H-1B ENFORCEMENT WHILE WORKING ABROAD: WHY ARE CBP OFFICERS IN ABU DHABI SCRUTINIZING LCAS?

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Recently, reports have surfaced of issues with U.S. Customs and Border Protection (CBP) Preclearance in Abu Dhabi – namely, that beneficiaries who had been outside the United States were asked questions about whether the conditions described in the Labor Conditions Application (LCA) had been complied with while they were working abroad. The LCA framework and DOL's protective purpose are defined around H-1B employment in the U.S., which makes CBP's apparent focus on foreign remote-work patterns somewhat unusual from a traditional LCA-enforcement perspective.

The American Immigration Lawyers Association solicited examples of these problems in March 2026, and an article from the American Bazaar, despite misstating some information, recounts the plight of an individual who passed through Abu Dhabi preclearance and informed officers that "she had remained in India for close to two months and had worked part time during that period while using her Paid Time Off (PTO)…Officers allegedly determined that she had spent too long outside the United States and questioned the fact that she continued to receive pay from her U.S. employer while working remotely from India. Her visa stamp was reportedly marked 'Cancelled and Withdrawn,' and she was told she would need to apply again." Gnanamookan Senthurjothi, a U.S. immigration lawyer, reported instances of " increased scrutiny of H‑1B travelers transiting Abu Dhabi's U.S. preclearance facility, especially on Etihad flights, where individuals who have worked remotely abroad for 2+ months are facing intensive questioning and, in some cases, visa revocation" in a recent LinkedIn post.

Although it is hoped that these reports are aberrations that CBP will prevent from recurring in future, these reports are troubling. The conditions stated on an LCA, such as a beneficiary's salary and worksite, are typically construed as applying only to employment within the U.S., as U.S. immigration laws cannot generally regulate employment that takes place abroad. Because H-1B is a U.S. admission/status classification, a foreign national who is physically outside the U.S. is not 'in' H-1B status during that time and, as such, is not required to hold H-1B status to perform services while abroad for a U.S. employer. The immigration consequences arise when that individual seeks re-admission in H-1B classification and CBP or USCIS evaluates whether they have complied with, or will comply with, the terms of the approved petition and LCA.

The situation in Abu Dhabi raises interesting questions, however, regarding the extent to which activities abroad can impact an employer's LCA compliance.

INA 212(n)(2)(C)(vii) specifies that an employer must continue to pay a full-time H-1B worker the wages indicated in the LCA even during a period of "nonproductive period", if the nonproductive status is "due to a decision by the employer (based on factors such as lack of work)". This provision prohibits "benching", or a scenario in which an employer stops paying the required wages to an H-1B worker during periods in which business is slow and there is insufficient work for the individual. Given the types of questions allegedly being raised by officers at Abu Dhabi preclearance, the Department of Labor could hypothetically find that an employer had engaged in "benching" and hold the company liable for back wages if it had not terminated an employee's H-1B employment in the U.S., and was not paying her the wages listed on the LCA while she worked abroad.

DOL enforcement practice and published decisions tend to focus on underpayment and benching during periods of H-1B employment in the U.S. labor market. There is limited clear authority on how DOL treats extended periods of foreign work where the employer maintains the H-1B petition but modifies pay or duties while the worker is abroad. Clearly, the US cannot sanction an employer for failing to post notice of the employer's LCA obligations at a work location abroad. The INA and DOL rules all contemplate compliance of an employer's LCA obligations when the worker is employed in the US and not at a foreign worksite.

Ideally, to completely avoid benching liability, it would be prudent if the

employer withdraws the petition while the H-1B worker is employed remotely abroad for long stretches and not paid the required wage. However, this may no longer practical as the employer may have to pay the $100,000 fee under Trump's H-1B Proclamation when it refiles an H-1B petition on behalf of an overseas H-1B worker to bring them back to the US. Moreover, many remote workers are only working overseas for their US employers because they are waiting for visa appointments or have been subject to "administrative processing" at US posts. Withdrawing the H-1B in these situations would be counterintuitive.

Due to the war in the Middle East, Abu Dhabi preclearance is not currently operational. CBP has withdrawn officers, who are currently stateside. Travelers routed through Abu Dhabi will be inspected by CBP in the U.S. Hence, the issue is moot at this time, but it may raise its ugly head again when Abu Dhabi preclearance is restored, or if the idea of going after H-1B workers employed overseas catches on with CBP at other ports of entry. Ultimately, CBP should refrain from enforcing the LCA when the worker is employed abroad as there is scant authority for it to do so and it is also impossible to enforce LCA obligations at foreign work locations. CBP can still ask questions about foreign work and pay when those facts bear on whether the underlying H-1B classification remains valid, but it should not be denying admission to H-1B workers because the employer ostensibly did not meet its LCA obligations when the worker was employed abroad.

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