



EMPLOYER SITE VISITS: GUIDANCE BEFORE, DURING AND AFTER



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IMMIGRATION SOLUTIONS

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What is a site visit?

In 2004, the Department of Homeland Security (DHS) United States Citizenship and Immigration Services (USCIS) established the Fraud Detection and National Security Directorate (FDNS) in response to a Congressional recommendation to establish an organization “responsible for developing, implementing, directing, and overseeing the joint USCIS-Immigration and Customs Enforcement (ICE) anti-fraud initiative...”



FDNS fulfills this statutory mandate by conducting site visits to verify information and documentation submitted with certain visa petitions (compliance review); this information is also used to determine if and when a visa petition should be revoked for fraud or misrepresentation. Additionally, FDNS conducts verifications for the U.S. Department of State (DOS) to verify work offers for overseas visa applicants. While the focus of this collateral is on FDNS site visits, employers should be aware of the potential for site visits from other governmental agencies including ICE (the agency that reviews I-9 compliance), and the U.S. Department of Labor (DOL) (the agency that reviews compliance with the requirements of the H-1B, H-1B1, and E-3 programs) and that this guidance is equally applicable to site visits from those agencies.

FDNS CURRENTLY CONDUCTS SITE VISITS ON VISA PETITIONS FOR:

- ⇒ H-1B nonimmigrant temporary visas (after adjudication)
- ⇒ L-1 nonimmigrant intracompany transferee executive or manager visas (after adjudication)
- ⇒ EB-5 immigrant investor program visas (before adjudication)
- ⇒ Special immigrant religious workers petitions (before and after adjudication)

FDNS conducts both random and targeted site visits to determine whether the underlying visa petition was valid and the petitioned-for employee is being employed in a manner and under conditions consistent with the filing. **Site visits are voluntary, but cooperation is strongly recommended.**

Site visits can be random or targeted

USCIS primarily uses the Administrative Site Visit and Verification Program (ASVVP) to assess whether petitioner-employers and petitioned-for employees (“beneficiaries”) are complying with applicable immigration laws and regulations. ASVVP is a program in which FDNS conducts random, administrative site visits to the worksites of petitioner-employers and petitioned-for employees.



Although ASVVP site visits are compliance-based and random, USCIS also uses targeted site visits to respond to indicators of fraud. The Targeted Site Visit and Verification Program (TSVVP) allows USCIS to focus resources where fraud and abuse of employment-based visa types is more likely to occur.

TARGETED SITE VISITS ARE GENERATED IN ONE OF THREE WAYS:

1. Site Inspection and Evaluation of Validation Instrument for Business Enterprises (VIBE) Entities. VIBE is a tool USCIS uses to verify a petitioner-employer’s business information, and which also identifies potentially fraudulent entities.
2. External Source Site Visit Program. In this instance, DOS refers fraud concerns for investigation.
3. Administrative Investigations. USCIS makes referrals for investigation when fraud indicators are found while adjudicating visa petitions. Law enforcement entities, the public, or other government agencies may also provide tip letters and referrals for investigation.

IN 2017, USCIS IMPLEMENTED PLANS TO INCREASE TARGETED SITE VISITS TO INCLUDE:

- ⇒ A greater focus on cases in which the petitioner-employer’s basic business information cannot be verified through commercially available data;
- ⇒ H-1B dependent petitioner-employers who have a high ratio of H-1B workers compared to U.S. workers; and
- ⇒ Petitioned-for employees who work offsite at another company or organization’s location.

Site visits, whether ASVVP or targeted, are USCIS' primary method to assess compliance with applicable immigration laws and regulations once a visa petition has been approved.

IN CONDUCTING AN ASVVP OR TARGETED SITE VISIT, FDNS MAY PERFORM ONE, OR A COMBINATION OF THE FOLLOWING:

- ⇒ Research in government and commercial databases and public records;
- ⇒ Internet searches of open source information (e.g. records of tax liens, court documents);
- ⇒ Searches of social media sites;
- ⇒ File reviews, telephone calls, and site visits;
- ⇒ Interviews of petitioners, beneficiaries and others; and
- ⇒ Administrative subpoenas, requests for assistance (from other agencies), and overseas verifications.

