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Business visa compliance: Auditing matters

Several Indian companies send their staff to the US on B1-B2 business visas, and most of them are generally admitted to stay in the US for three months.

By Ishani Duttagupta, ET Bureau | Last Updated: Sep 29, 2014, 03.00 AM IST

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Several Indian companies send their staff to the US on B1-B2 business visas, and most of them are generally admitted to stay in the US for three months.

With Indian companies spreading their operations across continents and engaging talent from all across the world, immigration compliance has become increasingly important, especially in countries such as the US. In fact, in many countries, penalties linked to noncompliance with immigration laws may include imprisonment of key officers of top companies and the professionals who are guilty, hefty fines for companies/employers, limited or permanent ban on the engagement of foreign nationals and a ban on the employee being able to

work in specific countries.

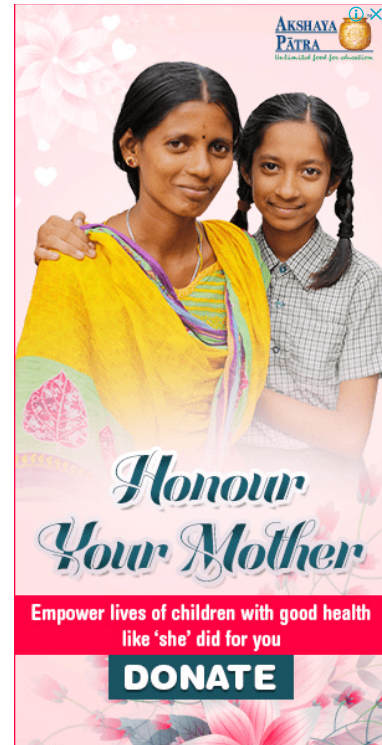
The importance of incorporating immigration compliance issues into regular HR processes for Indian companies was highlighted last year when IT major Infosys agreed to pay a record \$34 million to the US government as part of a civil settlement based on allegations of systemic visa fraud and abuse of immigration processes, and also agreed to enhanced corporate compliance measures. The payment made by Infosys was the largest payment ever levied in an immigration case in America.

"When Indian companies send their staff to work in the US, the two major problems we have found are tracking the use and misuse of business visas and complying with the H1B work permit regulations, which involve compliance with the US department of labor (DOL) regulations and the US citizenship & immigration services (USCIS) requirements," explains Mumbai-based immigration lawyer Poorvi Chothani.

Several Indian companies send their staff to the US on B1-B2 business visas, and most of them are generally admitted to stay in the US for three months. "It is important that during this period they confine their activities to business meetings, negotiating contracts, understanding client needs etc. in compliance with the US government guidelines. In specific instances, they may guide US clients with troubleshooting on software programmes provided by their employer overseas. However, they cannot provide hands-on help. It is extremely difficult to track these things when hundreds of people are travelling on a continuous basis unless there are strong compliance checks or random audits periodically," add Chothani.

Many Indian companies are now conducting periodic audits of travel activities and duration of visit on a business visa of individual staff members to help identify and stop misuse of the B1-B2 visa. "Audit results also help identify problematic projects. Very often the sales team at organisations makes promises to prospective customers and this involves deputation of staff on projects. They are not aware of the immigration ramifications.

An immigration audit helps identify such gaps and plug them," says Chothani.



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In the US, compliance issues can be related to B1-B2 visas and H1B and L1 work permits. They could arise out of overstay, tax compliance, appropriateness of visa, work location or labour and wage issues.

“An independent audit helps find any gaps or non-compliance. The organisation will be able to correct them (e.g. pay the difference in wages if someone was underpaid) before an actual audit by the DOL’s wage & hour division. Usually audits by DOL are driven by complaints from employees on noncompliance,” says Umesh Vaidyamath, CEO, INSZoom, a company offering IT solutions for immigration matters. “The company needs to identify an independent attorney or consultant who can review various documents to ensure that the company is compliant with the regulations. Any gaps identified that are corrected can be shown as a good faith effort by the company in case of a DOL audit to prove that the company follows best practices,” he adds.

Most immigration consultants and attorneys are seeing a significant increase in Indian companies requesting information about audit services and many have reported cases of employees threatening to blow the whistle on their employers over disparities in salaries mentioned on documents submitted to immigration authorities and the amount actually paid. “Many companies now have immigration audits done independently by both internal and external auditors,” says Vaidyamath.

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