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H-1B Primary Fraud Indicators for Referral California Service Center (CSC) Center Fraud Detection Operations (CFDO)

BACKGROUND

In February 2005, U.S. Citizenship and Immigration Services (USCIS) developed and implemented the Benefit Fraud and Compliance Assessment (BFCA) Program to evaluate the integrity of various nonimmigrant and immigrant benefit programs that require the adjudication of an application or petition.

The results of the H-1B BFCA identified the largest volume of fraud, technical violation(s), and/or abuse were linked to specific fraud indicators. In general, these fraud indicators include petitioners having:

- (1) a gross annual income of less than \$10 million;
- (2) fewer than 25 employees; and
- (3) been in business for fewer than 10 years.

These three indicators will be referred to as the 10/25/10 formula for ease of reference.

The BFA established a baseline fraud, technical violation(s) or suspect fraud rate of 23% for H-1B petitions, and resulted in the identification of indicators that can lead an adjudicator to quickly identify petitions warranting further scrutiny.

Based on the indicators elaborated in the BFCA and through experience, CFDO-CA has developed a Fraud Referral Sheet. Once a petition is identified as needing further examination, adjudicators complete the one-page Fraud Referral Sheet and follow the referral process below. Upon receipt, CFDO will conduct a thorough document review and database search, in addition to a site visit, in order to uncover any fraud, technical violations, and suspect fraud associated with the petition, or to determine whether the petitioner is a viable business complying with the terms and conditions of its H-1B beneficiaries' employment. After the investigation, results will be posted to the Fraud Intelligence Digest (FID).

THE REFERRAL PROCESS

Presently, CFDO will only accept referrals for H-1B petitions with concurrent request for Change of Status (COS) or Extensions of Stay (EOS) that have not already been identified in the FID.

In order to insure an actionable fraud referral is sent to the CFDO, the adjudicator must refer all cases that exhibit at least 2 of the 10/25/10 criteria and at least one additional indicator listed on the Fraud Referral Sheet. However, the more items identified, the better the indicator of fraud.

A fraud referral may be made either Pre- or Post-Adjudication. However, it is preferred that a final decision (approval, denial, revocation, withdrawal, or abandonment) is completed before sending it to the Center Fraud Detection Operations (CFDO).

- Post-Adjudication Review – Besides the "Fraud Referral Sheet" the adjudicator completes a "Decision Processing Worksheet" as usual, marking the new "**Send to CFDO Shelf**" item in the "Action" part of the sheet. The case then goes to clerical for completion. Upon completion of

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clerical processing the file will be routed to the file room for further review by CFDO and, if possible, site-visits as the workload allows. No additional update in CLAIMS required

- Pre-Adjudication Review - the adjudicator should discuss the case with his or her supervisor to get concurrence (Supervisor's initials required) before walking the case over to CFDO.
 - Typically this might be a case with a response to an RFE or an ITD with the adjudicating officer requiring only a quick check of a variety of systems to validate or strengthen a final decision. No additional update in CLAIMS required.
 - Other times a CFDO, Immigration Officer (IO) may decide to keep the case for a further investigation. In such cases, CLAIMS must be updated, "Referred to Center Fraud Unit."

PETITIONER FRAUD INDICATORS

The following items explain in more detail the fraud indicators listed on the one-page Fraud Referral Sheet.

- **Company claims less than 25 employees** – Employers with less than 25 employees pay (in addition to the \$320 filing fee for the Form I-129) a fee of \$750. Employers with more than 25 employees pay \$1,500 fee. This is a significant incentive for an employer to understate the current number of employees when they file. Check CLAIMS Mainframe. If the employer has filed an abnormally high number of H-1B petitions, the adjudicator may want to request quarterly wage reports for the past year to verify the total number of employees at the time of filing – especially if there are other fraud/ineligibility indicators as well.
- **Gross Annual Income less than \$10 million**
- **Company established for less than 10 years**
- **Multiple filings** by petitioner are inconsistent with company size. Check CLAIMS Mainframe. Use the 10 to 1 rule: Company files 10 times the number of I-129 petitions than the number of employees in the last year (e.g. petitioner with 10 employees filed 100 I-129 petitions in the last year or so). Be sure to RFE and request for petitioner "bona fides" (corporate taxes, State quarterly wage reports, contracts with end-clients, etc.). Try to deny for no contracts with the ultimate end-client (no evidence that a specialty occupation exists - see below) before referring to CFU.
- **Contracts for consultants or staffing agencies show no end-client** – no work description or itinerary. Contracts not signed. No information on the contract to contact the end-client.

