



ONE YEAR AFTER THE NEUFELD MEMO: CAN THE BEAST EVER BE TAMED?

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By Cyrus D. Mehta

It has been one year since the issuance of the memo by Donald Neufeld of the USCIS, <http://tiny.cc/z3ZU8> which sought to define the employer-employee relationship, especially when an employer places an H-1B worker at a third party client site. The Neufeld Memo is like a wild beast that can never be tamed, but can be kept content in captivity so long as it is well fed. Employers, especially in the IT consulting business, have been forced to change their business practices to ensure that they can establish control over the H-1B employee who is placed at a client site, and immigration attorneys have also learned to address and satisfy on the criteria in order to establish the employer-employee relationship. But there are instances where the wild beast can still try to escape and go on a rampage, and this has been demonstrated by Myriam Jaidi in her article on www.cyrusmehta.com regarding the recent problems faced by H-1B applicants when they apply for an H-1B visa stamp at a US Consulate during their vacation, <http://bit.ly/hW7KwO>. She writes, "it is not much of a surprise that the scrutiny for such companies has increased at consular posts as well. Consulates request tax returns, notarized employee lists, State Unemployment wage reports, etc., to verify that the employer exists and has the right to control the beneficiary's work."

In January 2009, a few days after the issuance of the Neufeld Memo, it appears that even the CBP got the virus and began questioning H-1B visa entrants arriving in the US, especially at Newark airport, <http://bit.ly/iefgsy>, and even subjected some of them to expedited removal. Even here, we have not heard of the same kind of summary removals after the incidents in January 2009 and this problems seems to have been contained. We are also pleased to report

that CBP in Newark did indeed rescind an expedited removal order, and this individual recently returned back to the US in H-1B status from the same airport that issued the expedited removal just under a year ago. We thank Newark for doing the right thing, and hope that it will exercise its discretion wisely in other cases too, <http://bit.ly/fFZ0a1>