

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Hon. Kevin McNulty
v. : Crim. No. 16-
SUNILA DUTT : 18 U.S.C. § 371

I N F O R M A T I O N

The defendant having waived in open court prosecution by indictment, the United States Attorney for the District of New Jersey charges:

1. At all times relevant to this Information:

a. Company 1 was an information technology (“IT”) staffing and consulting company with its principal office in New Jersey.

b. Company 2 was an IT staffing and consulting company with its principal office in Virginia.

c. Defendant SUNILA DUTT, a resident of Ashburn, Virginia, was admitted to practice law in New Jersey, and was employed as an immigration attorney for Company 1 and Company 2 (“the Companies”).

d. S.S., a co-conspirator not named as a defendant herein, was a resident of New York, New York, and an owner of the Companies.

e. H.P., a co-conspirator not named as a defendant herein, was a resident of Jersey City, New Jersey and was the Human Resources Manager for the Companies.

f. S.M., a co-conspirator not named as a defendant herein, was a resident of Jersey City, New Jersey and was the Head of Finance for Company 1.

g. H.K., a co-conspirator not named as a defendant herein, was a resident of India and was employed by the Companies as the U.S. Immigration Manager.

h. Individual 1 was a foreign national who resided in New Jersey and Maryland.

i. The United States Department of Homeland Security, United States Citizenship and Immigration Services (“USCIS”) was an agency of the executive branch of the United States that was charged with, among other duties, the oversight of immigration into the United States, and was empowered to approve and process applications for residency within the United States.

j. The United States Department of Labor (“USDOL”) was an agency of the executive branch of the United States that was charged with, among other duties, enforcement of the requirements of labor regulations, including immigration-related employment standards and worker protections.

The H-1B Visa Program

2. The H-1B visa program allowed businesses in the United States, such as the Companies, to temporarily employ foreign workers with specialized or technical expertise in a particular field such as accounting, engineering, or computer science.

3. Before hiring a foreign worker under the H-1B visa program, the employer was required to first obtain approval from the USDOL by filing a Labor Condition Application (“LCA”). In the LCA, the employer represented that it intended to employ a specified number of foreign workers for specific positions for a particular period of time. The employer was also required to make truthful representations regarding the foreign worker’s rate of pay, work location, and whether the position was full-time. In addition, the employer agreed to pay the foreign worker for non-productive time—that is, an employer who sponsored a foreign worker was required to pay wages to the foreign worker, even if he or she was not actively working for certain periods of time.

4. The employer was required to further attest that the representations were true and accurate, and the LCA provided a warning that false representations could lead to criminal prosecution. Except in limited circumstances, the LCA was required to be filed electronically. Upon filing, the employer was required by regulation to print and sign a copy. The employer was further required to maintain the signed copy in its files.

5. After the USDOL approved the LCA, which approvals were primarily based on the employer’s representations in the LCA, the employer was required to then obtain permission from USCIS to hire a specific individual. This approval was obtained by filing a Petition for a Nonimmigrant Worker, Form I-129, and paying certain fees. In this petition, the employer was required to truthfully provide biographical information regarding the specific foreign worker to be employed. The employer also provided much of the same

information that was on the LCA, including job title, the specific type of position for which the worker was hired, work location, pay rate, dates of intended employment, and whether the position was full-time. The petition was signed under penalty of perjury, and the employer was required to certify that the information submitted was true and correct.

6. Once USCIS approved this petition, the foreign worker could apply for a visa at a United States embassy or consulate overseas. If the foreign worker was already lawfully in the United States, then the foreign worker's immigration status could be adjusted without the worker having to leave the country.

7. Once a visa was issued or a change of status occurred, the foreign worker possessed lawful non-immigrant status and could reside in the United States and work for the employer until the status expired or his or her government-approved employment with the company ended, whichever occurred first. The foreign worker could not immigrate, or permanently reside, in the United States under this type of status.

8. For a foreign worker entering the United States from abroad, the employer was required to start paying the foreign worker once he or she entered into employment or within 30 days of admission to the United States, whichever was sooner.

9. If the foreign worker was dismissed before the H-1B status expired, the employer was required to send notice to USCIS and offer to pay for the foreign worker to return to his or her native country.

The Conspiracy

10. From at least as early as in or about 2010 through in or about April 2015, in Hudson County, in the District of New Jersey, and elsewhere, defendant

SUNILA DUTT

knowingly and intentionally conspired and agreed with co-conspirator S.S., co-conspirator H.P., co-conspirator S.M., co-conspirator H.K., and others, to:

- (1) present applications and other documents required by immigration laws and regulations prescribed thereunder which contained materially false statements and which failed to contain any reasonable basis in law and fact, contrary to Title 18, United States Code, Section 1546(a); and
- (2) alter, conceal, cover up, falsify, and make false entries in records, documents, and tangible objects with the intent to impede, obstruct, and influence an investigation and the proper administration of any matter within the jurisdiction of an agency and department of the United States, namely, the United States Department of Homeland Security, United States Citizenship and Immigration Services, contrary to Title 18, United States Code, Section 1519.

Objects of the Conspiracy

11. The objects of the conspiracy were to: (a) fraudulently obtain H-1B visas for foreign workers; and (b) obstruct a government investigation into such fraud.

Overview of the Scheme

12. Defendant DUTT and her co-conspirators falsely represented, in the Companies' paperwork submitted to USCIS, that foreign workers had full-time "in-house" positions, and would be paid an annual salary, as required to secure the H-1B visas. Contrary to these representations and in violation of the H-1B visa program, the Companies paid the foreign workers only when the foreign workers were placed at a third-party client, or a company that entered into a contract for services with the Companies.

