United States Department of State

Washington, D.C. 20520

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JUL 13 2012

Dear Senator Grassley:

Thank you for your letter of April 30. We understand your clearly stated concerns regarding the misuse of nonimmigrant visitor (B) visas by companies seeking to evade the restrictions and U.S. worker protections applicable to H-1B visas. We also understand your more specific concerns regarding the utilization of the "B in lieu of H" process by the Boeing Company. We have reviewed Department consular records and were able to gather additional information to address those specific issues that are under the jurisdiction of the Department of State. The Department of Homeland Security (DHS) will send a separate response addressing the issues that are under its jurisdiction.

As noted in our interim response dated May 14, applicants seeking visitor (B) visas for business purposes must qualify for the visa under the Immigration and Nationality Act (INA). They do not have petitions filed for them by employers, rather, the applicant completes an online nonimmigrant visa application and submits it to the U.S. embassy or consulate with jurisdiction over where s/he resides. Once the application is submitted and a face-to-face interview conducted, the consular officer determines whether the applicant is eligible for the visa. The B visa process for an applicant normally classifiable as a temporary worker (B in lieu of H) is processed in the same way as an ordinary B visa applicant who may apply for a visa to visit the United States for business. Because of the limitations of our database, we can only provide you with the estimates and not exact figures.

We searched Department records that had "B in lieu of H", "B1 in lieu of H1-B", or "9 FAM 41.31 N11" (the section of the Foreign Affairs Manual that provides guidelines on B in lieu of H), listed in the annotation field of the visa. In 2007, there were 1,808 visas issued with such annotations; there were 1,396 visas issued in 2008; 1,275 issued in 2009; 2,552 issued in 2010; 4,052 issued in 2011; and, 1,967 issued so far in 2012. Of the more than 13,000 B in lieu of H visas issued from 2007 to present, 223 of them had the word Boeing mentioned somewhere in the visa application, although not all would have been traveling to perform services under the B1 in lieu of H rule. The period of validity of a

The Honorable
Charles E. Grassley,
United States Senate.

nonimmigrant visa is based on reciprocity, so any of those visas could be valid for up to 10 years from when they were issued. Additionally, some individuals may have entered the United States to perform the types of services envisioned under Department B1 in lieu of H guidelines using previously issued B visas that would not include the annotations noted above.

You have also stated your concerns about the training and guidance that consular officers receive in detecting fraud by B visa applicants. Each of our consular posts has an officer designated as the fraud prevention manager to assist with verifying claims made by all visa applicants. Consular officers, in cooperation with our Department's Office of Fraud Prevention Programs and DHS, have taken several steps to combat unauthorized work performed while traveling on a B visa. Consular officers ask additional questions when an applicant is traveling to the United States for long- term training, and the visa is refused if the applicant cannot fully articulate the need, duration, and other specifics related to their travel. Only if the consular officer is convinced that the applicant is qualified and is coming to the United States for a purpose consistent with U.S. immigration law and regulations will a visa be issued.

Our Department continues to discuss with DHS removing or substantially modifying the B1 in lieu of H guidelines. This requires DHS coordination and may take some time before any change is implemented.

We look forward to continuing our work with you on this issue. We trust this information is responsive to your concerns. Please do not hesitate to let us know if we can be of further assistance.

Sincerely,

David S. Adams
Assistant Secretary
Legislative Affairs