



Department of Homeland Security Office of Inspector General

**The U.S. Citizenship and Immigration
Services' Adjudication of Petitions for Nonimmigrant
Workers (I-129 Petitions for H-1B and H-2B visas)**



Office of Inspector General

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

AUG 25 2011

MEMORANDUM FOR: Donald Neufeld
Associate Director
Service Center Operations Directorate
U.S. Citizenship and Immigration Services

FROM: Anne L. Richards *Anne L. Richards*
Assistant Inspector General for Audits

SUBJECT: *The U.S. Citizenship and Immigration Services'
Adjudication of Petitions for Nonimmigrant Workers
(I-129 Petitions for H-1B and H-2B visas)*

Attached for your information is our final letter report, *The U.S. Citizenship and Immigration Services' Adjudication of Petitions for Nonimmigrant Workers (I-129 Petitions for H-1B and H-2B visas)*. We incorporated the formal comments from the Director, U.S. Citizenship and Immigration Services in the report.

The report contains two recommendations aimed at improving Immigration Services Officer fraud identification and response training. Your office concurred with both recommendations. Within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendations. Until your response is received and evaluated, the recommendations will be considered open and unresolved.

Consistent with our responsibility under the *Inspector General Act*, we are providing copies of our report to appropriate congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. The report will be posted on our website.

Should you have any questions, please call me, or your staff may contact John E. McCoy II, Deputy Assistant Inspector General for Audits at (202) 254-4100.

Attachment

Background

The United States Citizenship and Immigration Services (USCIS) is the agency within the Department of Homeland Security (DHS) that oversees lawful immigration to the United States. Its responsibilities include collecting, processing, and adjudicating visa petitions submitted by employers seeking permission to temporarily employ foreigners as nonimmigrant workers in the United States.

Employers use Form I-129 (Petition for Nonimmigrant Worker) to request permission to bring foreign individuals to the United States temporarily to perform services or labor, or to receive training. The specialty occupation worker visa (H-1B visa) is a nonimmigrant visa authorized under the *Immigration and Nationality Act*.¹ It allows U.S. employers to temporarily employ foreigners in “specialty” occupations. The regulations define “specialty occupation” as one requiring theoretical and practical application of a body of highly specialized knowledge in a field of human endeavor, which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.² The temporary nonagricultural worker visa (H-2B visa) is a nonimmigrant visa authorized under the *Immigration and Nationality Act*.³ It allows U.S. employers to employ foreign individuals in temporary nonagricultural jobs.⁴

USCIS’ headquarters-based Service Center Operations Directorate is responsible for the adjudicative process at four USCIS service centers; most I-129 petitions are processed and adjudicated by Immigration Services Officers (ISOs) working at USCIS’ California and Vermont Service Centers. The Service Center Operations Directorate develops adjudicative guidance and disseminates it to the service centers.

The service centers are the first to review I-129 petitions for H-1B or H-2B visas. If approved, the petition information is forwarded to the U.S. Department of State for issuance of the visa. However, if the service center identifies fraud indicators, the petition is forwarded to USCIS Fraud Detection and National Security (FDNS). If FDNS believes the potentially fraudulent act is intentional and warrants legal action, it forwards the petition to U.S. Immigration and Customs Enforcement. U.S. Immigration and Customs Enforcement works with U.S. Department of Justice to seek legal action against the employer.

Results of Review

Immigration Services Officer Fraud Training Can Be Improved

The ISO fraud training for the adjudication of the H-1B and H-2B visa classifications of the I-129 petitions is decentralized and inconsistent. Although USCIS has a process to

¹ *Immigration and Nationality Act*, Section 101(a)(15)(H)(i)(b).

² 8 C.F.R. § 214.2(h)(4)(ii) (2011).

³ *Immigration and Nationality Act*, Section 101(a)(15)(H)(ii)(b).

⁴ 8 C.F.R. § 214.2(h)(1)(ii)(D) (2011).

train newly hired ISOs, on-the-job training procedures vary. Experienced ISOs do not all receive the same type of fraud training, and ongoing fraud training is not updated and provided annually. This occurs because USCIS headquarters has not implemented a national, ongoing fraud identification and response training program that includes standards for annual training and updates. Without a consistent fraud identification training program, USCIS cannot ensure that fraudulent petitions for H-1B and H-2B visas are consistently identified.