13. In some instances, false payroll records were generated to create the appearance, and lull the United States Government into believing, that the foreign workers were being paid full-time wages and to unlawfully maintain their status. In fact, some of those foreign workers were advised to pay the Companies in cash the approximate amount they were supposed to be paid by the Companies in order to generate the false payroll records. The foreign workers were told that these payments to create the false payroll records would be the only way for them to maintain their H-1B visas.

14. "Benching" is defined by USDOL as "workers who are in nonproductive status due to a decision by the employer, such as lack of work."

The Companies were actively violating USDOL regulations in not paying their benched workers.

15. When USCIS conducted an inquiry regarding Individual 1's status, in or about January 2015, Defendant DUTT and her co-conspirators engaged in a scheme to obstruct that inquiry by: instructing Individual 1 to lie to an individual believed to be a USCIS employee regarding his/her residency; providing fictitious documentation as to that residency; and providing fictitious payroll information to Individual 1 to present to an individual believed to be a USCIS employee upon Individual 1's cash payment to Company 2.

16. When USDOL conducted an audit of the Companies beginning in or about 2014, Defendant DUTT's co-conspirators engaged in a scheme to obstruct that audit by making it appear that the benched workers were on leave through the generation of fictitious leave slips.

Manner and Means of the Conspiracy

17. It was part of the conspiracy that Defendant DUTT and her co-conspirators submitted or caused to be submitted LCAs to the USDOL, falsely representing that the Companies had a temporary need for full-time workers and that it would pay the foreign workers for all hours worked and for any non-productive time.

18. It was further part of the conspiracy that Defendant DUTT and her co-conspirators submitted or caused to be submitted one or more filings to USCIS, falsely representing that the Companies would employ foreign workers in full-time positions.

19. It was further part of the conspiracy that Defendant DUTT's co-conspirators did not employ these foreign workers on a full-time basis, but rather they "benched" multiple foreign workers following approval of H-1B visas by USCIS.

20. It was further part of the conspiracy that Defendant DUTT's co-conspirators unlawfully failed to pay multiple foreign workers, contrary to their representations to USCIS.

21. It was further part of the conspiracy that Defendant DUTT and her co-conspirators encouraged foreign workers to remain in the United States after the invalidation of their H-1B visas through the benching process by requiring them to find work for themselves and/or requiring the foreign workers to pay cash for the creation of false payrolls to maintain their H-1B visa statuses.

22. It was further part of the conspiracy that Defendant DUTT and her co-conspirators obstructed a USCIS investigation to cover up their H-1B visa scheme, to avoid detection, and to allow their scheme to continue. Defendant DUTT's co-conspirators also submitted fictitious leave slips of foreign workers to USDOL for the time periods that they were benched to conceal the benching scheme.

Overt Acts

23. In furtherance of the conspiracy and in order to effect the objects thereof, Defendant DUTT and her co-conspirators committed and caused to be committed, the following acts in the District of New Jersey and elsewhere:

a. On or about January 3, 2012, co-conspirator S.S. sent an e-mail to “info @scmdata.com” with the subject heading: “Cash to Collec[sic].” Attached to the e-mail was a spreadsheet that listed names of benched workers along with dollar amounts next to the names that ranged from \$1,500 to \$3,000, representing the amount of money the individuals were required to pay to perpetuate the payroll scheme.

b. On or about October 16, 2014, Company 2, through Defendant DUTT, and at the overall direction of co-conspirator S.S., submitted an I-129 Petition (“Petition”) to USCIS to extend the H-1B visa status of Individual 1. In or before January 2015, Company 2 stopped paying Individual 1.

c. On or about January 30, 2015, Defendant DUTT told Individual 1 to lie to an individual (whom Defendant DUTT believed to be a USCIS employee, but who was an undercover law enforcement agent) by falsely stating that Individual 1 had been living with a friend in Virginia or at a guesthouse controlled by Company 2.

d. On or about February 2, 2015, Defendant DUTT sent an e-mail to Individual 1 containing false information to be given to an individual

(whom Defendant DUTT believed to be a USCIS employee, but who was an undercover law enforcement agent), as fictitious proof that Individual 1 resided at Company 2's guesthouse in January 2015.

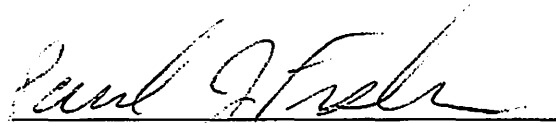
e. On or about February 2, 2015, co-conspirator H.K. instructed Individual 1 to pay Company 2 in cash so that Company 2 could issue a check to Individual 1 and falsely claim that Company 2 paid Individual 1 wages in January 2015.

f. On or about February 20, 2015, co-conspirator H.K. explained to Individual 1 the importance of having paystubs and employment status because USCIS would inquire about both.

g. On or about February 20, 2015, co-conspirator S.M. gave Individual 1 a paycheck drawn on the account of Company 2 in the net amount of \$2,339.42, and Individual 1 gave S.M. \$3,673.00 in cash.

h. In or about February 2015 and March 2015, in response to a USDOL audit, the Companies provided fabricated leave slips of foreign workers to the USDOL for the time periods that the foreign workers were benched to conceal the benching scheme and to conceal the fact that the foreign workers were not paid during those time periods as required by federal law.

All in violation of Title 18, United States Code, Section 371.

A handwritten signature in cursive script, appearing to read "Paul J. Fishman", written over a horizontal line.

PAUL J. FISHMAN
UNITED STATES ATTORNEY

CASE NUMBER: _____

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