Junior consultant and staffing agencies (e.g., under \$1 million gross annual income) generally have no work of their own. So, without valid contracts between the petitioner and the actual end-client firm ultimately involved with the beneficiary's computer related duties, the record would not establish the work to be completed; that the duties to be performed are those of a [e.g., computer programmer analyst] position, and, thus, a specialty occupation position; and that the work will be available for the beneficiary when he enters the United States.

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- **Incomplete, inconsistent, or misstated information on the petition** – excessive blanks, inflated figures, etc.
- **Not Paying the Claimed Wage:** The “Key” document here is the State Quarterly Wage Report which indicates whether the petitioner has been complying with the terms and conditions of employment listed on the petition (wages and hours of work per day, week, year). Depending on the size of the company, request up to four quarters for a clearer overview of the business practices. If the petitioner has been requested to provide the bona fides of the business (corporate taxes, State quarterly wage reports, contracts, etc.) and the wages shown are not the same as those claimed on the petition or employment is sporadic, refer to CFU after denying the petition (see Computer Consultant denial format in the H-1B denial folder under petitioner issues.) Also, request pay records, W-2's, and corporate tax returns to compare and contrast with the rest of the evidence requested. This fraud/ineligibility item goes hand-in-hand with small staffing agencies with aberrant filing practices.
- **No Website for an IT Consulting company.** Also be aware of websites that appear to be working but when you click on the buttons they are always under construction.
- **Suspect Documents:** Altered, counterfeit, or boilerplate, etc. (i.e., All employment letters have virtually the same text and signatures with letterheads being the only difference). Request originals.
- **Preparer & Preparer's Address** – The preparer, notary, petitioner, etc. are all the same person and they have the same address while the actual work location shows a different address.
- **Location on the Labor Condition Application (LCA) Form ETA 9035** differs from place of employment.
- **Photographs** of petitioner's premises have been altered (i.e., company logos and signs added after photo was taken – brightness and contrast are off, shadows in the wrong places). Photos do not match with the floor plans (i.e. photos show windows but floor plan shows the office is in the interior of the building and has no windows). Photos do not match with the satellite view of the claimed address (see Live Search Maps website <http://maps.live.com/>) - photos show commercial building, satellite shows residential or a completely different commercial building.
- **Zoning** inconsistent with business internet data for the petitioner's address indicates that it is zoned residential rather than commercial.
- **H-1B Dependent** – Petitioner asserts that it is not H-1B dependent but a check of Mainframe CLAIMS indicates this may not be true. RFE for clarification on this inconsistency.
- **LCA Code does not match** the claimed duties listed in the petition and cover-letter.
- **Evasive or ambiguous answers:** or complete failure to respond to requested information. Generally the petitioner is just abusing the classification – easy denial for cause due to insufficient evidence to establish eligibility, etc.

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- **No G-28, No Representation.** Appears there may be a preparer anyway because the same mistakes – used common formats, etc - are made in all its submissions.
- **Petitioners filing outside of jurisdiction** – check MainFrame CLAIMS to see trend.
- **Abandonment or withdrawal** after request for evidence issued. Send all of these that meet at least four of the fraud/ineligibility criteria to CFDO for review and/or site check.
- **Questionable education credentials**
- *** FID Update** – see additional relevant information to update the FID. Send these types of cases to CFDO if the file contains information that will improve the facts already available in the FID. For instance, if the adjudicator obtains more up-to-date tax returns or quarterly wage reports, or any other information that would help in the adjudication of the case – either positively or negatively, send it over.

