



ATTY. ROBERT REEVES & JOSEPH I. ELIAS

Immigration Service inspecting H-1B employers

YOUR IMMIGRATION SOLUTION

THE Immigration Service has recently begun investigating H-1B employers to identify fraudulent petitions. Employers are reporting privately contracted investigators arriving unannounced at worksites to investigate approved H-1B petitions. These visits are deliberately unannounced, and the investigators ask to speak with the human resource (HR) representative and H-1B worker. The employer rep and employee have little to no time to prepare the information needed. The element of surprise can also confuse the H-1B parties and result in inconsistent responses. Investigators are asking the HR representative questions about

the company such as how many employees it has and how many are legal residents. Questioning then moves to the H-1B job duties, salary, work hours and start date. Sometimes, the person interviewed is not as familiar with the job duties as, say for example the H-1B employee's immediate supervisor. This can result in well-intentioned but harmful guessed answers. The H-1B employee is also individually questioned about duties and responsibilities, salary, work hours and period of employment. When one investigator was asked if the interview was based on a random selection process, the investigator stated that it was not random.

It is important that H-1B employers and employees be prepared for these unannounced visits. The designated HR representative should have a clear and thorough understanding of the H-1B worker's duties and responsibilities. The HR rep should not guess any answers

but have the information readily available, including the start date, work hours, and wages paid. These should be consistent with those listed on the petition, and if not, immediately brought to the attention of the company's immigration attorney to advise on the corrective measures that need to be taken.

It was extremely revealing that these inspections are not random. From a previous release by the immigration service, we know that certain factors trigger referrals to the H-1B fraud unit. These are employers with gross annual income of less than \$10 million, less than 25 employees, companies engaged in consulting or staffing showing no end-client/work description or itinerary, job location on the LCA differing from the place of employment, no website for IT companies, excessive blanks in the petition and for certain H-1B occupations. The suspect occupations are Accountants, Market Research

Analysts, Business Analysts, Financial Analysts, Advertising Managers, Public Relations and Sales positions with what the Immigration Service calls "marginal companies." A marginal company is defined by the Immigration Service as lacking the organizational complexity required to support the position on a full-time basis. Examples provided to adjudicators are liquor stores, dry cleaners, gas stations, residential care facilities, convenience stores, donut shops, fast food restaurants, dental offices, 99 cent stores and parking lots.

The Immigration Service has created a profile of what it deems to be a suspect H-1B petition. There are many legitimate H-1B petitions that fit squarely within the suspect profile. H-1B employers and employees in this position should understand that they can be subjected to additional scrutiny from the Immigration Service. Consequently, they should be

properly prepared by thoroughly and accurately documenting the H-1B position. They should clearly understand the scope and terms of employment. Then, even if they receive a surprise visit from an investigator, they will be able to demonstrate the H-1B position is a legitimate and valid position.

Atty. Reeves has represented clients in numerous landmark immigration cases that

have set new policies regarding INS action and immigrants' rights. His offices are located in Pasadena, San Francisco, Las Vegas and Makati City.

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The analysis and suggestions offered in this column do not create a lawyer-client relationship and are not a substitute for the personalized representation that is essential to every case. (Advertising Supplement)

Consular Outreach - Las Vegas, Nevada

A team from the Philippine Consulate General in Los Angeles will conduct a Consular Outreach Program in Las Vegas, Nevada on 10-11 October 2009:

Location : Masonic Memorial Temple, 2200 W. Mesquite Ave., Las Vegas NV 89106

Service Hours : 9am - 12pm and 1pm - 5pm

The consular outreach program is being undertaken in cooperation with the Filipino American Heritage Foundation - Nevada, Las Vegas Philippine American Lions Club, Bikolnon Association of Las Vegas, and other local Filipino-American organizations.

The following consular services will be rendered:

Applications for Machine Readable Passport (Cost: \$50), to be returned to the applicant by mail at an additional cost of \$6.

Applications for the retention and re-acquisition of Philippine citizenship pursuant to Republic Act 9225 or Dual Citizenship Law (Cost: \$50). Oath-taking will be scheduled on the same day for qualified applicants.

