



LESSONS LEARNED FROM INFOSYS SETTLEMENT: HOW TO AVOID ALLEGATIONS OF VISA FRAUD AND UNAUTHORIZED EMPLOYMENT OF FOREIGN NATIONALS

Information technology consulting company Infosys recently reached a \$34 million settlement with the U.S. Department of Justice after the DOJ alleged systemic visa fraud and abuse of immigration processes in violation of a federal law prohibiting false claims, pursuant to [31 USC 3279](#). The \$34 million payment made by Infosys as a result of these allegations represents the largest payment ever levied in an immigration case, U.S. Immigration and Customs Enforcement (ICE) announced.

The investigation involved multiple agencies including ICE and its Homeland Security Investigations (HSI) division. Among other allegations, ICE accused Infosys of directing B-1 visa holders to deceive U.S. consular officials, including creation of a "do's and don'ts" memorandum that instructed B-1 foreign nationals not to mention activities that "sound like work" or anything about contract rates.

During the analysis of Infosys employment records ICE uncovered Form I-9 violations, including an 85% failure rate for re-verifying the employment eligibility of foreign national employees. As part of the settlement agreement, in addition to the fines and limitations placed on securing business visitor visas, Infosys agreed to undergo Form I-9 audits for two years at its own expense to ensure future compliance.

In light of this record payment and sanctions levied in the Infosys case, we send this update as a reminder to our clients:

- All persons employed in the U.S. must establish employment eligibility to work in the U.S. A person in the U.S. as a business visitor may not need a work visa, but the B-1 visa and visa waiver program must not be used as a way to circumvent the H-1B visa program. While there are some activities that clearly fall under the B-visa or visa waiver category, such as entering the U.S. to attend a short business meeting, there are other activities that are not so clear. Because what constitutes work can be ambiguous under the law, contact your immigration counsel with specific fact scenarios.

- The government is willing to pursue employers that attempt to circumvent the H-1B visa program and its labor force protections. In Infosys, a whistleblower complained and could receive 15% of the \$34 million settlement. Follow the law because you must, and to help avoid situations where a disgruntled employee complains, even if wrongfully, and causes disruption to the company's workforce and productivity.

- An employer must comply with the H-1B visa requirements and employer obligations and responsibilities. If an H-1B worker will work at a worksite location not listed in the H-1B

petition, a new labor condition application likely may be needed with new postings at the new worksite location; additionally, an amended H-1B petition may be needed. Contact your immigration counsel before the H-1B worker works at another worksite location as such notification could save the company money in having to file an amended H-1B petition if steps are taken in advance and also reduce liability for possible failure to satisfy the H-1B program requirements.

- All employees in the U.S. must complete a Form I-9 properly and in timely manner, and the Form I-9 must be re-verified when appropriate. While Infosys did not incur criminal liability, criminal liability can occur. If you have questions on the type of work visa needed, the proper and timely completion of the Form I-9, or independent contractor agreements, contact your immigration counsel.

- Immigration submissions, including supporting documents, are generally made under penalty of perjury and must not contain material misrepresentations. Communicate with your counsel so that proper disclosure and documentation may occur.

- A company and its employees must be honest with the government, including in invitation letters submitted to U.S. Consular Officials on the purpose of the visa and the location of employment. Do not place your employer, the individual or yourself in the position of potentially misleading the government. Let your immigration counsel know what the circumstances are so that the attorney can properly advise you, including with writing detailed invitation letters.

Infosys stated the following in a press release dated October 30, 2013:

“Today, Infosys announced that it has completed a civil settlement that concludes the investigation by the U.S. Attorney’s Office for the Eastern District of Texas and resolves all issues with the U.S. Department of State, Immigrations and Customs Enforcement and the U.S. Department of Homeland Security relating to I-9 paperwork errors and visa matters that were the subject of the investigation. There were no criminal charges or court rulings against the Company. Furthermore, there are no limitations on the Company’s eligibility for federal contracts or access to U.S. visa programs as a result of the settlement.”

For more information on the settlement, you can review the DOJ’s October 30, 2013 press release [[DOJ Infosys Press Release](#)].

If you have questions on work visas and I-9 compliance or other immigration matters, please contact your FosterQuan attorney.