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Avoiding “America First” Pitfalls When Vendors Use H-1B or Other Visas

Paul Virtue



Agenda



- Challenges for offshore staffing vendors
- Historical views on H-1B visas
- The risks for customers
- What suppliers can do

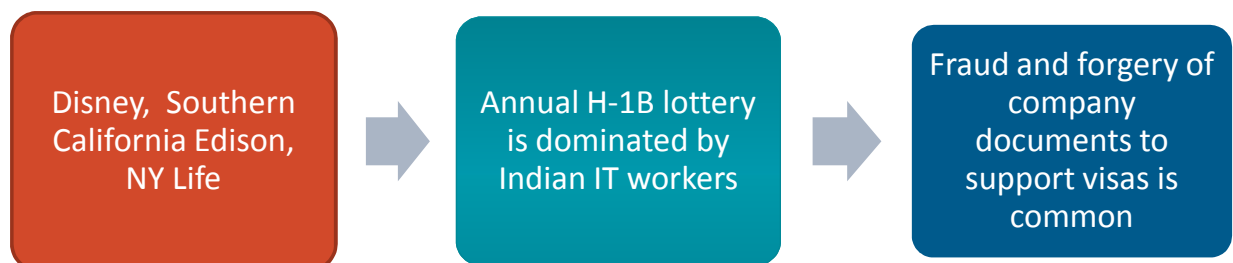


“ From this moment on, it’s going to be America First. Every decision on trade, on taxes, on immigration, on foreign affairs, will be made to benefit American workers and American families. We must protect our borders from the ravages of other countries making our products, stealing our companies, and destroying our jobs. ”

Inaugural Address of President Donald J. Trump
January 23, 2017

Challenges for Offshore Staffing Vendors

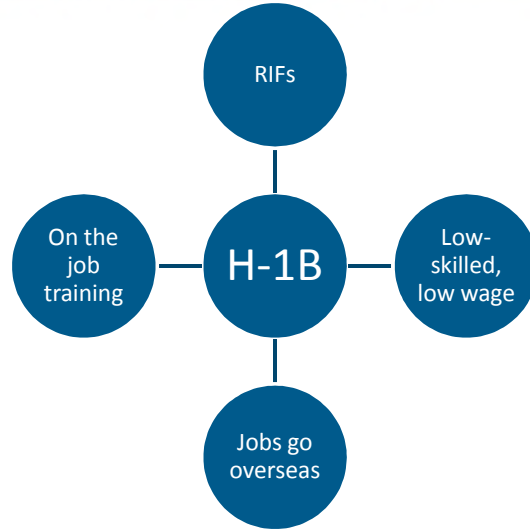
- In today’s “America First” environment, no industry sector is under higher scrutiny from the immigration agencies than these suppliers



Historical views on H-1B

"...H-1B, was never meant to be an avenue for cheaper labor, and it was certainly never intended to displace qualified American workers. But some companies are exploiting the program's loopholes to fuel a demand for cheaper, often less-experienced labor at job sites in the United States. Others use the program to train foreign workers for U.S.-based jobs only to ship the workers and, ultimately, the jobs themselves overseas."

Senator Chuck Grassley, February 12, 2017



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February 22, 2018 USCIS Policy Memo

Contracts and Itineraries

- Actual contracts, work orders, and itineraries preferred
- **USCIS Requests for Evidence focused on this issue, USCIS may deny or cut visa period short if proof is not clear**

Proof of Control Over the Employee

- Direct supervision, control, and oversight by sponsoring company
- **USCIS fraud unit site visits to police and question customer and workers directly, with ICE investigations a potential consequence**

Direct Relevancy of University Degree

- Staff augmentation context may not warrant university degree
- **Surge in USCIS Requests for Evidence and denials based on degree nexus**

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A Growing Problem with Forgery and Fraud



In this administration, immigration fraud could make the career of an ambitious AUSA

Some Common Examples

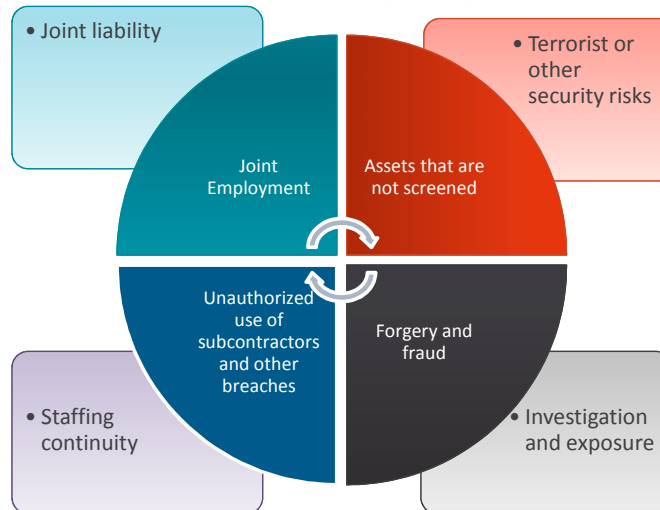
US consulate flags problem	State Department (Kentucky) emails customer	Customer reviews and asks its supplier for an explanation	Supplier confirms forgery	Results
US consulate in India refers questionable supporting documentation to the Kentucky center of the State Department	State emails customer to confirm legitimacy of customer documents submitted with visa application by supplier candidate	Customer reviews the documents, but does not recognize the signature and detects alteration of logo	“We thought it was easier to alter your letterhead so we could get staff to you”	Vendor fired, response to government needed GC and outside counsel review, and customer has to address staffing continuity

