

Indian IT's H-1B visa woes could worsen in 2020

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The Indian IT industry could suffer from delays in grant of work visas by the US in 2020 due to lack of clarity in the new registration process that kicks off in April, according to immigration attorneys who also expect the uncertainty to increase as Donald Trump seeks a second term in November.

The US Citizenship and Immigration Services (USCIS), the agency that issues H-1B visas, will move to a new system in April that requires employers to register in advance names of employees who need the work permit. The agency will then select which of the registered candidates can apply for the visa.

“Customarily, the H-1B ‘season’ runs from early March to the second week of April. Now, it will run from early March (when the registration begins) to at least until the end of July 2020,” said Neil A Weinrib, a US-based immigration lawyer.

“Essentially, this means that USCIS will take even longer to adjudicate (on) these cases and many companies and foreign nationals may miss the October 1 start date,” Weinrib said.

The delays could be further amplified by the US government's record of tardy technology or workflow implementation, said a second lawyer, who expects this will impact both Indian and US companies.

"There is more than a little apprehension that the process could be muddled up because of technological or workflow errors made by the government," said Rajiv S Khanna, managing attorney at Immigration.com.

New & Untested

US has **streamlined** visa process

Companies will have to **register** H-1B visa applicants online

Only those **selected** will have to submit an application

IMPACT

Likely to cause **delays** as it hasn't been tested

Cos may have to **pay** for premium processing if there are delays

Will **affect** Indians the most

Over **70%** of H-1B visa recipients are **Indians**

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Indian nationals are the biggest beneficiaries of the H-1B visas, which the US issues to get highly qualified professionals to work in the country. Since Trump became President on the back of anti-immigration rhetoric, the US has consistently declined more visas to employees of Indian software exporters — who used the work permit to send professionals to the US on client projects — and has instead favoured US technology companies such as Google, Facebook and Apple. Under the Trump administration, Indian IT services companies have seen rejection rates jump from 6% in 2015 to 24% in 2019.

In 2018, the top six Indian IT firms had received about 16% of the total visas issued. In 2019, there were only two Indian companies among the top ten visa recipients, which got 1,966 visas compared with 8,898 for the other eight firms.

This has forced Indian IT firms to be more cautious while filing their applications, resulting in an increased cost. They are also preparing to deal with increased scrutiny.

"Under the current immigration environment in the US, things are going to get tougher. The government has also earmarked more funds for immigration and labor law enforcement, which will result in more 'raids', site visits, audits and scrutinies," said Poorvi Chothani, managing partner of Law-Quest, a US immigration firm headquartered in Mumbai. "Hence, remaining compliant with the law and maintaining proper paper work to show compliance is of paramount importance."

Analysts also expect that there could be changes to how 'speciality occupation' is defined in the context of the H-1B visa, which may lead to increased scrutiny of applications.

In November, the Department of Homeland Security said it would review the H-4 Employment Authorisation Document (EAD) that allows spouses of H-1B visa holders to legally work in the US in spring 2020.

"Based on what we have seen over the past few years, it is highly likely that the Trump administration will push this agenda forward and, unfortunately, remove H-4 dependent spouses from the classes of aliens currently eligible for employment authorisation," Weinrib said. "There is just not sufficient opposition within the US business community to defeat this attack," said Weinrib.

Nine out of ten spouses working in the US on the H-4 EAD visa, an Obama era law, are Indian nationals. If the Trump administration goes ahead with its plan, US companies will be impacted as several families could decide to move back to India.

The US may also bring in new rules that would reduce the time allowed for a foreign student who pursues science, technology, engineering and mathematics (STEM) to work in the US. The DHS plans to change in August the so-called Optional Practical Training (OPT) rule that currently allows STEM graduates to work for an additional 24 months in the US following the first year of graduation.