

REPLY TO:

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- ☐ 721 FEDERAL BUILDING
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- ☐ 150 1ST AVENUE NE
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United States Senate

CHARLES E. GRASSLEY

WASHINGTON, DC 20510-1501

REPLY TO:

- ☐ 103 FEDERAL COURTHOUSE BUILDING
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- ☐ 210 WATERLOO BUILDING
531 COMMERCIAL STREET
WATERLOO, IA 50701-5497
(319) 232-6657
- ☐ 131 WEST 3RD STREET
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DAVENPORT, IA 52801-1419
(563) 322-4331
- ☐ 307 FEDERAL BUILDING
8 SOUTH 6TH STREET
COUNCIL BLUFFS, IA 51501-4204
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April 30, 2012

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, D.C. 20528-0150

Dear Secretary Clinton and Secretary Napolitano:

I write again to express my concerns about the B-1 visa program, particularly the so-called "B-1 in lieu of H-1B" policy, and seek your cooperation to determine if some companies are abusing this avenue to bring in cheaper foreign labor.

Last April, I wrote to both of you about the "B-1 in lieu of H-1B" policy, and asked that the policy, which is included in the State Department Foreign Affairs Manual but omitted in Homeland Security guidance, be reconsidered. To date, nothing on this issue has been done, despite a fairly positive response from the State Department that they were working on "removing or substantially amending the FAM."

I remain concerned about fraudulent actions that some companies may be taking in order to get around the requirements and U.S. worker protections of the H-1B visa program. While my previous letter on this issue focused on a lawsuit pending against Infosys, it has come to my attention that The Boeing Company ("Boeing") may have employed similar tactics to bring in foreign workers.

According to a report in the *Seattle Times*, 18 Russian engineers arrived in Seattle on October 14, 2011, with B-1 visas. Officials from U.S. Customs and Border Protection (CBP) interviewed the arriving individuals and found that their stories about what they would do in the country did not correspond with the terms of their visas. Records provided by the *Seattle Times* to my office reveal the following notes between the foreign nationals and CBP officials (who took statements under oath in a sworn affidavit):

- One individual admitted that, prior to her trip, she was told by her company (Nik, Ltd.) that she would perform the same work in the United States as she did in Russia. This person admitted that she would be working alongside Boeing employees. She also said she was instructed by her company not to state that she would be working in the United States.
- One individual stated that he was invited by Boeing and presented an invitation letter to attend training, but admitted that it "was not the whole truth."
- Several individuals admitted that they intended to work at Boeing five days a week, eight hours a day.

RANKING MEMBER,
JUDICIARY

Committee Assignments:

AGRICULTURE
BUDGET
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Co-CHAIRMAN,
INTERNATIONAL NARCOTICS
CONTROL CAUCUS

- One individual stated that the letter he presented to the U.S. Consulate in Moscow was not entirely correct in its context, and that he would be working, not training. When asked by the CBP officer if an American could perform the work, he stated that "Boeing needs to hire one" and that "it was his belief that it was cheaper to hire Russian engineers."
- One individual told officers that he would not do any hands-on work at the Boeing plant in Everett, Washington, but later, under oath, he admitted that he would.

It was apparent to CBP officers that these foreign nationals were not traveling to the United States to receive or provide training; attend a conference, meeting or trade show; be a speaker, lecturer, or researcher; or perform sales or sign contracts; which are the types of activities appropriate for a B-1 visa. It's my understanding that all 18 B-1 visa holders were turned away on October 14, 2011. In light of the report and the CBP documentation, I was dismayed to read earlier this month a follow-up story in the *Seattle Times* stating that Boeing has not changed its practices, and that about 250 additional Russian contract engineers have entered the country to work with Boeing.

Given these reports and my ongoing concern about this issue, I ask for your help in answering the following questions about Boeing and the use of B-1 visas:

1. How many B-1 visas has Boeing petitioned for in the last five years? How many have been approved and how many denied?
2. How many B-1 visa holders, other than those encountered by CBP on October 14, have been turned away at a port of entry in the last five years?
3. What other previous trips had each of the 18 workers (from October 14, 2011) made to the United States? Under what visa classification and for how long were their previous stays in the United States?
4. How often, if at all, does the Department of Homeland Security conduct site visits of companies that regularly receive B-1 visitors? Has or will the Department of Homeland Security conduct an on-site review or I-9 audit of Boeing? If not, why not?
5. In light of the recent reports about certain companies using B-1 visas to circumvent other employment visa programs, are CBP officers receiving updated guidance on how to handle B-1 visa entries? Are consular officers receiving guidance or training to detect fraud by B-1 visa applicants?

It's my hope that your Departments will provide as much information to my office as possible about this matter, including any other relevant information not requested in this letter. In doing so, we can work together to ensure that companies are abiding by the law and not ignoring American workers at home who may be able to do these high skilled jobs.

I look forward to hearing from you.

Sincerely,



Charles E. Grassley
United States Senator