Notarization/Authentication of Documents (Cost: \$25), to be returned to the applicant by mail at an additional cost of \$6.

While walk-in applicants will also be entertained, priority will be given to those with confirmed appointments with the Consulate, as posted in the website. All walk-in applicants are advised to transact their business directly with Consulate officials and not through travel agencies. Walk-in applicants are by definition those who did not pass through travel agencies.

1. Appointment Scheduling Steps for Machine Readable Passport (MRP) Applicants

Visit the Philippine Consulate website (www.philippineconsulate.org) and print the passport application form;

Complete the passport application form; and,

No later than 2 October 2009, send an advance copy of the completed passport application form and data page (bearing the name and photo) of the old passport to the Consulate either by fax (213) 639-0990 (Attn: Las Vegas Outreach) or by email attachment to consular.outreach.lv@gmail.com. Thumbprint and photo are not necessary; these will be done on site. Incomplete forms will not be processed.

2. Appointment Scheduling Steps for Dual Citizenship Applicants

Visit the Philippine Consulate website (www.philippineconsula-

tela.org) and print the Dual Citizenship Application form;

Complete the Dual Citizenship Application form; and,

No later than 2 October 2009, send an advance copy of the completed Dual Citizenship application form and supporting documents to the Consulate either by fax (213) 639-0990 (Attn: Las Vegas Outreach) or by email attachment to consular.outreach.lv@gmail.com. Thumbprint and photo are not necessary; these will be done on site. Incomplete forms will not be processed.

Note: Oath-Taking will be scheduled on the same day for qualified applicants.

3. Appointment Scheduling Steps for Notarization/Authentication of Documents

No later than 2 October 2009, send an advance copy of the completed legal document to the Consulate (Attn: Las Vegas Outreach) either by fax (213) 639-0990 or by email attachment to consular.outreach.lv@gmail.com.

Information for all applicants

The Consulate regularly updates the appointment schedule posted on the website as they receive the completed applications.

The final list of all applicants with pre-processed applications will be posted at the Consulate's website (www.philippineconsulate.org) by 10 August 2009. Personal appearance is required for all applicants for data verification, finger-printing and signature capture. Applications by mail are no longer accepted.

All applicants are advised to

transact their business directly with Consulate officials and not through travel agencies.

Private photographers, who are knowledgeable of the photo requirements for the machine readable passport, will be present at the venue during the Consular Outreach for those who will need photos for passport renewal. To obtain details regarding the new passport photo requirements, applicants may visit the Consulate's website (www.philippineconsulate.org).

Fees must be paid in person at the scheduled appointment. The Consulate will only accept payments in cash, postal money order or cashier's check. Personal checks will not be accepted.

Machine Readable Passport: \$50 processing fee + \$6 for passports to be returned to the applicant by mail

Dual Citizenship: \$50 processing fee

Notarization/Authentication: \$25 per document + \$6 for documents to be returned to the applicant by mail

For information on consular matters, E-mail: consular.outreach.lv@gmail.com or interested parties may wish to call:

Vice Consul Ruel Gunabe
Tel: 1-213-637-3020

General Summary of Machine Readable Passport Requirements & Processing Time

For the information of the public, the Philippine Embassy and Consulates General in the U.S.

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started to accept and to process applications for Machine Readable Passports (MRP) on 2 June 2008. This is in compliance with the requirements of the International Civil Aviation Organization (ICAO) for its member states, including the Philippines, to issue MRPs not later than 1 April 2010.

Since applications are sent to the Department of Foreign Affairs in Manila via diplomatic pouch, it may take six (6) weeks for a passport to be released to the applicants, from the time the application is accepted.

While some countries may still honor valid green Philippine passports beyond 1 April 2010 as bona fide travel documents until they expire, most countries will require travelers to be holders of either machine readable passports or e-passport for their sojourn by 2010.

In this regard, all Philippine passport holders are advised to renew their Philippine passport six (6) months prior to its expiration, in accordance with ICAO regulations, and to secure their plane tickets only after they have received their new passport.

All Filipinos, including those with valid green passports, are therefore encouraged to apply for their machine readable passports as early as possible.

Visit www.philippineconsulate.org for more information.

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