



EXPEDITED REMOVAL OF H-1B WORKERS AT NEWARK AIRPORT

Posted on January 13, 2010 by Cyrus Mehta

We have personally heard of H-1B workers from India employed by IT consulting firms being subject to expedited removal orders at Newark airport in New Jersey. The grounds seem to be rather spurious. Some H-1Bs have been removed because they were working at client work sites, and the position of the Customs and Border Protection officer was that the H-1B petition should have been filed by the client and not by the IT consulting company. Another affected H-1B worker reported that the CBP officer did not believe it was legitimate for the IT consulting firm to be making a profit by billing the client for the services of the H-1B employee. While we need to gather more facts, all of this makes no sense. It is legitimate for an employer to assign an H-1B worker to a client so long as it is indicated in the H-1B petition and that the underlying Labor Condition Application also covers the client location. In some cases, short term assignments may not be considered worksites and need not be covered in the LCA. There is no prohibition for an H-1B worker to make a profit through the services of an H-1B worker so long as he or she is being paid the higher of the prevailing or actual wage (the wage paid to similarly situated workers employed by the IT consulting firm). Moreover, the USCIS is pretty tough in its scrutiny of H-1B petitions filed by IT consulting companies before approving them. Also, the consul also further scrutinizes visa applicants before granting an H-1B visa.

Our colleague, Ron Gotcher, also reports similarly on his blog, http://imminfo.com/News/Newsletter/2010-1/newark_airport_beware.html, and notes one ridiculous instance of a CBP official telling an H-1B worker that only US citizens or permanent residents can work for state agencies.

Most H-1B workers report that they are forced to make their statements under

threats of being detained. Furthermore, non-immigrants entrants who are subject to secondary inspection at an airport have no right to counsel. It is important for H-1B workers to stay calm and be truthful and not wilt to pressure. If there is a rogue element among CBP officials at Newark, everyone needs to protest and work with the highest echelons at CBP to correct the problem. Those who have been subject to erroneous expedited removal orders can informally work with the CBP to vacate the expedited removal order. Otherwise, such an order bars the individual from entering the US for a period of 5 years, and it is not fair to so harshly penalize an H-1B worker just because CBP at Newark decides that he or she is violating the terms of the visa.