Assistant Secretary for Legislative Affairs
U.S. Department of Homeland Security
Washington, DC 20528

JUL 1 8 2011

Homeland Security

The Honorable Charles E. Grassley
United States Senate
Washington, DC 20510

Dear Senator Grassley:

Thank you for your letter to the Department of State and the Department of Homeland Security (DHS) regarding the alleged use of B-1 business visitor visas to circumvent the requirements of the H-1B nonimmigrant visa program. I understand that the State Department has responded separately on matters that fall within its purview, including the B-1 visa process overseas and the Foreign Affairs Manual.

Although the State Department has jurisdiction over determining visa eligibility and issuance of B-1 visas abroad, DHS is responsible for determining the admissibility of aliens at U.S. ports of entry and the immigration status violations of aliens in the interior of the United States. This responsibility is distinct from visa issuing authority. Issuance of a B-1 visa allows the alien to make application for admission at a port of entry as a visitor for business. Upon application for admission, the alien must show the inspecting U.S. Customs and Border Protection Officer that their purpose is consistent with the visa classification, and that they intend to abide by the terms and conditions of the visa classification and admission.

U.S. Immigration and Customs Enforcement (ICE) enforces immigration law violations related to employment in the United States. Enforcement actions may include seeking the removal of a nonimmigrant alien for having worked without authorization or seeking civil monetary penalties against an employer under section 274A of the *Immigration and Nationality Act* (INA) for having knowingly employed an unauthorized alien in the United States, having knowingly contracted for the labor of an unauthorized alien, or having failed to comply with employment eligibility verification requirements (the Form I-9).

B-1 nonimmigrant visitors for business are not authorized to be employed in the United States, except in the very limited circumstances (certain personal or domestic servants, or foreign airline personnel who apply for and are granted an Employment Authorization Document) described in DHS regulations at 8 C.F.R. § 274a.12(c)(17). Longstanding case law and policy recognize the nature and scope of activity that legitimately falls within the description of permissible business visitor activity for a B-1 business visitor. Whether a particular business activity is lawful for a B-1 visitor (neither constituting a violation of status nor qualifying as employment in the United States for

purposes of the employer sanctions provisions and requiring an I-9 on the part of the employer) is not always clear. See, e.g., Matter of Hira, 11 I&N Dec. 824 (BIA 1965, 1966; A.G. 1966). Each particular case must be examined on its specific facts in light of prevailing law and guidance. Under the DHS regulations at 8 C.F.R.§ 274a.9(a), any person or entity who believes that an employer is in violation may submit a complaint in writing to ICE For appropriate investigative action.

The law prohibits a person or entity from hiring or recruiting an alien knowing that the alien is unauthorized to work in the United States, or to continue to employ the alien knowing that the alien is or has become an unauthorized alien with respect to such employment. Sanctions for such violations can include criminal and civil penalties. See 8 C.F.R. §274a.10.

Existing law does not authorize DHS to debar an individual company or alien from approval of petitions or applications for immigration benefits based on a finding of violation by the alien of the terms and conditions of admission as a B-1 business visitor or of fraud on the part of a U.S. company that illegally employed the B-1 visitor. (Such debarment authority does exist, though, for violations of other visa programs. See 8 U.S.C. 212(n)(2)(C)(i)(II) and (ii)(II) (debarment for violation of H-1B program requirements); 8 U.S.C. 1184(c)(14)(A)(ii) (debarment for violation of H-2B program requirements).) However, if a business entity or individual is convicted of civil or criminal violations, the person or business may be subject to debarment under the Federal Acquisition Regulation (FAR), an administrative process that protects the government from doing business with, assisting, or conferring certain benefits on irresponsible employers and individuals. Although debarment under the FAR may not specifically prevent a business or individual from getting a visa, such debarment would make that person or business ineligible from receiving Federal Government contracts, grants, loans, insurance, non-entitlement benefits, licenses, and other business-type relationships. In fiscal year 2010, ICE debarred 146 individuals and businesses. See ttps://www.epls.gov/.

U.S. Citizenship and Immigration Services (USCIS) is responsible for adjudicating applications for extensions of stay and changes of status, including for the B-1 visa classification. Through its adjudications process, USCIS determines whether the applicant meets the requirements for the nonimmigrant classification and whether the applicant has properly maintained his or her previous nonimmigrant status. Failure to comply with the terms and conditions of the previous nonimmigrant status, including working without authorization, is grounds for denying the application and may affect the alien's ability to remain in the United States. Under the INA, aliens who have been admitted to the United States but have violated their status or the conditions placed upon their entry are removable. See INA §237(a)(1)(C). USCIS has also assigned Fraud Detection and National Security Immigration Officers to the State Department's Kentucky Consular Center to assist in the detection of fraud in nonimmigrant visa applications pending before State.

With regard to the "B-1 in lieu of H-1B" interpretation, DHS will coordinate with the State Department to develop guidance clarifying the scope of activities permissible in the B-1 business visitor classification.

Thank you again for your letter. DHS is committed to working with the Department of State to ensure the integrity of all U.S. visa programs and procedures, including the B-1 and H-1B visa programs. I hope to continue to foster a close working relationship with you on these and other homeland security-related matters. Should you need additional assistance, please do not hesitate to contact me at (202) 447-5890.

Respectfully,

Nelson Peacock
Assistant Secretary
Office of Legislative Affairs

cc: Joseph E. MacManus
Acting Assistant Secretary
Legislative Affairs
U.S. Department of State