FOIA Request Response Statement

The FDNS Directorate is dedicated to developing and maintaining the anti-fraud, screening (background checks), and information sharing programs needed to accomplish the overall USCIS goal of administering benefits within the legal immigration system. In support of its mission, FDNS develops policies, procedures, and other resources to enable USCIS officers to detect, investigate, and assess whether applicants and petitioners raise fraud or national security concerns that would prevent legal immigration.

To complete its mission, FDNS develops its own techniques and procedures to identify fraud and national security concerns, and utilizes techniques and procedures developed by counterparts in the law enforcement and intelligence communities. Furthermore, our law enforcement and intelligence community partners rely on FDNS data provided by us for their investigations and prosecutions. The FDNS investigations into those applicants and petitioners for which USCIS articulates a suspicion of fraud or national security concern is authorized as part of USCIS's adjudicative authority and authorities to administer and enforce the immigration and naturalization laws.

FOIA Exemption 7: Records or Information Compiled for Law Enforcement Purposes

Under FOIA's Exemption 7, records or information compiled for law enforcement purposes are protected from disclosure. According to the Department of Justice's Guide to the FOIA, U.S. courts have determined that the "law" to be enforced within the meaning of the term "law enforcement purposes" includes both civil and criminal statutes, as well as those statutes authorizing administrative (i.e., regulatory) proceedings. See:

- McErlean v. DOJ, No. 977831, 1999 WL 791680, at *8 (S.D.N.Y. Sept. 30, 1999), which states that "it is well-settled that documents compiled by the Immigration and Naturalization Service (INS) in connection with the administrative proceedings authorized by the Immigration and Naturalization Act are documents compiled for 'law enforcement purposes'";
- Jefferson v. DOJ, 284 F.3d 172, 178 (D.C. Cir. 2002), which reiterated that Exemption 7 "'covers investigatory files related to enforcement of all kinds of laws,' including those involving 'adjudicative proceedings'" (quoting Rural Hous., 498 F.2d at 81 n.46);
- Schoenman v. FBI, 573 F. Supp. 2d 119, 146 (D.D.C. 2008), which found that Exemption 7 threshold applies to files related to enforcement of all kinds of laws including "administrative matters".

FOIA Exemption 7(E): Law Enforcement Techniques, Procedures, and Guidelines

FDNS compiles records and develops policies detailing its techniques, procedures, and guidelines for investigating fraud and national security concerns – conducted under USCIS's authorities to administer and enforce the immigration and naturalization laws and in support of the law enforcement and intelligence functions of other agencies. FDNS works to identify threat and fraud schemes and assess the risk of these acts to ensure our safety and security as well as preserve the integrity of the legal immigration system. FDNS requires that these tools and their associated techniques, procedures, and guidelines are not made public to prevent those seeking to circumvent the legal immigration process from having the knowledge to do so.

According to the Department of Justice's Guide to the FOIA, U.S. courts have upheld the withholding of techniques and procedures pertaining to the selection criteria and fraud indicators associated with applications for government benefits, including those relating specifically to H-1B visas. See:

- Am. Immigration Lawyers Association vs. DHS 852 F. Supp. 2d 66, 77-80 (D.D.C. 2012), which protected fraud indicators used to review H-1B visa applications; and
- Techserve Alliance v. Napolitano, 803 F. Supp. 2d 16, 29 (D.D.C. 2011), which allowed withholding of "selection criteria, fraud indicators, and investigative process...use[d] in fraud investigations during the H-1B visa process."

**U.S. Citizenship
and Immigration
Services**

June 3, 2013

Memorandum

TO: USCIS Employees

FROM: Fraud Detection and National Security Directorate

SUBJECT: Revised H-1B Anti-Fraud Operational Guidance

Purpose

This operational guidance rescinds and supersedes the October 31, 2008 Policy Memorandum entitled *H-1B Anti-Fraud Initiatives – Internal Guidance and Procedures in Response to Findings Revealed in H-1B Benefit Fraud and Compliance Assessment* (the "October 31, 2008 Policy Memorandum") and details the operational enhancements that will be used to prevent, detect, and combat fraud in the H-1B program.

Background

USCIS Immigration Service Officers (ISOs), under the leadership of the Service Center Operations Directorate (SCOPS), play a critical role in identifying possible fraud in H-1B petitions and determining when to refer those cases to the Fraud Detection and National Security Directorate (FDNS). In 2008, FDNS conducted an H-1B Benefit Fraud and Compliance Assessment (BFCA) and other BFCAs to determine the types and frequency of immigration fraud.

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This memorandum is the result of these efforts.

