

Export Controls Action by the U.S. Department of State Relating to H-1B Visa Holder



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Between December 2009 and June 2010, a Chinese national and H-1B visa holder working at Microwave Engineering Corporation, a U.S. company located in Massachusetts, (Microwave) was provided with technical data which otherwise would have required a license from the U.S. State Department's Directorate of Defense Trade Controls (DDTC). Specifically, the technical data to which the Chinese national employee was provided access is a defense article that is controlled for export from the United States under the International Traffic in Arms Regulations (ITAR). DDTC is responsible for licensing exports and reexports of defense articles, defense services, and technical data. Providing a non-U.S. person with access to ITAR-controlled technical data, even if the non-U.S. person is located in the United States, is deemed an export under the U.S. export laws and regulations (deemed export), and generally requires DDTC authorization.

During the time period noted above, the president of Microwave and other individuals repeatedly provided the H-1B visa holder with ITAR-controlled technical data, activity which would generally require a license under the ITAR. This particular instance is further compounded because the H-1B visa holder is a Chinese national, and the U.S. maintains an arms embargo with the People's Republic of China. Further, during the time in which the unauthorized exports occurred, Microwave was working under a Technology Control Plan (TCP) approved by the Defense Security Service which stated that no foreign person could be provided

access to classified material or unclassified information that involved the disclosure of export-controlled technical data.

Microwave self-disclosed the violation to DDTC in early 2012, which led to the State Department charging Microwave with a single violation of the Arms Export Control Act (AECA) and the ITAR.

On June 22, 2016, the State Department announced it had entered into Consent Agreement with Microwave whereby Microwave agreed to pay a \$100,000 civil penalty. In assessing the penalty, the State Department took into account the violation itself as well certain inadequacies with Microwave's export compliance program.

As mitigating factors, DDTC took into account Microwave's submission of a voluntary self-disclosure, cooperation with the DDTC, and implementation of extensive remedial measures. In the Consent Agreement, DDTC specifically noted that these mitigating factors directly contributed to Microwave not being subject to more harsh penalties, such as debarment.

DDTC's response to Microwave's violation highlights the importance of a rigorous export compliance program when dealing with export-controlled items, services and technical data, especially when employing foreign nationals. Activity such as merely discussing certain technical information with a foreign national may be prohibited under the various U.S. export control laws and regulations.

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