

REPLY TO:

- 135 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510-1501
(202) 224-3744
e-mail: grassley.senate.gov/contact.cfm
- 721 FEDERAL BUILDING
210 WALNUT STREET
DES MOINES, IA 50309-2140
(515) 288-1145
- 150 1ST AVENUE NE
SUITE 325
CEDAR RAPIDS, IA 52401
(319) 363-6832

United States Senate

CHARLES E. GRASSLEY

WASHINGTON, DC 20510-1501

September 29, 2009

REPLY TO:

- 103 FEDERAL COURTHOUSE BUILDING
320 6TH STREET
SIOUX CITY, IA 51101-1244
(712) 233-1860
- 210 WATERLOO BUILDING
531 COMMERCIAL STREET
WATERLOO, IA 50701-5497
(319) 232-6657
- 131 WEST 3RD STREET
SUITE 180
DAVENPORT, IA 52801-1419
(563) 322-4331
- 307 FEDERAL BUILDING
8 SOUTH 6TH STREET
COUNCIL BLUFFS, IA 51501-4204
(712) 322-7103

The Honorable Alejandro Mayorkas
Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Washington, D.C.

Dear Director Mayorkas:

It's been one year since U.S. Citizenship and Immigration Services (USCIS) released its benefits fraud and compliance assessment of the H-1B Non-immigrant Visa Program. This report evaluated the integrity of the H-1B visa program by reviewing a sample of petitions and by taking a comprehensive look at all aspects of the petition process. Unfortunately, the assessment showed that 20.7% of visa cases reviewed were identified as having outright fraud or other program violations associated with them.

Upon release of the benefits fraud assessment, I wrote to Acting Director Jonathan Scharfen to ask what steps USCIS had taken or would take to restore integrity in the program. Acting Director Scharfen reported to me that the agency had issued internal field guidance informing adjudicators of the findings and instructing them to make changes to how they adjudicate H-1B petitions.

While I appreciate the steps taken to alert USCIS Service Center adjudicators about the report and fraud indicators to be watchful for, I am surprised that no guidance has been provided to adjudicators, or to the public, about additional evidence to be gathered from petitioners. Adjudicators were told to "seek to resolve any and all issues through a Request for Evidence" but the guidance did not specify the evidence that should be requested of applicants. One of the changes that USCIS was considering, per Acting Director Scharfen, was clarifying what documentation must be submitted when the alien will be assigned by the H-1B petitioner to a third-party worksite.

We have seen substantial fraud and program violations by employers who bring in H-1B visa holders and then outsource them to other worksites. Such was the case with the indictment of Vision Systems Group, Inc. earlier this year in my home state. U.S. Immigration and Customs Enforcement alleges that the company did not have jobs available for the H-1B workers they petitioned for, and placed them in non-pay status upon arrival in the United States. Additionally, Vision Systems allegedly submitted Labor Condition Applications (LCAs) with the U.S. Department of Labor (DOL) that stated prevailing wage data for a location in Iowa rather than the higher prevailing wage for the location outside Iowa where the worker would actually be employed.

RANKING MEMBER,
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I seek your commitment to tackle this problem immediately. Simply put, adjudicators should be asking companies up front for evidence that H-1B visa holders actually have a job awaiting them in the U.S., i.e. that workers are not coming in only to be “benched” by employers and that the job the workers are filling is the same job and in the same location as the job/location described in the LCA approved by DOL. I strongly encourage USCIS to request from petitioners that have stated they will be assigning H-1B workers to third-party worksites copies of relevant portions of any and all contracts or agreements between the petitioning company and the third-party worksites that prove the foreign workers will actually have work upon arrival and that the work will in fact be performed at the places described in the approved LCA and in the itinerary submitted with the petition. This evidentiary requirement should be instituted immediately so that USCIS can ensure that H-1B workers are filling true vacancies rather than taking jobs from qualified Americans.

Acting Director Scharfen also noted that the agency was considering other anti-fraud initiatives, including: changing the I-29 petition form; clarifying when a petitioner must file an amended H-1B petition based on a material change in employment; modifying the H-1B evidentiary requirements; prohibiting a petitioner from passing any fee associated with an H-1B petition to the beneficiary; and prohibiting subsequent filings by those who previously were found to have committed fraud in an attempt to gain an immigration benefit. I would like an update on these efforts that were being considered by USCIS, including detailed explanations as to why any of them have been shelved or not implemented in the last year.

Acting Director Scharfen also reported that USCIS would “soon begin using independent, open source data available through commercial sources to obtain information regarding the petitioner that would be relevant to the adjudication of the petition.” Has any action on this “independent documentation” effort taken place? Do you, as the new Director, believe that such an initiative is worthwhile, efficient, and necessary?

In addition to the above-mentioned issues, I would like to know what other steps you are taking to alleviate the problems found in the 2008 benefits fraud assessment, including the following:

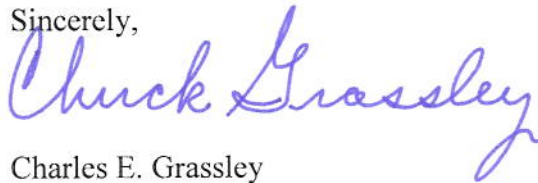
- Employees are working at locations not identified in the petition and/or Labor Condition Application (LCA);
- Actual job duties differing from those described in the LCA and petition;
- Failure to pay prevailing wage or required the beneficiary to pay some or all of the American Competitiveness and Workforce Improvement Act of 1998 fees;
- Use of fraudulent or forged documents or signatures; and
- Aliens misrepresenting they were maintaining status when returning to the U.S. even though they previously had failed to maintain H-1B status.

Fraud in the H-1B visa program only hurts companies that play by the rules and truly need highly skilled workers. For this reason, it’s vitally important that your agency take all steps necessary to eliminate abuse and take action against those who do not comply with the law.

When we met prior to your confirmation hearing, you committed to rooting out fraud and abuse in all visa programs, but specifically the H-1B visa program. Upon being confirmed, you also answered several questions for the record, including ones that I submitted about the H-1B visa program. You said, "I believe the existence of fraud in the H-1B visa program needs to be addressed forcefully." Your statement complements that made by Secretary Napolitano herself in her testimony before the Senate Judiciary Committee last May: "From an enforcement standpoint, my priority is to make sure that there's not fraud occurring within the H-1B program at all." You also said you would promptly conduct a thorough review of USCIS programs to identify areas in need of improvement and in need of increased focus, and that you would develop a close working relationship with ICE to ensure that fraud and abuse are addressed through criminal prosecution.

I look forward to hearing about the thorough review that you promised to undertake as soon as you were confirmed. I appreciate your consideration of the issues I have raised, and await your speedy response to this letter.

Sincerely,



Charles E. Grassley
United States Senator