



## Labor & Employment ADVISORY ■

**NOVEMBER 19, 2013**

### Largest-Ever Settlement in an Immigration Case Is a Warning to Outsourcing Companies to Revisit Policies and Procedures for Securing Immigrant Visas

---

In the largest civil settlement ever reached in an immigration case, Infosys Corporation has agreed to pay \$34 million and submit to enhanced corporate compliance measures in response to allegations of systemic visa and immigration process abuse. Given that an enormous number of businesses in the United States make use of independent contractor services, this settlement should be on the radar of any company that outsources work that requires securing H-1B or B-1 visas, whether as an end-user or an independent contractor.

Infosys is an Indian company focused on technology and consulting that operates in 30 countries, including 17 cities within the United States. Its office in Plano, Texas, is responsible for managing its immigration procedures to bring foreign workers into the United States under the H-1B and B-1 visa programs. Allegedly, Infosys violated the visa immigration laws in several ways when it brought foreign nationals to the United States to serve U.S. clients. First, the government alleged that workers on H-1B visas did not perform services in the geographic area for which the visas were approved. Second, Infosys allegedly used the B-1 “temporary visitor” visa to bring India-based employees to the United States, not for meetings and consultations, but to fill skilled labor positions that should have gone to either U.S. citizens or legitimate H-1B visa holders. In addition, the government alleged that Infosys issued travel letters and interview instructions for the B-1 visas that were inaccurate, and included instructions to avoid certain terminology in order to deceive the consular and immigration officers about the nature of the work they were planning to do in the United States.

Because the case is settling, fewer facts will become public to let employers know the specific grounds for the government’s position. Regardless of the specifics, however, the Infosys case should raise a cautionary flag for any company whose outsourcing work involves immigration visa programs. Whether one is a contracting company or an end-user, it is wise to consult with counsel to ensure that contracts are properly drafted, and that internal policies and procedures are designed both to prevent abuse or misunderstanding, and to quickly alert contractors and end-users if such issues do arise. An annual review of immigration policies and procedures is thus a healthy and recommended practice, which will help to reduce the likelihood of allegations, bad press or fines.

This advisory is published by Alston & Bird LLP to provide a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered attorney advertising under court rules of certain jurisdictions.

Moreover, while in this case, the third-party contractor (Infosys) was the target, in many other cases, it is the end-user of the contractor that is the subject of the government's investigation. Indeed, investigations of high-profile end-users, as well as lesser-profile entities, are occurring throughout the United States. U.S. Department of State staff at nearly all of the U.S. embassies and consulates throughout the world has been trained to ask certain questions of contractors to seek out inconsistencies and/or potential mistakes. Both contractors and end-users must be wary, as this increased level of monitoring and fact-seeking is leading to a concurrent increase in government investigations. As such, over the last two years, Alston & Bird has been working with clients and the visa fraud investigatory teams at a number of U.S. embassies around the world to ensure that clients have the necessary knowledge and understanding to comply fully with U.S. immigration laws.

Finally, even for those employers in the United States that abide by all provisions of the non-immigrant visa rules, it is unfortunately likely that the Infosys case will lead Congress to consider increasing fees or other regulations attached to H-1B visas. Alston & Bird will continue to monitor any reaction by Congress to these developments and be available to provide any guidance that might be needed on this important area of law.

The Department of Justice press release on the settlement can be found [here](#).

If you would like to receive future *Labor & Employment Advisories* electronically, please forward your contact information to [labor.advisory@alston.com](mailto:labor.advisory@alston.com). Be sure to put "subscribe" in the subject line.

