



Extreme Consistency: How Employers Can Help Prepare for Extreme Vetting

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This past week, we saw two individuals refused entry to the United States. One was an H-1B computer scientist. His visa petition was approved over a year ago, and that led to questions about whether the job was still available. Customs and Border Protection (CBP) called the employer contact listed on his H-1B petition, who did not remember the details or know that the individual was flying that day. He was sent back to his home country, and received a five year ban to the United States.

The other was a Ph.D. engineering student from China. She had received a student visa at a U.S. consulate, after a long security delay. However, CBP questioned her about her work and found that the resume she submitted at the consulate was shortened from a longer version she had on her laptop. She was not given a bar to the United States, but was returned to China to apply for a new student visa.

Employers sponsoring H-1B employees can learn from visa processing situations that do not go well. Though these incidents may increase under the new Trump administration based on his previous “extreme vetting” executive orders, consistency has always been vital to success in the immigration applications. The U.S. government has more access to more information today than ever before through technological advances and agency data sharing. And approval by one agency does not guarantee a pass from others.

Initiatives such as TECS ([Traveler Enforcement Compliance System](#)) are being well-funded and used. Site visits will continue to expand, searches of electronic devices will happen more often, and internet sources will be consulted more regularly (perhaps with AI tools). CBP inspections at airports and borders are a volume business - if a situation requires deeper investigation, an officer understandably would send someone back to a U.S. consulate.

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Ralph Waldo Emerson [once wrote](#): "A foolish consistency is the hobgoblin of little minds, adored by little statesmen and philosophers and divines." But extreme purposeful consistency is a powerful tactic.

If a scientist left certain publications off a resume, officers may ask if the consulate really had all the information needed to initiate a security check. Was one of those publications involving a sensitive technology, funded by a military organization, or co-authored with someone of concern?

If the employer of an H-1B worker cannot articulate the start date, plan for onboarding etc., is it a bona fide job opportunity?

Last week, two of our attorneys discussed these cases with a CBP officer, his supervisor, and ultimately the supervisor's supervisor. We learned that CBP has new instructions to vigorously scrutinize applicants for admission to the United States. We can assume that US consular officers and US Citizenship and Immigration Service (USCIS) officers are under the same instructions. So, the employer's representative on the petition, and the employee must be on the same page ("sing the same song") when called upon to do so. Being consistent throughout immigration processes can make all the difference.

These situations have taken place with immigration officers for years: the asylum applicant who mistakenly gives the wrong year of high school graduation, or the spouse of a U.S. citizen who says the incorrect birthday of her new stepchild. Those inconsistencies can lead to further scrutiny. To help avoid situations this, employers must engage in "Extreme consistency," including:

1. Make sure documents submitted to U.S. government agencies are the same as documents used for other purposes. An employee's submitted resume should match other resumes, the LinkedIn profile, professional biographies, etc. If not, be proactive in noting that. In the example above, the student said that she condensed her resume to meet consular file size requirements. If that's true, have your employee put a big note on the shorter resume uploaded to the consular file saying "reduced to fit file size limited - full CV available on request." Be proactive about an employee's potential inconsistencies.

2. Agree on details and make sure both you and your employee have the H1-B summary on hand while the employee is traveling for their visa processing. The H-1B support letter tells the story of the petition - what the company does, what the job is, and how the individual qualifies. That should be reviewed by the employer and employee, and the details confirmed. There should be a feedback loop if something changes. Moreover, the employer and employee should have a copy of the support letter handy to review before a site visit, consular appointment, or inspection at an airport. Maintain constant communication with employees about any updates.



3. Be prepared for a quiz. Both the employee and the employer – in particular the employer’s representative who signs off on the underlying work visa paperwork and could get an unannounced phone call – should be prepared to respond to questions from CBP officers regarding the details of the position in the United States in as much detail as possible. We refer to this as the immigration “Pop Quiz,” and are seeing it in particular recently for Canadians. Employers and employees should know that they may be quizzed on the substance of a petition or application. Make sure to prepare by knowing the details of an employee’s position and visa paperwork.

It is hard to prepare for extreme vetting, since it may play out in different ways with different officers. But, employers can prepare through extreme consistency by being proactive about an employee’s potential inconsistencies, constantly communicating with employees, and being prepared for quizzes.