BENEFICIARY FRAUD INDICATORS

BFCA results have shown that beneficiaries with Bachelor's Degrees have higher fraud and technical violation rates than those with graduate degrees.

- **Work Experience Letters:** Altered, counterfeit, or boilerplate, etc. (i.e., All employment letters have virtually the same text and signatures with letterheads being the only difference.) Unprofessional letterhead, usually generated on a computer, will not list a website for IT companies. Request original docs before overseas investigation. Sometimes they just abandon or withdraw their petitions.
- **Equivalency evaluation of training and experience** performed by a foreign education credentials evaluator. A private educational credentials evaluation service may not evaluate an alien's work experience or training; because Regulations limit the scope of foreign educational credential evaluators to evaluating only foreign education.
- **Skill/age/salary/education** does not match job requirements
- **Biometric discrepancies**

POSITION FRAUD INDICATORS

Generally companies with \$3 million or less in annual income and twelve or less employees (liquor stores, dry cleaners, gas stations, 99 cent stores, dental offices, residential care facilities, donut shops, fast food stores, etc.) would not hire an accountant or any kind of analyst in a full-time position for three years. Most small businesses cannot support the "full-time" services of such professionals – there is not enough H-1B work to keep them busy a majority of the time. That is why these positions are generally contracted to complete a specific project or study. However, if the petitioner is a Certified Public Accounting firm, business management firm, or market research analysis firm there may be an actual need for one of the following positions.

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(b)(7)(e) Use common sense to determine if there is a bona fide job offer. Always consider the nature of the petitioner's business with the claimed duties. Look at the date the business was established and the gross annual income. Also, look at the petitioner's website to see if they are telling the public the same thing they are claiming in the petition.

- **ACCOUNTANT** – In these fraud or abuse cases, the petitioner's business will not appear to be sufficient to support the position on a full-time basis and/or CLAIMS Mainframe shows that this petitioner has already filed several petitions that have been approved for beneficiaries with accounting degrees for work with an employer in an unrelated field (e.g., adult residential care facility with four accountants).

NOTE: Petitioner's that state the beneficiary will be working as an accountant but indicate that they use QuickBooks software are actually nothing more than data entry accounting clerks.

Small businesses use QuickBooks for most financially-related business processes, from entering sales receipts, tracking expenses, preparing and sending invoices, sales tax tracking and payment, preparation of basic financial statements and reports, and inventory management. The program also includes MICR check printing and options for employee payroll and time tracking. For most tasks, QuickBooks doesn't require users to understand standard accounting procedures, including double-entry bookkeeping. Most transactions are recorded using on-line screens that closely resemble paper based forms such as invoices or checks.

RFE using the "Accountant" format found in O Common in "Position Issues" of the H-1B RFE Folder for a more detailed description of duties, what kind of software they use for their accounting report preparation, petitioner tax returns for three years, and State quarterly wage reports. If possible deny for cause [see Accountant denial formats in I-129, H-1B, I-292 Denial, Position Issues, Specific Issues folder – if you can write a better one let CFDO know] before referring to CFU. If all else fails, refer very small companies that hire an accountant to CFDO for a site-visit (e.g., florist shop, with two employees, makes a gross annual income of \$180,000 – they hire an accountant. Send to CFDO)

- **MARKET RESEARCH ANALYST** - A marginal business that does not extend beyond the scope of the local community, in other words, the market for the product or service provided is limited and specialized to the neighborhood or the vicinity in which it operates, or, to a particular part of a metropolitan area, would lack a consumer base that is extensive or complex enough to require the services of a marketing and/or-sales staff for an extended period of time. The business would not have an organizational complexity that would include a marketing division, department, team, or marketing specialists to gather market data for analysis by a market research analyst. Nor, would it have a sufficient sales division, department, team, or sales representatives to implement advertising or sales campaigns as a result of the research performed and recommendations made by a market research analyst.

