

As another year comes to an end, we share some recent developments in US immigration law and related employer compliance. This update summarizes the record US\$34 million settlement between IT consulting firm Infosys and the US government, enhancements and changes to E-Verify as well as the expansion of US Citizenship and Immigration Services' (USCIS) administrative site visit program.

Infosys Settlement

The US Department of Justice recently announced it had reached a settlement with the IT consulting firm Infosys Corporation (Infosys) which included a record payment of US\$34 million in civil fines. The investigation arose out of a whistleblower case filed by a manager who alleged that the company misused the B-1 visitor visa in order to circumvent the H-1B work visa process.

According to court documents and the settlement agreement, the government alleged that Infosys circumvented the law and governmental oversight of the H-1B visa program by "knowingly and unlawfully" using B-1 visa holders to perform skilled labor in order to fill positions in the United States for employment that would otherwise be performed by US citizens or require legitimate H-1B visa holders. The complaint filed against the company also alleges it did so in order to increase profits, minimize costs of securing visas, increase flexibility of employee movement, obtain an unfair advantage over competitors, and avoid tax liabilities. The government also alleged that Infosys failed to properly maintain I-9 records for many of its foreign nationals in the United States as required by law.

The settlement agreement includes civil forfeiture fines of US\$10 million, a civil penalty fine of US\$24 million and continued auditing of the company's use of B-1 and H-1B visas and its I-9 compliance. To date, this represents the largest civil penalty ever levied against a company for immigration-related violations.

While this landmark case arose out of the alleged misdeeds of one company, the impact will likely be felt by all employers utilizing B-1 and H-1B visas. We expect to see not only increased scrutiny by immigration and consular adjudicators of these visa categories but possibly the rejuvenation of Congressional efforts to restrict the use of the B-1 or H-1B visa. In addition, the focus on the company's I-9 practices sends a message to all US employers that the government is continuing its efforts to enforce these laws and hold employers accountable for sloppy or improper employment verification practices. For a more in-depth analysis of the settlement agreement and how it will impact employer visa sponsorship and I-9 practices, see our recent blog post on [Employment Law Worldview](#).

E-Verify Social Security Lock

USCIS has announced that its E-Verify System will now incorporate a security feature where a social security number (SSN) can be "locked" if it appears to have been misused. In order to safeguard against fraud, USCIS advises that it will use a "combination of algorithms, detection reports and analysis" to identify patterns of fraudulent SSN use and will lock the number in the E-Verify system.

If an employee attempts to use a locked SSN, E-Verify will generate a "Tentative Nonconfirmation" (TNC). The employee will then have the opportunity to contest the TNC finding with a local Social Security Administration (SSA) field office. If the SSA confirms the employee's identity correctly matches the SSN, the TNC will be converted to "Employment Authorized" status in E-Verify. While an employee contests a TNC an E-Verify employer is prohibited from taking any action adverse to their employment status.

While this enhancement will go a long way to resolving some of the deficiencies in the E-Verify system and provide some safeguards from identity theft, it may also trigger unintended consequences. Locking the SSN will also impact the true holder of the number. In some cases it may be difficult to determine the true owner of the SSN and while the SSA sorts out the discrepancy, the number will remain locked in the system.

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations nor should they be considered a substitute for taking legal advice.

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Administrative Site Visits Expanding to L-1 Visas

At a recent liaison meeting with representatives from USCIS, officials announced that in January 2014 the USCIS Fraud Detection and National Security (FDNS) Directorate will expand its Administrative Site Visit and Verification Program (ASVVP) to include L-1 Visas. Under the ASVVP, FDNS, through its officers or contractors, conducts unannounced pre- and post-adjudication site inspections at company locations listed in visa petitions. ASVVP site inspectors typically verify the information submitted with the petition and verify the existence of a petitioning entity. They also may take digital photographs of the premises, ask to review documents or speak with organizational representatives to confirm the beneficiary's work location, employment workspace, hours, salary and duties. In some cases, a site inspection could trigger the USCIS to issue a Notice of Intent to Revoke the visa petition.

These site visits initially targeted R-1 religious workers and in recent years were expanded to target H-1B workers. This new push to target L-1 visa petitioners for site visits likely came about due to findings included in the Department of Homeland Security, Office of Inspector General report, *Implementation of L-1 Visa Regulations*, published in August 2013. The report focused on perceived weaknesses or deficiencies in the adjudication of "new office" (or start-up) L-1 petitions and those processed for Canadian citizens at US/Canada ports of entry or pre-flight clearance locations in Canadian airports. While the parameters of L-1 site visits have not been released to the public, we expect the FDNS to initially focus on "new office" petitions and L-1s processed on the US/Canada border.

For more information about these developments or other immigration related matters, please contact your principal Squire Sanders lawyer or one of the individuals listed in this publication.

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