Information collected through commercial data, public records, social media websites, and publicly available data is used to help validate or identify inconsistencies with information already on file as part of an application with USCIS. Although USCIS will not deny or revoke benefits solely based on publicly available information, FDNS provides USCIS with information found through these methods to use in formulating Requests for Evidence (RFE), Notices of Intent to Deny (NOID), and Notices of Intent to Revoke (NOIR).

What to expect during a site visit

Upon identifying themselves and explaining the reason for the visit, FDNS will likely ask to speak with a human resources manager, the petitioned-for employee and his or her direct supervisor or manager. In most situations, there is no advance notice of a site visit.



DURING A SITE VISIT, FDNS WILL:

- ⇒ Verify information submitted with the petition, including supporting documentation submitted by the petitioner-employer;
- ⇒ Verify the existence of the petitioning entity;
- ⇒ Review public records and information on the petitioning organization;
- ⇒ Take digital photos;
- ⇒ Review documents;
- ⇒ Speak with organizational representatives to confirm the petitioned-for employee's work location, employment workspace, hours, salary, duties, and overall employer-employee relationship; and
- ⇒ Speak with the petitioned-for employee.

Interviews typically last less than an hour. FDNS will have a list of prepared questions and documents (copy of the petition) and will focus on three general areas: scope of work, compensation, and control. FDNS will also document what the petitioned-for employee does, how much he/she is paid, and to whom he/she reports. A sample of common questions (by interviewee) is included as **Exhibit A**.

ADDITIONALLY, FDNS MAY ASK FOR DOCUMENTS PERTAINING TO THE COMPANY AND THE PETITIONED-FOR EMPLOYEE TO COMPARE WITH INFORMATION REFLECTED IN THE PETITION, INCLUDING:

- ☐ Petitioned-for employee's paystubs and W-2 forms;
- ☐ Paystubs for employees supervised by the petitioned-for employee, if any;
- ☐ Organizational chart for the related foreign organization (L-1 site visits);
- ☐ Company wage and tax documentation; or
- ☐ Contracts, statements of work and/or agreements between the petitioner-employer and an end-client, if the petitioned-for employee is placed offsite.

With an increased focus on fraud detection and prevention, interview questions now commonly fall outside the scope of the petition and documentation submitted. Meltzer Hellrung has prepared the following tips to help our clients successfully prepare for and navigate a site visit:

Preparing for a site visit

Unlike site visits for L-1, EB-5, and religious worker visa petitions, H-1B site visits have been mostly unannounced. Site visits may occur at the petitioner-employer's principal place of business and/or at the petitioned-for employee's worksite location, including end client locations. Though most site visits are unannounced and will not be rescheduled to accommodate counsel, counsel is permitted to be present if logistically possible and might be permitted to participate via telephone to answer questions. If a site visit is announced, petitioner-employer's will be contacted by phone or email. **Regardless of whether a site visit is announced or unannounced, contact your designated Meltzer Hellrung attorney immediately before providing/confirming any information.**



BEFORE A SITE VISIT:

- ⇒ Have a response plan in place for site visits. Human resources departments, staff, and company signatories should be aware of the potential for unannounced site visits and should be prepared to follow the response plan.
- ⇒ Carefully review each petition prior to filing to ensure everything included in the petition is accurate.
- ⇒ Ensure the person who signed the petition knows where to find copies of the petitions quickly.
 - These documents are available in your shared folder for current clients.
 - Should you elect to submit to an interview, the designated official should retrieve this documentation and review it prior to meeting with FDNS.
- ⇒ Provide a copy of the petition (redacted if preferred) and supporting documents to the petitioned-for employee relating to the nature of the job opportunity, the terms and conditions of employment, and education and prior work history.
- ⇒ If the petitioned-for employee has been placed at an end client location, the end client should be notified about the possibility of a site visit and instructed to contact you at the beginning of a site visit so that your designated representative and/or counsel may be present either in person or by telephone.
- ⇒ Notify Meltzer Hellrung immediately about material changes to job duties and changes to work location, as this could require an amended filing.
- ⇒ Details about the tasks and assignments the employee will carry out during the training opportunity and how those tasks *relate* to the employee's STEM degree.
 - The plan must also describe the specific skills, knowledge and techniques the employee will learn or apply and an explanation as to how the employee will achieve the goals set out for the training opportunity. This description should include the training curriculum and timeline.

