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## Entering USA, what to expect?

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Submitted by Rajiv S. Khanna on Jan 26th 2010

#### **What kind of problems can employment-based nonimmigrants (H-1, L-1, E-1, E-2, E-3, TN) face during reentry?**

I think this question is most relevant for H-1 holders, but other employment-based nonimmigrants may also note the general principles here.

For the last two weeks I had been hearing rumors of H-1B employees being 'deported' from the airport when they tried to enter (or reenter) USA. I did not believe there was much to these rumors until, during the employers conference call a week ago I spoke with an employer with whose employee this had happened at an international airport in NY/NJ. I have gone over the details of what transpired.

The employee was asked who was his employer and where was he working. As soon as the CBP officer found out that the employee was working at a site other than the employer's he went into the entire employment history of the employee. The CBP officer then made a quick call to the employer as well. Finally, he gave the employee a choice: "either we formally decline you entry, then you cannot come back for 5 years, or you withdraw your application for admission and leave USA." So this poor guy took a 20-hour flight back.

I am incensed for two reasons. One, the issue of what an "employer" is under common law is so complicated that IRS has been struggling with it or several decades. A CBP employee with no legal training makes a snap judgment distributing misery without a thought given to the rule of law. Second, if there were any doubts about the veracity of the case, the proper recourse would have been deferred inspection where an employee is allowed to enter USA, but they have to come back with documents, and perhaps their lawyer to explain the case.

I have talked with three H-1B holders who were put in deferred inspection. I can live with that. The January 8th Memo of USCIS will end up in court whether through us or some other law firm. This memo has made a mockery of the legal process. I will explain more once I have decided on a detailed course of action. Until then, I want every employee entering USA to do the following things:

1. Remember, not everyone is being stopped and turned back. I have spoken with many, many recent entrants, who had no problem.
2. Make sure you have contact numbers of your employer and your end-client, if you are deployed at a third-party site.
3. Let your employer/end-client know when you will be entering USA.
4. Remember also, I do not believe you can carry any documentation over and above what you would normally carry.
5. Advance parole entries are relatively safer.
6. Dependents traveling alone are not likely to be bothered.

Feel free to post your questions here ONLY related to this topic please. I will try my best to answer. I had stopped answering while we were doing some changes on site. But this issue is important. I want to make sure we address all aspects as best as we can.

### **Nonimmigrant Visas:**

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