All newly hired ISOs complete the same basic 6-week ISO course before being assigned to a service center. However, local on-the-job training procedures vary. At the Vermont Service Center, on-the-job training is provided by senior officers, subject matter experts, and training coordinators. In addition, all new hires are assigned a mentor who reviews their adjudication decisions. Once the mentor feels that the new ISO can work independently, the mentor completes a Training Qualification Sheet that summarizes the number of cases reviewed, the decision made on each case, and the date on which the new ISO became qualified to independently adjudicate cases. The ISO's supervisor also certifies that the ISO is qualified to adjudicate cases. The Center Training Unit maintains a copy of the Training Qualification Sheet and certification in a database. The California Service Center also assigns mentors to the new ISOs and ensures continuous on-the-job training, but does not use a standardized checklist or booklet. The California Service Center does not track ISO training or certify that new ISOs received on-the-job training.

In 2006, both service centers provided I-129 H and L Fraud Training, which discusses the process to adjudicate Form I-129 H and L visa classifications and related fraud cases. However, this training was not provided to all ISOs responsible for the adjudication of H-1B and H-2B petitions. For example,

- Sixty-eight (57%) of the 119 ISOs and supervisors at the Vermont Service Center did not take the I-129 H and L Fraud Training.
- One hundred (85%) of the 118 ISOs and supervisors at the California Service Center did not take the I-129 H and L Fraud Training.

Fraud prevention training beyond the H and L courses differs between the two service centers. The Vermont Service Center provides Nonimmigrant Visa Fraud Identification, Criminal History Data Request, and Aggravated Felony training as stand-alone courses. The California Service Center provides I-129 Fraudulent Document training and an Overview of Center Fraud Detection Operations for Family Based Adjudicators, which contains a section on marriage fraud.

Not all ISOs and supervisors responsible for adjudicating the H-1B and H-2B petitions attended the fraud courses unique to each service center. For example,

- Thirty-seven (31%) of the 119 ISOs and supervisors at the Vermont Service Center did not take the Nonimmigrant Visa Fraud Identification training.
- One-hundred and two (86%) of the 118 ISOs and supervisors at the California Service Center did not take the I-129 Fraudulent Document training.

USCIS headquarters has not developed a formal, post-basic, national fraud identification and prevention training program. Such a program would help ensure that ISOs receive adequate and consistent training to ensure that immigration benefits are granted only to eligible applicants and petitioners. It would allow for efficient policy and procedural changes when a systemic vulnerability or widespread fraud activity is detected.

Recommendations

We recommend that the Director of USCIS—

1. Develop and implement a national, post-basic fraud identification and response training program that identifies current fraud trends.
2. Ensure that this fraud training is conducted annually for all ISOs and supervisors responsible for H-1B and H-2B adjudications.

Management Comments and OIG Analysis

The Director, USCIS, concurred with both recommendations in our report. We have included a copy of the comments in appendix B. The following is an evaluation of USCIS's comments.

Management Comments to Recommendation 1

Concur: USCIS is currently developing post-basic fraud courses to aid ISOs in identifying current fraud trends and provide them with the necessary skills for conducting interviews where fraud may be present.

OIG Analysis: We concur that the steps that USCIS is taking, and plans to take, begin to satisfy this recommendation. This recommendation will remain open and unresolved until we have obtained and reviewed a synopsis of the post-basic fraud courses.

Management Comments to Recommendation 2

Concur: USCIS agreed to begin the necessary steps to ensure that ISOs receive this training annually, once the courses are developed and implemented.

OIG Analysis: We concur that the steps that USCIS is taking, and plans to take, begin to satisfy this recommendation. This recommendation will remain open and unresolved until we have obtained and reviewed policies and procedures that ensure ISOs receive the post-basic fraud training annually.

Appendix A

Purpose, Scope, and Methodology

The objective of our review was to determine whether USCIS provides its ISOs with consistent fraud training for the adjudication of the H-1B and H-2B visa classifications of I-129 petitions.

To accomplish our objective, we analyzed the training records of ISOs adjudicating the H-1B and H-2B visa classifications of I-129 petitions at the California and Vermont Service Centers. These training records covered January 2003 through May 2010 for 237 ISOs and supervisors. We reviewed these records for fraud-related courses offered and attended.