If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

**ATLANTA**

Shama Barday  
404.881.7437  
shama.barday@alston.com

Alexandra Garrison Barnett  
404.881.7190  
alex.barnett@alston.com

Ashley D. Brightwell  
404.881.7767  
ashley.brightwell@alston.com

Lisa H. Cassilly  
404.881.7945  
lisa.cassilly@alston.com

Brett E. Coburn  
404.881.4990  
brett.coburn@alston.com

Clare H. Draper IV  
404.881.7191  
clare.draper@alston.com

R. Steve Ensor  
404.881.7448  
steve.ensor@alston.com

Kimberly L. Fogarty  
404.881.4502  
kim.fogarty@alston.com

Kandis Wood Jackson  
404.881.7969  
kandis.jackson@alston.com

Molly M. Jones  
404.881.4993  
molly.jones@alston.com

J. Thomas Kilpatrick  
404.881.7819  
tom.kilpatrick@alston.com

Christopher C. Marquardt  
404.881.7827  
chris.marquardt@alston.com

Wes R. McCart  
404.881.7653  
wes.mccart@alston.com

Charles H. Morgan  
404.881.7187  
charlie.morgan@alston.com

Edmund M. Morrell  
404.881.7953  
edmund.morrell@alston.com

Glenn G. Patton  
404.881.7785  
glenn.patton@alston.com

Robert P. Riordan  
404.881.7682  
bob.riordan@alston.com

Eileen M. Scofield  
404.881.7375  
eileen.scofield@alston.com

Alicia P. Starkman  
404.881.4994  
alicia.starkman@alston.com

Brooks Suttle  
404.881.7551  
brooks.suttle@alston.com

Kristen Willoughby  
404.881.4284  
kristen.willoughby@alston.com

**CHARLOTTE**

Susan B. Molony  
704.444.1121  
susan.molony@alston.com

**DALLAS**

Jon G. Shepherd  
214.922.3418  
jon.shepherd@alston.com

**NEW YORK**

Erin L. Connolly  
212.210.9461  
erin.connolly@alston.com

**LOS ANGELES**

Lindsay G. Carlson  
213.576.1038  
lindsay.carlson@alston.com

Martha S. Doty  
213.576.1145  
martha.doty@alston.com

James R. Evans, Jr.  
213.576.1146  
james.evans@alston.com

Jesse M. Jauregui  
213.576.1157  
jesse.jauregui@alston.com

Deborah Yoon Jones  
213.576.1084  
debbie.jones@alston.com

Sayaka Karitani  
213.576.1026  
sayaka.karitani@alston.com

Ryan T. McCoy  
213.576.1062  
ryan.mccoy@alston.com

Claire Lucy Readhead  
213.576.1181  
claire.readhead@alston.com

Nicole C. Rivas  
213.576.1021  
nicole.rivas@alston.com

Casondra K. Ruga  
213.576.1133  
casondra.ruga@alston.com

**WASHINGTON, D.C.**

Emily Seymour Costin  
202.239.3695  
emily.costin@alston.com

Charles A. Gartland II  
202.239.3978  
chuck.gartland@alston.com

Jonathan G. Rose  
202.239.3693  
jonathan.rose@alston.com

**ALSTON & BIRD** LLP

WWW.ALSTON.COM

© ALSTON &amp; BIRD LLP 2013

ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777

BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719

CHARLOTTE: Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111

DALLAS: 2828 North Harwood Street ■ 18th Floor ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899

LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213-576-1100

NEW YORK: 90 Park Avenue ■ 12th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444

RESEARCH TRIANGLE: 4721 Emperor Blvd. ■ Suite 400 ■ Durham, North Carolina, USA, 27703-85802 ■ 919.862.2200 ■ Fax: 919.862.2260

SILICON VALLEY: 275 Middlefield Road ■ Suite 150 ■ Menlo Park, California, USA, 94025-4004 ■ 650-838-2000 ■ Fax: 650.838.2001

WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.756.3300 ■ Fax: 202.756.3333

VENTURA COUNTY: 2801 Townsgate Road ■ Suite 215 ■ Westlake Village, California, USA, 91361 ■ 805.497.9474 ■ Fax: 805.497.8804