United States Department of State

Washington, D.C. 20520

MAY 13 2011

Dear Senator Grassley:

Thank you for your letter of April 14 in which you described potential fraud in the use of B-1 business visitor status and your concerns regarding the "B-1 in lieu of H-1B" note in the Foreign Affairs Manual ("FAM"). We are working with the Department of Homeland Security (DHS) to consider removing or substantially amending the FAM note that you referenced.

Specifically, the Infosys litigation you described appears to involve misrepresentation in the visa application, rather than a misapplication of visa law.

All business visa applicants must qualify under U.S. immigration law, and each of our consular posts has a fraud prevention unit to assist in verifying claims made by applicants. Our consular officers in India, in cooperation with our Office of Fraud Prevention Programs and DHS, have taken concrete steps to combat illegal work performed while in B-1 status. These steps include specific additional lines of questioning at the visa interview and suspension from the business visa facilitation program. When an applicant is traveling to the United States for long-term training, our consular officers in India probe for specific details, and the visa is refused if the applicant cannot fully articulate the need, duration, and other key facts. At one consulate, the net refusal rate has increased by 25 percent among this applicant pool. Our consular team in India also has a "Business Executive Program," which provides services to qualified businesses including expedited appointments. In the last year, five large employers have been suspended from this program as a result of fraud discovered in visa applications filed by purported employees. Applications from individuals claiming to work for those employers now receive particularly close scrutiny.

We are in the process of discussing with DHS removing or substantially modifying the B-1 in lieu of H guidelines, which State first proposed eliminating in a 1993 Federal Register notice. This change requires DHS coordination and may require Federal Register notice, thus it may take some time before the any change is implemented.

The Honorable
Charles E. Grassley,
United States Senate.

Regarding your request for statistics, it is difficult to identify accurate numbers because the B-1 in lieu of H is recorded as simply a B-1 visa, like other temporary business issuances. However, our consular team in India estimates that they issue fewer than 1,000 B-1 in lieu of H visas in any given year. In FY 2010, Indian nationals were issued 1,722 B-1 business visas, 2,345 B-2 tourist visas, and 294,120 combination B-1/B-2 visas.

Thank you for your letter, and we look forward to working with you and your staff on these issues. Be assured that we are constantly improving our fraud prevention efforts both at the consular level and in close cooperation with DHS agencies.

Sincerely,

Joseph E. Macmanus
Acting Assistant Secretary
Legislative Affairs