We reviewed applicable federal regulations establishing the policies for alien nonimmigrant workers to obtain temporary employment in the United States and its territories under the H-1B and H-2B programs. We also reviewed the Adjudicators Field Manual; national and local standard operating procedures for H-1B and H-2B adjudications; other adjudicative guidance; U.S. Government Accountability Office reports; USCIS Ombudsman reports, Benefit Fraud Compliance Assessment; and other relevant reports and documents for topics covering nonimmigrant worker adjudications.

We interviewed USCIS officials from the Office of the Chief Financial Officer, Quality Assurance, Fraud Detection and National Security, Office of Policy and Strategy, and Service Center Operations. We also interviewed officials from the U.S. Department of State, the Kentucky Consular Center, and the U.S. Department of Labor.

We conducted this performance audit between August 2009 and March 2011 pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide for a reasonable basis for our findings and conclusions based upon our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.

We appreciate the cooperation by USCIS management and staff in providing the information and access necessary to accomplish this review.

Appendix B

Managements Comments to the Draft Letter Report

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
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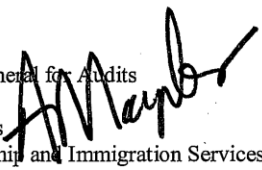


U.S. Citizenship
and Immigration
Services

AUG 09 2011

Memorandum

TO: Anne L. Richards
Assistant Inspector General for Audits

FROM: Alejandro N. Mayorkas 
Director, U.S. Citizenship and Immigration Services

SUBJECT: Draft Letter Report: *The U.S. Citizenship and Immigration Services' Adjudication of Petitions for Nonimmigrant Workers (I-129 Petitions for H-1B and H-2B visas) – For Official Use Only*

USCIS appreciates the opportunity to review and comment on the subject report and generally agrees with the OIG summary of the issues identified in the report. USCIS disagrees with the assignment of the recommendations to the Associate Director of USCIS Service Center Operations and feels that this recommendation should be addressed to the Director of USCIS for implementation by USCIS program offices in alignment with the USCIS mission since the recommendations are national in nature.

DHS-OIG recommends that the [Director of U.S. Citizenship and Immigration Services]:

Recommendation 1: Develop and implement a national, post-basic fraud identification and response training program that identifies current fraud trends.

USCIS response: USCIS concurs with this recommendation. Post-basic fraud courses for Immigration Services Officers (ISOs) are currently being developed to aid ISOs in fraud identification and trends. These courses will assist ISOs in identifying current fraud trends, and provide them with the necessary skills for conducting interviews where fraud may be present. The focus of the courses will include providing the ISOs with the knowledge and guidance to make reasonable determinations with respect to identifying fraud, making the appropriate referrals to Fraud Detection and National Security (FDNS) and using the correct process in requesting support from FDNS operations.

www.uscis.gov

Appendix B

Managements Comments to the Draft Letter Report

The U.S Citizenship and Immigration Services' Adjudication of Petitions for Nonimmigrant Workers (I-129 Petitions for H-1B and H-2B visas) – For Official Use Only
Page 2

Recommendation 2: Ensure that this fraud training is conducted annually for all ISOs and supervisors responsible for H-1B and H-2B adjudications.

USCIS response: USCIS concurs with this recommendation. Once the post-basic fraud courses for ISOs are developed and implemented, USCIS will begin the necessary steps to ensure that ISOs receive this training on an annual basis.

Currently, ISOs sustainment and refresher training is held at Center Training Units in the Service Centers, where fraud training is conducted by instructors from the Center Fraud Detection Operations (CFDO). The training provided by CFDO instructors includes information on any identified fraud trends and patterns, and discusses fraud indicators that the ISOs should look for during the adjudicative process. CFDO instructors confirm that if the ISO identifies fraud indicators, suspicious patterns, or trends during their review of cases, the ISO must refer this information to the CFDO for fraud review and processing.

USCIS does note that ISOs are not FDNS Immigration Officers (IO), and thus do not have the same FDNS fraud training as an IO. ISOs normally will only make a final finding of fraud when supported by the FDNS findings as contained in the FDNS Statements of Findings. ISO fraud training prepares ISOs to recognize potential fraud and instructs the ISO on how to articulate their suspicion of fraud when making a referral to the CFDO.

Appendix C
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Appendix D
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