



November 7, 2013

## Improper Use of B-1 In Lieu of H-1B Visa An Expensive Temptation

### United States v. Infosys Limited, Case No. 4:13-cv-634 (E.D. Tex. filed Oct. 30, 2013)

Following a visa fraud investigation carried out jointly by the U.S. Department of Justice and the U.S. Department of Homeland Security, Infosys Limited, a Bangalore-based IT services company operating in over 30 countries, has agreed to pay \$34,000,000 to settle allegations of the improper use of B-1 business visitor visas and Form I-9 violations in connection with the hire of foreign workers. As part of the settlement agreement, Infosys also agreed to undergo independent auditing of the company's I-9 forms and to report future B-1 visa usage. The investigation was prompted by a lawsuit filed by a former Infosys employee.

According to the complaint, Infosys inappropriately used B-1 business visitor visas to bring skilled workers to the United States instead of utilizing the H-1B visa for specialty workers. Infosys was alleged to have thereby circumvented all H-1B visa requirements and the limitations on available H-1B visas. Infosys also allegedly failed to maintain and keep updated required I-9 forms for a large number of its foreign employees during 2010 and 2011.

### Intended use of B-1, H-1B and Form I-9

B-1 visas are used by foreign nationals to visit the United States for international business purposes. B-1 visa holders are not permitted to engage in local employment for hire when present in the United States. H-1B visas are used by "specialty workers", that is, individuals coming to the United States to fill positions for which the minimum requirement is a bachelor's degree. Unlike the B-1 visa, the H-1B is a specific work visa and is limited in its availability to no more than 85,000 visas annually. Employers are obligated to accurately complete and maintain I-9 forms and verify work authorization for all employees - foreign and U.S. alike - within three days of hire.

### Lessons to be Learned:

- **Improper Use of B-1 in Lieu of H-1B - Don't Take a Bite Out of This Apple.** H-1B visa usage is oversubscribed - each year there is increasingly more demand than supply. In fact, for the most recent Immigration fiscal year, the year's entire allotment of 85,000 H-1B visas was used up within the first week. As a result, thousands of potential H-1B workers each year are unable to obtain H-1B visas to take jobs in the United States. Consequently, the use of B-1 business visitor visas to bring foreign workers to the United States when H-1B visas are not available can be a temptation for U.S. employers. However, as the Infosys case shows, employers should seriously consider the consequences of taking a bite out of this apple.
- **File H-1B Visa Petitions as Early as Possible.** The Immigration fiscal year commences on October 1, at which time a new allotment of 85,000 H-1B visas becomes available. H-1B petitions may be filed up to six months in advance of the proposed (October 1) work start date, that is, no sooner than April 1 each year. Accordingly, with an acute shortage of available visas, it is imperative for employers to plan their hiring of foreign workers early so that they are prepared to file their H-1B visa petitions no later than the first week of April each year.
- **Mitigate Damages.** In the event of an Immigration-related audit or investigation, employers should seek professional advice regarding how best to minimize prospective penalties. The risk of I-9 violations can be reduced through engaging in effective I-9 compliance procedures, including self-auditing of I-9 forms, internal training and compliance, storage and retention of I-9 forms and annual I-9 audits performed by your Immigration counsel. In this way, the outcome of an I-9 investigation or audit will be more predictable and penalties prevented.

It is interesting to note that despite the grievous nature of the allegations, the U.S. government

brought no criminal charges against Infosys and did not limit the company's eligibility for federal contracts or U.S. visa programs as part of the settlement. Perhaps Infosys drew this favorable response as a result of its mitigatory approach to the allegations. That is, it had already implemented additional I-9 and visa compliance procedures and later cooperated fully with the government in its investigation. Thus, another lesson we can learn from this case is that mitigating damages by way of good faith compliance efforts and cooperation are key to minimizing prospective penalties.

If you have any questions about this issue or any other immigration issues, please contact a member of our [GrayRobinson Immigration Team](#).

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