Some Common Examples

US consulate flags problem	State Department (Kentucky) emails customer	Customer discovers manager signed	Manager response	Results
US consulate in India refers questionable supporting documentation to the Kentucky Center of State Department	State emails customer to confirm legitimacy of supporting documents submitted by H-1B visa applicants	Customer discovers one of its managers signed the supporting letter, but never planned to retain the H-1B visa applicant	"I was helping out one of our prior vendors, because my cousin ran the company and needed my help, but don't worry, we won't be using this vendor"	Manager fired, internal audit launched, GC and IA engage in communication with government, all with outside counsel help

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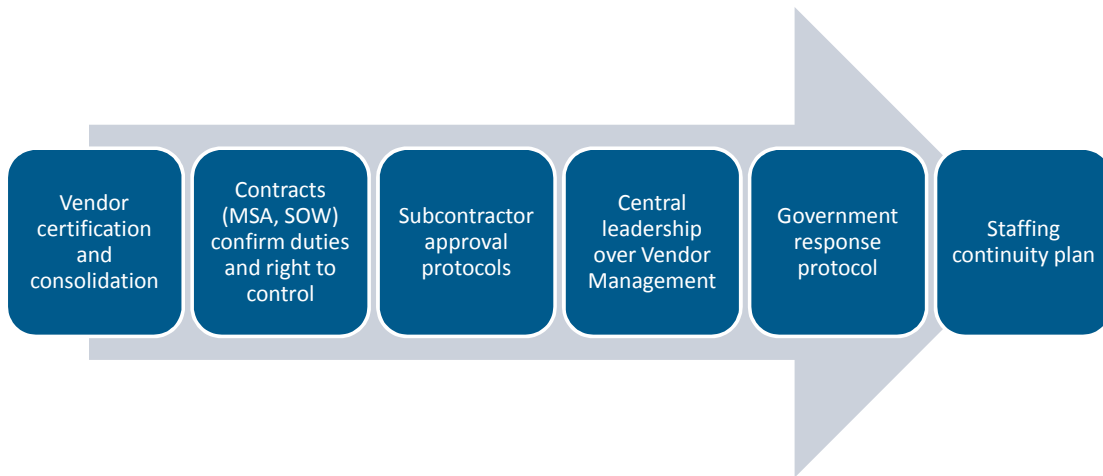
The Risk for Customers



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A Well-Planned Defense Is Essential



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Checklist for Customers

- Appoint **supplier compliance leadership**, with escalation to Legal and HR
- Set up a **government response protocol**, and keep an audit trail
- Document **compliance standards, controls, and reporting**
- **Educate business leaders** so they don't bypass the compliance leadership
- Require suppliers to regularly provide **certification of compliance**
- Ensure **MSAs and SOWs** affirm supplier control over assets and immigration compliance
- Create a **template set of documents** for suppliers to use and a **central point of contact**

Types of documents suppliers will need:

Contracts, SOWs, work orders, or equivalent

Technical documentation, milestone tables, marketing analysis, cost-benefit analysis, or brochures

Contractual agreements between the direct supplier and all other indirect suppliers in the staffing chain

Proof of actual skills/duties required by customer and how supplier asset(s) will fulfill the role

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What Can Suppliers Do

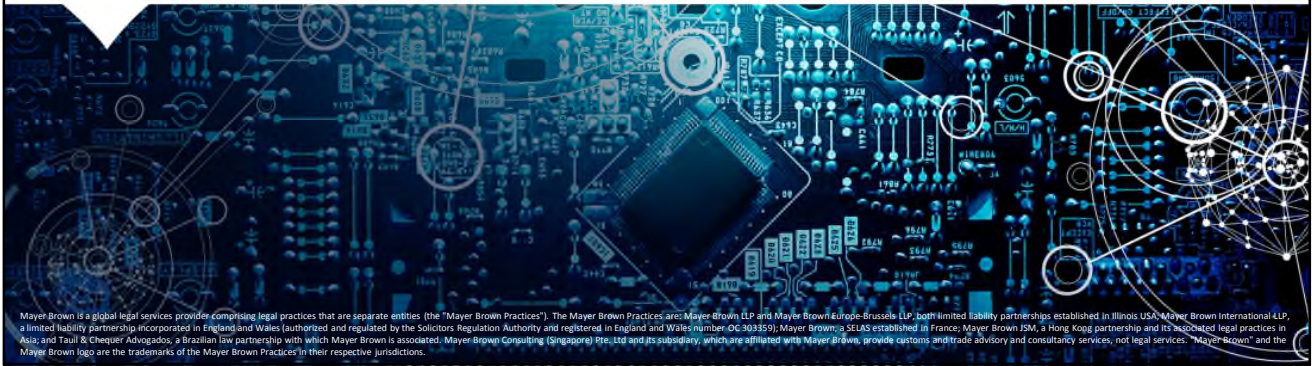
1. Visa eligibility
 2. Subcontractor compliance
 3. Forgery and fraud
 4. STEM graduates (F-1 students on OPT)
1. Standards and controls, ongoing monitoring and audit
 2. Subcontractor approval process, with penalties for non-compliance
 3. Central point of contact for visa preparation, agreed-upon documents, transparent reporting to customer
 4. Until USCIS clarifies posture, do not send STEM OPT students to client sites

QUESTIONS?

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