USCIS sought addl info for 60% H-1B applications last quarter

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Mumbai: Data released recently by the United States Citizenship and Immigration Services (USCIS) reflects a greater scrutiny of H-1B applications, with an increase in requests for evidence (RFEs).

Data for the first quarter of US fiscal 2019 (that is, three months ended December 2018) shows that 60% of all completed H-1B cases had been issued RFEs. This is significant, considering that only 38% of all completed H-1B applications received RFEs during fiscal 2018 (12-month period ended September 30, 2018) and 21.4% in the previous fiscal.

By issuing an RFE, the agency seeks additional evidence before it adjudicates an H-1B application. If the evidence submitted, say to prove that the job is a speciality occupation, does not satisfy USCIS officials, the application is rejected. RFEs cast an additional burden on the sponsoring companies, both in terms of time and cost.

In numerical terms, nearly 60,000-odd RFEs were sent during the first quarter of fiscal 2019 as opposed to 1.50 lakh during fiscal 2018 and 86,000 odd in fiscal 2017.

The IT sector dominated the top 30 employers that had sponsored H-1B applications for both 'initial' (new applications) and 'continued approvals' (visa extensions). Most impacted by additional scrutiny were IT consultancy companies (including India

headquartered companies), which saw a higher denial rate, especially for 'initial' H-1B applications. The win-rate for continued visas (or extensions) was comparatively better.

The denial rates for initial visa applications for Capgemini was as high as 80%. It was 61% for Cognizant, which was the top employer. It ranged between 20% and 40% for India headquartered companies. Contrast this with US headquartered non-consultancy companies such Amazon, Microsoft, Intel, Google, Facebook and Apple, which saw a denial rate of only around 1% for new visa applications. The total approval rate for these US companies (including for continued employment) was 98-99%.

USCIS denied 54% of the initial H-1B petitions for Infosys while for Mindtree the denial rate was 40%. It was 23% for Wipro and the L&T group combined (comprising L&T InfoTech and L&T Tech Services). TCS, the second largest employer of H-1B workers, fared better with a denial rate of 22%.

H-1B RESULTS FOR KEY FIRMS

Company	No. of Initial Approvals	No. of Initial Denials	Denial Rate for Initial Visas (%)	Total Approval Rate (%)
Cognizant Tech US	500	790	61%	68%
Capgemini America	273	1,061	80%	60%
Indian companies				
TCS	528	152	22%	82%
Infosys	69	80	54%	74%
Wipro	273	82	23%	82%

➤ Source: USCIS RFE data for top 30 employers

➤ The above numbers are for fiscal 2018 (12 month period ended September 30, 2018)

➤ Total approval rate includes H-1B applications for initial and continued visas

The top three reasons for denials of H-1B applications, according to USCIS, are inability by the sponsoring employer to establish that the position is a speciality occupation, inability to substantiate a valid employer-employee relationship (including the right to control work) and lack of evidence of specific assignment at third party sites for the entire visa duration requested.

Immigration experts feel that the IT consultancy companies will continue to face challenges, especially in the light of the recent policy changes that require a host of documents to be submitted upfront.

"Obstacles placed by the USCIS make it more difficult for consultancy companies who

place H-1B workers at third party sites to get approvals, even as it is a legitimate business model under the H-1B visa law. For instance, a petitioner would need to provide upfront documentation that proves the relationship between itself and the end client. In addition, the documentation would clearly need to specify the duration of the project that requires the H-1B worker through a Statement of Work and identify the H-1B worker who will be placed on the project. What the USCIS is doing may not be warranted under the Immigration and Nationality Act and a lawsuit has been filed," said New York-based immigration attorney Cyrus D Mehta.

"Unfortunately, USCIS has become almost impossibly stringent in demanding information from and about placements at third party client sites. Our average responses to RFEs have grown in volume from 30-40 pages to 300-1,000 pages. It is often extremely difficult to produce documentation and exact information about projects that are several months in the future," Rajiv S Khanna, managing attorney at Immigration.com told TOI.

"The 'Initial Evidence' Memo will be used to aggressively reject H-1B applications filed by IT consultancy companies," forecasts Ashwin Sharma, a Florida-based immigration attorney. Sharma believes that the USCIS has essentially crucified the entire IT consultancy sector.

"To illustrate, I have seen USCIS mischaracterize very clear language to win its argument. USCIS knows that each and every one of its illegal denials can easily be overturned by a Federal Court judge, but it also knows that the vast majority of its improper decisions won't be questioned because the gateway to justice has a high admission fee," he said.