DURING A SITE VISIT:

- ⇒ Personnel responsible for greeting visitors should (in addition to following the response plan) request the name, title, badge number, and contact information of the person who visited.
 - As previously noted, because there are multiple government agencies that perform site visits, it is important to determine which agency is requesting information (FDNS, ICE, DOL).
- ⇒ Ensure your designated representative and/or counsel is present for any conversations between personnel and FDNS.
 - In order to solicit candor, this may not be possible with respect to an interview between the petitioned-for employee and FDNS.
- ⇒ If FDNS asks a question that is beyond the scope of the petition or would require internal research, **ask for additional time to respond rather than guessing.**
- ⇒ The designated representative should take notes of all information requested and/or provided to FDNS (verbally or in writing), the locations visited, the pictures taken and/or any other relevant information from the site visit.
- ⇒ Keep a record of any physical documentation provided to FDNS during a site visit.

AFTER A SITE VISIT:

- ⇒ If Meltzer Hellrung was not present or not permitted to attend by telephone, immediately after the site visit, write a detailed description of what happened.
- ⇒ Notify Meltzer Hellrung of any additional information or documentation requested in any follow-up communication before responding.

Once a site visit is complete, FDNS will assess whether the petitioner-employer and the petitioned-for employee are in compliance with the terms and conditions outlined in the visa petition or whether there were fraud indicators. FDNS then submits a written report to USCIS for review and final determination.

USCIS will then:

- ⇒ Approve the visa petition (or if already approved take no action – in which case you will not hear anything further);
- ⇒ Issue a Request for Evidence (RFE);
- ⇒ Issue a Notice of Intent to Deny (NOID); or
- ⇒ Issue a Notice of Intent to Revoke (NOIR).

In any case where USCIS contemplates denial or revocation of an immigration benefit based on evidence of fraud, misrepresentation, or non-compliance, the petitioner-employer will be given an opportunity to review and rebut the evidence prior to issuance of an adjudicative decision. Petitioner-employer will also have an opportunity to file motions or appeals if the application or petition is denied or revoked.

EXHIBIT A: COMMON FDNS QUESTIONS



Signatory or Authorized Representative Questions

- Q:** What is the company's total number of full-time and part-time employees?
- Q:** What is the total number of H1B employees working for the company?
- Q:** What is the total number of H1B petitions filed by the company?
- Q:** What is the total number of employees working off-site versus on-site at the company?
- Q:** Does the beneficiary work full-time or part-time?
- Q:** What is the beneficiary's current job title?
- Q:** What is the beneficiary's current annual gross salary?
- Q:** How often is the beneficiary paid (e.g. weekly, bi-weekly, monthly)?
- Q:** What is the beneficiary's work schedule and hours?
- Q:** What address does the beneficiary normally perform his/her work?
- Q:** Does the beneficiary work from home or at any other locations?
- Q:** Who paid the filing costs for the beneficiary's I-129 Petition?
- Q:** Has an I-140 been filed on behalf of the beneficiary? If so, what is the priority date and who paid for the petition?
- Q:** When did the beneficiary start working for this organization?
- Q:** What are the beneficiary's specific duties?
- Q:** Does the company provide on-site supervision?
- Q:** Does the company provide off-site supervision (if so, what does that supervision consist of)?
- Q:** Who controls the day-to-day work of the beneficiary?

EXHIBIT A: COMMON FDNS QUESTIONS (continued)



Supervisor Questions (most of the same questions asked of the signatory or authorized representative plus these additional questions)

- Q:** Are you the direct supervisor of the beneficiary (i.e. the person who does evaluations)?
- Q:** How long have you worked for the company?
- Q:** How many people do you supervise?
- Q:** Who provides the tools & instrumentalities used by the beneficiary in his/her day-to-day work?
- Q:** Who evaluates the beneficiary's work product?
- Q:** When was the beneficiary's last performance evaluation?
- Q:** Has the beneficiary ever worked for the organization before (in a different status for example J-1, OPT, etc.)?
- Q:** Is this petition for new employment or an extension of a previously approved petition?

Beneficiary Questions (most of the same questions asked of the signatory or authorized representative and supervisor plus these additional questions)

- Q:** What is your highest level of educational degree?
- Q:** Where did you attend college and what was your educational major?
- Q:** Did you work under the OPT program during your F-1 status? If yes, what company, where and the dates worked?
- Q:** What was your path to employment with your current organization?
 - a. When did you first come to the U.S.?
 - b. What was your status?
 - c. When did you start employment with the company?
 - d. Did you do OPT and if so, where?
 - e. Where you ever an F-1?