Guidance

Since the results of the 2008 BFCA, USCIS has continued to implement operational and technical enhancements in its fraud detection and deterrence efforts. It has developed additional training tools and compliance review programs that leverage advancements in technology with accumulated experiential knowledge. These enhancements strengthen the existing USCIS anti-fraud standard operating procedures that inform our work agency-wide. They are designed to further empower and assist USCIS's Center Fraud Detection Offices that will continue to work aggressively to ensure program integrity is maintained. USCIS will continue to employ standard tools such as requests for evidence when additional data is needed. These tools will assist the agency in making appropriate decisions in response to such requests.

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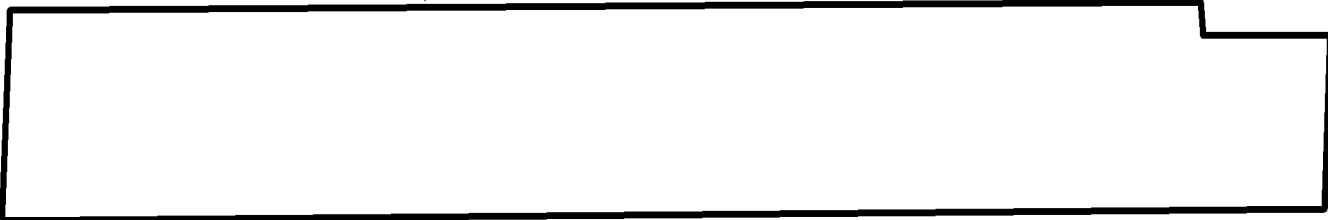
Operational Enhancements since October 2008

ASVVP

In December 2011, USCIS implemented the Administrative Site Visit and Verification Program (ASVVP), which utilizes in-person site inspections to verify information provided to USCIS in support of certain types of immigrant and nonimmigrant visa petitions.[1] ASVVP site inspections are conducted as part of a compliance review program designed to assess whether petitioners and beneficiaries are in compliance with applicable immigration laws and regulations. While ASVVP site inspections are not predicated on suspicions of fraud, they do provide USCIS officers with valuable information in developing possible fraud indicators.[2]

VIBE

In September 2009, USCIS launched the Validation Instrument for Business Enterprises (VIBE), a web-based tool that enhances USCIS's ability to adjudicate employment-based petitions efficiently and to identify ineligible petitioners and potentially fraudulent filings. VIBE is a service that offers a standardized means of helping validate or verify whether a petitioning company or organization is legitimate or financially viable. When ISOs adjudicate certain visa classifications of employment-based petitions, VIBE makes it possible to establish the validity of the company or organization using a more robust core of information from the public records arena. This allows USCIS to identify petitions filed by non-existent, non-viable, ineligible, and/or fraudulent companies and organizations.

Training

USCIS created a standardized training course, Identifying and Combating Immigration Benefit Fraud, to assist USCIS officers in identifying, detecting, and deterring immigration fraud. This course provides standardized national fraud detection and deterrence training, includes techniques to identify various types of immigration fraud, discusses best practices to follow in file review and interviewing, and emphasizes the fraud referral and statement of findings processes as communication tools between USCIS components.

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[1] ASVVP site inspections are conducted on RW petitions prior to adjudication (pursuant to regulation) and randomly selected post-adjudication H-1B and RW petitions.

[2] Since its inception, the ASVVP has completed over 57,000 compliance review site inspections.

FDNS-DS Data

USCIS enhanced the analytics and reporting capabilities of our Fraud Detection and National Security Data System (FDNS-DS). The consolidated management of fraud and national security cases into a single system allows officers to conduct person-centric queries and display all relevant information about an applicant, petitioner, or beneficiary. The system was also enhanced by expanding its ability to import application-related data from other USCIS systems, further improving the breadth, accuracy, and utility of records in FDNS-DS. Along with improvements in data integrity, these refinements give USCIS enhanced capabilities in the identification, tracking, and resolution of fraud, national security, and public safety issues.

Conclusion

USCIS has a responsibility to protect and enhance the integrity of our nation's immigration system and is dedicated to remaining vigilant in monitoring and assessing changes to newly identified fraud, national security, and public safety-related concerns.

USCIS will continue to provide updated information as we develop new tools and observe changes in patterns and practices in the use of the H-1B visa program. ISOs shall continue to be guided by current standard operating procedures and other guidance regarding the identification of fraud indicators and referral to FDNS.

Contact Information

Questions or suggestions regarding this memorandum should be addressed through appropriate channels to the Headquarters Fraud Detection and National Security Directorate, Fraud Division.

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