

NAVIGATING CORPORATE RISK: THE IMPERATIVE OF THOROUGH H-1B PROGRAM AUDITS

In the realm of corporate risk, immigration-related concerns often take a back seat. But a closer look at the current Administration's actions reveals where priorities lie and which industries, sectors, and companies may be in the crosshairs. Form I-9 audits and Immigration and Customs Enforcement (ICE) inspections have common associations with immigration risk. The Department of Justice (DOJ), particularly its Immigrant and Employee Rights (IER) component, is also aggressively scrutinizing U.S. companies' hiring practices, which can lead to settlements, DOJ announcements, and significant damage to brands and reputations, accompanied by varying monetary fines. However, one particular area of corporate immigration risk that may not be as well-known relates to H-1B visa programs.

What you need to know:

Fraud and policy violations within the H-1B visa program are investigated by two separate agencies within the Department of Homeland Security (DHS). These units are the Fraud Detection and National Security Directorate (FDNS) within the U.S. Citizenship and Immigration Services (USCIS) agency and the Document and Benefit Fraud Task Forces (DBFTF) within Homeland Security Investigations (HSI). Both units are staffed with H-1B visa experts who fully scrutinize everything from procedural misunderstandings to blatant fraud schemes that cross into the criminal prosecutorial space. If you're benefiting from the program, be aware that these enforcement agencies are highly active under the Biden Administration. In other words, the current corporate risk is HIGH and should not be ignored!

As early as May of this year, USCIS announced its very serious concerns about H-1B lottery abuse. At the same time, USCIS stated that its findings of fraudulent activity among many U.S. companies would be referred to law enforcement authorities for criminal investigative purposes. Under the USCIS umbrella, FDNS often makes referrals to Homeland Security Investigations (HSI) and its DBFTF network. HSI's special agents are some of the best criminal investigators in the world and the task force model has proven repeatedly to ferret out fraudulent activity and subpar corporate policies and procedures. Recent examples of investigative findings by DBFTF and FDNS combining forces included a businessman convicted of 21 counts of visa fraud in connection with a H-1B program and a pair of information

technology company executives charged with the submission of multiple fraudulent H-1B applications. Additionally, the U.S. Department of Labor (DOL) has identified seven employers who have willfully violated the terms of the H-1B labor certification application process and are currently barred from participating in the program. The DOL and DHS constantly communicate and refer leads to each other. Again, do not take that lightly and do not take for granted that your own H-1B program is without vulnerabilities.

The bottom line:

We highly recommend a full scrub of your H-1B policies, procedures, and overall program. Not unlike other compliance areas, immigration-related business segments should be scrutinized from time-to-time to ensure that all is sound and running in full sync with federal laws and regulations. Too many businesses shove that all-important task aside due to budget constraints and the belief that “the government will not be interested in auditing our company.” That normally does not end well, and we’ve seen that scenario play out badly too many times. Avoid shortcuts and strongly consider hiring an independent third party to conduct a comprehensive review of your H-1B program. Internal audits by your own team often miss crucial details, so gaining insights into your immigration matters beyond what you already know is essential.



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John Shofi has more than 20 years of government experience in key leadership roles with the U.S. Department of Homeland Security (DHS), in-depth experience at Immigration and Customs Enforcement (ICE), and a widespread knowledge of DHS operations. He provides invaluable insight in matters involving investigative and compliance issues.



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