Further, if the petitioner is a franchisee, (i.e., Burger King, Subway, MacDonalds, 7-11 Convenience Store, cell phone stores) and a review of the petitioner's franchise agreement or the franchisor's web-site indicates that all marketing functions are provided by the franchisor there would be no credible need for a Marketing Research Analyst because the duties the beneficiary would perform are those already provided by the franchisor.

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RFE for a more detailed job description; the petitioner bona-fides – tax returns for the past three years; State quarterly tax returns, organization chart, and, if applicable, franchise agreement. If you can, deny for cause [see denial for Market Research Analysts in the I-129, H-1B, I-292 Denial, Position Issues, Specific Positions folder] before referring to CFDO.

- **BUDGET ANALYST** - is primarily concerned with the development, analysis, and efficient distribution of current and estimated future financial resources among various departments and programs within most large and complex, public and private organizations.

If the record fails to establish that the petitioner has a workforce large enough to require several divisions or departments each with its own budget, or so complex, that they would require development, analysis, and execution by a budget analyst, RFE for evidence to establish that the petitioner's business is of the financial or organizational scope or complexity to credibly offer a position for a Budget Analyst (i.e., tax returns for three years, State quarterly wage reports, and organizational chart). Then deny for cause [see denial format in O common, I-129, H-1B, I-292 Denials, Position Issues, Specific Positions, Budget Analyst 08-09 OOH] before referring to CFDO.

- **BUSINESS MANAGEMENT ANALYST** - If the job description so much as implies that the beneficiary would: implement, realize, apply, put into service, execute, perform, carry out, put into operation, employ, activate, start, put into action, initiate, instigate, direct, put into practice, affect any management programs or processes, then the beneficiary is involved with the management of the company and would not be employed exclusively as an analyst solely to advise the petitioner's management on ways to improve the organization's structure, efficiency, or profits.

RFE for a more detailed job description; tax returns for three years; State quarterly wage reports for the past year; and organizational chart. If possible, deny [see denial format in O common, I-129, H-1B, I-292 Denials, Position Issues, Specific Positions, Management Analyst] before referring to CFDO.

- **FINANCIAL ANALYSTS / PERSONAL FINANCIAL ADVISORS:** assess the economic performance of companies and industries for firms and institutions with money to invest. Also called *securities analysts* and *investment analysts*, they work for investment banks, insurance companies, mutual and pension funds, securities firms, the business media, and other businesses, helping them make investment decisions or recommendations. Financial analysts read company financial statements and analyze commodity prices, sales, costs, expenses, and tax rates in order to determine a company's value and to project its future earnings. They often meet with company officials to gain a better insight into the firm's prospects and to determine its managerial effectiveness.

If the petitioner is not involved in the business of providing financial investment services for clients or if the petitioner is not an investment company with its own funds to invest there is probably no bona fide position.

Request evidence that the petitioner has substantial, if any, immediately available capital (liquid assets) to invest (i.e., tax returns, bank certified monthly statements for six months). If possible, deny [see denial format in O common, I-129, H-1B, I-292 Denials, Position Issues, Specific Positions, Financial Analyst-Accountant or Financial Analyst-Investor] before referring to CFDO

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- **MANAGERS** - Advertising, Marketing, Promotions, Public Relations, and Sales Managers as listed in the Occupational Outlook Handbook (OOH), 2008-09 edition, a publication of the United States Department of Labor, indicates that, although some employers prefer a bachelor's degree, a wide range of educational backgrounds are suitable. Small companies requiring one of these managers should be placed under severe scrutiny.

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RFE for proof that the position qualifies as a specialty occupation pursuant to 8 C.F.R. 214.2(h)(4)(iii)(A) – standards for specialty occupation position. If possible, deny [see denial formats in O common, I-129, H-1B, I-292 Denials, Position Issues, Specific Positions, Top Executives, Marketing, Public Relations, Promotions, Advertising, Sales] before sending to CFDO.

ADDITIONAL ASSISTANCE

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