business card and advise them that officers should not be permitted to tour the worksite or speak to employees without a company representative present.

Foreign nationals and their managers should be advised about the possibility of a site visit and what to expect during the visit. Also, a company representative should accompany the officer while he or she is onsite. Be aware that the FDNS officer may decline the representative's request to sit in on interviews with foreign employees, however.

During the site visit, the company representative should take detailed

notes, including the officer's name, title and contact information; the names and titles of individuals the officer interviews; the questions asked during interviews; any company documents provided to the officer; the areas of the worksite that the officer visits; and any photographs taken by the officer. If company documents are provided to the officer, the company representative should be sure to list the documents provided and retain their copies. If the FDNS officer takes photographs of the premises, the representative should ask for copies of them.

### Next Steps

After a site visit, the FDNS officer may contact the employer by phone or email to request additional information. In cases where there appears to be a discrepancy between the information in an immigration petition and the circumstances at the worksite, USCIS may notify the employer of its intent to revoke the petition. If that occurs, the agency will provide the employer with an opportunity to explain any perceived inconsistencies. If there have been changes in a foreign worker's conditions of employment since the approval of the petition, the employer may need to file an amendment with USCIS.