Recent Changes To The H1B Visa Program And What Is Coming In 2019

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Indian passport with US currency notes and American flag in the background, symbolizing the effort of Indian workers seeking American H-1B visas to immigrate to America and earn American currency. Indian and Chinese workers are the ones most involved in the H1B visa program and affected by delays related to transitioning to green cards.Getty

What is the status of the current U.S. H1B visa program and what can we look forward to in the new year?

Foreigners view the H1B visa as the golden gate to furthering their career, starting a family and building a new life in America. The visa is particularly popular because you can also transition from it to a green card. Many applicants are international students trying to transition from F-1 student status to H1B work visas on route to a green card. Each year, the U.S. Citizenship and Immigration Service (USCIS) opens a total of 85,000 such visas — 65,000 for those applicants who have a bachelor's degree or equivalent, and 20,000 for those with a master's degree or higher. The USCIS begins accepting applications on the first business day of April each year. Within the first week, the visa allocation is exhausted. This year is the sixteenth year in a row that the H1B program has experienced such an overload of applicants. In the first week of this fiscal year, nearly 200,000 petitions were received. To cope with this excessive demand for the work visas, the USCIS has employed a lottery to choose successful candidates.

It is worth considering which individuals have passed through this H1B visa gateway and what they have contributed to American society.

Nearly half of Fortune 500 companies were founded by first or second-generation immigrants and no doubt, many were former H1-B visa holders. According to a recent report, U.S. tech giants like Amazon, Microsoft, Google and Intel are among the top 10 employers of approved H-1B applicants. Amazon itself, was the second highest guarantor of H-1B visas in 2017 with 2,515 such visas, sharply up from the previous year. U.S. educators have established without doubt that the entry of foreign-born scientists and engineers remains an unmatched source of "strength and

vitality" for the country's tech industry. A loss of foreign employees in the tech sector could result in considerable competition from overseas companies because graduates from American colleges would help foreign companies compete against U.S. firms.

Given these circumstances, one would expect the American government to support the H1-B visa program. Instead, it has introduced a number of policies that appear to impede its effectiveness.

For one thing, securing a work visa for foreign nationals accomplished in the math and engineering fields fit for high tech has become more difficult under the "Buy America, Hire American" executive order President Trump signed in April of last year. The policy directs the Department of Homeland Security to issue H-1B visas to only the most-skilled foreigners or highest-paid beneficiaries. According to new data acquired by the National Foundation for American Policy (NFAP), the USCIS has begun to increase H-1B visa denials and the number of Requests for Evidence issued to H-1B visa applicants. According to an NFAP source, "Employers report the time lost due to the increase in denials and Requests for Evidence has cost millions of dollars in project delays and contract penalties, while aiding competitors that operate exclusively outside the United States."

U.S. President Donald Trump, center, displays a signed executive order during an event at Snap-On Tools Corp. headquarters in Kenosha, Wisconsin, U.S., on Tuesday, April 18, 2017. Trump signed executive orders pushing for U.S.

government to "Buy American" products, such as iron, steel and manufactured goods, when enforcing regulations and rules. Photographer: Daniel Acker/Bloomberg© 2017 Bloomberg Finance LP

In a second initiative in August, Trump immigration officials announced they would expand the suspension of premium processing for H-1B petitions. The stipulations included that no H-1B petition filed on behalf of an employee changing employers or location with the same employer are eligible to be filed with premium processing, which business professionals have relied upon in previous years. The result has been a slow down in processing. The suspension appears to be in effect only until February of 2019 however. We shall see if it will continue thereafter.

Then on November 19th, 2018 the U.S. Department of Labor began requiring that employers of H-1B applicants use a new Labor Condition Application form (LCA), ETA 9035. Critics claim the new form is designed to elicit internal information from employers and increase government pressure upon H-1B employed companies, with the intended possibility of negative attention from the press. The new labor conditions could deter tech companies from hiring skilled graduates abroad lest they fork out too much in annual wages, and could compel them to "hire American" in line with Trump's new order. Alternatively, if companies cannot source adequate American-born employees, the new conditions may result in selected foreign employees being appointed at much higher salaries. The true effects of this new LCA form have yet to be seen.

From the perspective of both foreigners and international students, the uncertainty of such U.S. policies and denials, can be overwhelming. These U.S. restrictions impact Indian and Chinese nationals most because they account for the vast majority of these visas. For example, they accounted for 82 per cent of H-1B visas in 2016. Indian workers specifically are known to specialize in IT-related jobs, helping fill the gaps in the tech industry.

However, not all U.S. initiatives regarding H1B visas have necessarily been bad. A change in the way the USCIS conducts its lottery may benefit some H1B applicants. In particular, international students graduating from US colleges with master's degrees (and other advanced degrees) may soon have a much better chance of receiving an H-1B visa in the United States. The proposed new policy changes the rules of the lottery system used to determine who will receive the H-1B visa as follows:

Aerial view of Silicon Valley towns (Palo Alto, Menlo Park, Redwood City); east bay and Mt Diablo in the background; San Francisco bay area, California. The IT industry here makes use of a great many H1B visas.Getty

1. USCIS will reverse the order by which USCIS selects H-1B petitions under the H-1B cap and the advanced degree exemption. This will increase the number of selected H-1B beneficiaries with a master's degree or higher from a U.S. institution of higher education up to 16% (or 5,340 workers).

Currently, the advanced degree exemption is selected prior to the H-1B cap. The proposed rule would reverse the selection order and count all registrations or petitions towards the number projected as needed to reach the H-1B cap first. Once a sufficient number of registrations or petitions have been selected for the H-1B cap, USCIS would then select registrations or petitions towards the advanced degree exemption.

2. USCIS will require petitioners seeking to file H-1B cap-subject petitions to first electronically register with USCIS. The employers will not need to send in the H-1B petitions and supporting documentation before the cap selection process. This will ease the amount of work required to apply for the H1B visas.

USCIS expects that shifting to electronic registration would reduce overall costs for petitioners and create a more efficient and cost-effective H-1B cap petition process for USCIS.

The time of implementation of this new rule is not yet set. The American Immigration Lawyers Association has taken the position that it should be delayed for one year. More news is expected about this after the time for comments expires in early January 2019.

As the political landscape in Washington changes following the results of the recent 2018 election, hopefully more positive changes will be introduced to increase the effectiveness of the H1B visa program. Meanwhile the American economy must struggle to make the most of a program that could use a lot of improvements.