

“Visa Sponsorship and US Business Site Inspections” by Adam Edward Rothwell, Esq.

US businesses that sponsor and employ foreign citizens on H-1B Visas and now L-1 Visas are likely to receive a site inspection and audit. These inspections are always no joke and should be taken seriously by businesses.

Site inspections are usually fairly straightforward processes if the US business has organized information readily available for the site inspector on the employment of the foreign worker.

Site inspectors are usually government contractors, and they are utilized to ensure foreign workers on H-1B and L-1 Visas are performing roles and terms addressed within their visa applications. Site inspectors will expect to see a public access file with a range of documentation. These documents should include a copy of the petition with terms of employment submitted on behalf of the foreign worker. The public access file should also include a copy of the foreign worker’s approval notice, visa if relevant and entry document.

After examining the above documentation, the site inspector should receive evidence affirming the terms of employment are being met. This includes evidence the foreign worker is working on site in the role authorized by the immigration petition. The site inspector will usually expect to see evidence the foreign worker is being paid at the rate authorized by the immigration petition, and the site inspector will want to receive some confirmation of duties undertaken by the foreign citizen. Sometimes it helps to have the foreign citizen actually speak to the site inspector to alleviate confusion.

If the site inspection does not go well, there may be substantial ramifications.

The ramifications of a poor/failed site inspection are varied. On one extreme, I am familiar with at least one instance where the site inspection for a US business sponsor of a foreign worker on a non-immigrant visa went about as wrong as possible and there was really no known ramification or even follow-up. However, businesses that do not strictly comply with terms of employment referenced in H-1B and L-1 Petitions as determined by site visits run the risk of being fined, having the employment status of the foreign worker revoked and/or even potentially facing criminal charges for known severe violations. In my experience if the site inspection is not successful, the business then faces an unknown future as it relates to sponsorship of the foreign worker. For this reason businesses that sponsor foreign workers on H-1B and L-1 Visas especially should be fully prepared in advance for potential site visits to ensure they go as well as possible.

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