



(Representative image)

MUMBAI: US Citizenship and Immigration Services (USCIS), the immigration agency of the Trump administration, has on July 17, rescinded two controversial policy memos, that targeted H-B visa applications filed by IT service and consulting companies.

While clearly articulating that officials adjudicating H-1B visa applications should not apply the rescinded policy memos, the immigration agency has issued fresh guidance.

These steps follow the favourable summary court order won by ITServe Alliance, a large a large coalition of IT service companies in the US, run mainly by Indian-Americans. TOI had front paged coverage of this judgement, in its edition of March 11. Subsequently, USCIS had entered into a settlement agreement with ITServe on May 20.

USCIS, in its new guidance (introduced by a new policy memo dated July 17), states that it will abstain from the application of the itinerary requirement. The now rescinded February 2018 policy memo required IT service companies, that typically place their employees at third-party customer sites, to file detailed itineraries of their H-1B employees as also customer contracts.

As regards, submission of contacts, USCIS adds that a sponsoring employer is not required by the existing regulations to submit contracts or legal agreements between it and third parties. However, the sponsoring employer must demonstrate eligibility for the H-1B visa sought.

For determination of the employer-employee relationship, USCIS calls upon its officials to not apply the earlier 2010 policy memo (also known as the Neufeld Memo), which now stands rescinded. This memo had created a new restrictive definition of employer-employee relationships.

“Under the Immigration and Naturalization Service Regulation, 1991, an employer-employee relationship is evidenced by some aspect of control, which can be shown in various ways, be it the ability to hire, to pay, to fire, to supervise or to control. USCIS had abandoned this regulation and required assignment of day-to-day tasks to show that an employer-employee relationship existed,” explains Rajiv Khanna, managing attorney at Immigraiton.com

Under the new guidelines a USCIS official is required to consider whether the sponsoring

employer meets at least one of the “hire, pay, fire, supervise, or otherwise control the work of” factors with respect to the beneficiary (for whom the H-1B visa is being sought). USCIS has in the past called for requests for evidence in many cases to determine whether or not the job position was a speciality occupation. Rejection rates, based on this ground were also high. Immigration experts and companies contacted by TOI view that under the revised guidelines, the approach will be more tempered.

While USCIS officials may continue to issue approvals for H-1B petitions with validity periods shorter than the time period requested by the sponsoring employer, the new guidelines require that they must explain the reason for their decision.

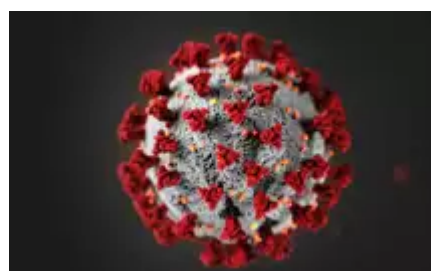
The policy memos that now stand rescinded had resulted in a higher rate of denial of H-1B applications. According to the National Foundation for America Policy (NFAP) the denial rates for many IT service companies (including multinationals) for new H-1B petitions had risen from about 2% in fiscal 2015 to over 30% in fiscal 2019.

Amidst the uncertainty that currently prevails on whether US President Trump will, in the coming days, introduce a temporary ban on H-1B visas, this step by USCIS is being hailed as a significant victory for IT Service companies and H-1B workers (a major chunk of which are Indians).

“USCIS’s 180 degree turn today represents a significant victory to all H-1B stakeholders, it demonstrates the importance of lawsuits via US federal courts, which cast light on USCIS’s shadowy adjudication processes,” sums up Ashwin Sharma, a Florida based immigration attorney.

Download

The Times of India **News App** for Latest **Business News**



the CORONA letter