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United States Senate

CHARLES E. GRASSLEY

WASHINGTON, DC 20510-1501

April 14, 2011

REPLY TO:

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307 FEDERAL BUILDING
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The Honorable Hillary Rodham Clinton
Secretary
U.S. Department of State
2201 C Street NW
Washington D.C. 20520

The Honorable Janet Napolitano
Secretary
U.S. Department of Homeland Security
245 Murray Lane, Mailstop 0150
Washington, DC 20528-0150

Dear Secretary Clinton and Secretary Napolitano:

I'm very concerned about fraudulent actions that at least one foreign-based company has allegedly been taking in order to get around the requirements and U.S. worker protections of the H-1B visa program, and more generally, about provisions in current guidance to visa adjudicators that actually authorize such evasion of Congressional intent.

On February 23, 2010, a U.S. employee of Infosys Technologies Limited, Inc. ("Infosys") filed a complaint in the Circuit Court of Lowndes County, Alabama, alleging that his employer was "sending lower level and unskilled foreigners to the United States to work in full-time positions at Infosys' customer sites in direct violation of immigration laws." The plaintiff described ways that Infosys, one of the top ten H-1B petitioning companies, had worked to "creatively" get around the H-1B visa program in order to bring in low-skilled and low-wage workers, resulting in visa fraud against the U.S. Government.

Infosys, by its own admission, is an "H-1B dependent employer." Under the Immigration and Nationality Act, H-1B dependent employers must take good faith steps to recruit U.S. workers and to offer them compensation that is at least as great as that required to be offered to H-1B nonimmigrants.

The formal complaint against Infosys details how Infosys management in India decided to use the B-1 business visitor visa program to get around H-1B program restrictions. The plaintiff alleges that Infosys was importing foreign workers as B-1 business visitors under the guise of attending meetings rather than working for a wage as an employee of a U.S. company, which is forbidden under the statute and regulations governing the B-1 visa program. Under section 101(a)(15)(B) of the Immigration and Nationality Act, a B-1 visa holder may not come to the U.S. "for the purpose of...performing skilled or unskilled labor." Under State Department regulations, a B-1 visa holder may not engage in "local employment or labor for hire." If the allegations against Infosys are substantiated, American workers will have been hurt by this company's fraudulent actions, and the integrity of both the B-1 and H-1B visa programs will have been compromised.

RANKING MEMBER,
JUDICIARY

Committee Assignments:

AGRICULTURE
BUDGET
FINANCE

CO-CHAIRMAN,
INTERNATIONAL NARCOTICS
CONTROL CAUCUS

More troubling than the illegal ways a company can get around the H-1B program's restrictions using the B-1 visa program are the legal ways companies can use the B-1 visa program to defy the intent of Congress. For example, the State Department's Foreign Affairs Manual (FAM) currently authorizes the granting of B-1 visas to foreign workers who should otherwise be seeking H-1B visas in cases where the worker is employed by a foreign company and is coming to the U.S. to work at a U.S. client of that foreign company. Specifically, the FAM states that to qualify for such B-1 in lieu of H-1B visas, "the employee must customarily be employed by the foreign firm, the employing entity must pay the employee's salary, and the source of the employee's salary must be abroad." Under this low threshold, a company could import workers via the B-1 business visitor visa and evade the H-1B visa cap and prevailing wage requirements that would otherwise apply to such workers so long as the workers could show that their paychecks were still coming from the foreign company. I believe a thorough review of the "B-1 in lieu of H-1B" provision in the Foreign Affairs Manual is warranted by both of your Departments, especially at a time when American workers are vying against foreign workers for employment in this country.

In light of the allegations against Infosys, and the potential for other employers to abuse the B-1 visa to get around the H-1B visa program, I would appreciate your cooperation to get to the bottom of the situation. I would also like information about how the B-1 visa is being used by employers and processed by consular officers, including the following:

- Statistics with regard to the numerical distribution of B-1 visas, including which employers are using them, how many B-1 visas are petitioned for and approved each year, and the lengths of time a visa holder remains in the United States on a B-1 visa.
- The number of "B-1 in lieu of H-1B" visas issued each year for the past five years, including the posts where such visas were issued, the U.S. companies hosting such workers, and the foreign companies paying the worker's salary.
- How does the Department of State verify an employer's claim that a B-1 visa holder will attend a meeting, convention, or other business appointment in the United States?
- What actions, if any, are being taken against employers who abuse the B-1 visa program? Will the Departments consider barring such employers from any visa program if found guilty of misusing the visa system? Will the Departments cease to approve visas for Infosys until the lawsuit in Alabama is settled? If not, what additional oversight and/or actions will be taken until the Infosys lawsuit is finalized?
- What is the legal basis for the State Department's policy known as "B-1 in lieu of H-1B"? The Immigration and Naturalization Service, in 1993, proposed a regulation to eliminate the "B-1 in lieu of H" category citing inconsistency with Congressional intent. Will the Department consider changes to the Foreign Affairs Manual so that this means of entry is not abused? Will the Department consider eliminating this provision altogether? How does the Department of Homeland Security feel about this State Department policy today?

My hope is that your Departments will cooperate to make sure that the B-1 visa program is not being abused by employers who wish to get around the annual caps and prevailing wage requirements imposed by the H-1B visa program. I look forward to your review of the issues I have raised, and would appreciate a response to my questions no later than April 28, 2011.

Sincerely,



Charles E. Grassley
United States Senator