

ECONOMY

H-1B visa guidance may lead to an increase in litigation



i

Sanjay Vijayakumar

CHENNAI APRIL 06, 2017 20:40 IST

UPDATED: APRIL 06, 2017 22:44 IST

New memos aim to prevent replacement of local coders with low-cost H-1B staff

The U.S. government's new guidance for issuing H-1B visa, which allows technology firms to hire skilled overseas workers, may lead to increased litigation, immigration lawyers said.

Just ahead of opening the H-1B visa application window, U.S. Citizenship and Immigration Services (USCIS), which oversees immigration into the U.S. and processes the applications, issued guidelines which said computer programmers need to prove that it is a specialised skill to be eligible.

Increased scrutiny

In a separate note, the agency said there would be increased scrutiny to detect H-1B visa fraud and abuse. The U.S. Department of Justice also cautioned employers seeking H-1B visas not to discriminate against U.S. workers, warning strict action. "The new memos indicate that the USCIS will not... continue to recognise a computer programmer as a speciality occupation for H-1B purposes. This will no doubt lead to numerous lawsuits," Carl Shusterman, a former attorney for the U.S. Immigration and Naturalization Service said in an email.

He said there had been instances of U.S. programmers being terminated and replaced by the low-cost H-1B visa workers.

“It is pretty certain that the new memos are primarily focused on them. Time will tell.” Cyrus D. Mehta, managing attorney and founder of New York-based law firm Cyrus D. Mehta and Partners, foresees more investigations and lawsuits based allegedly on discriminating against American workers if firms hire foreign H-1B workers.

“Still, the employer must have an intent to discriminate when replacing Americans with foreign workers, and not when there is a lawful business purpose for doing so, such as migrating to new platforms with new skill sets,” he wrote in an email.

Indian IT firms have been one of the biggest users of the H-1B visa programme. Industry lobby Nasscom and analysts have ruled out any significant impact from the changes.

“Whether the Trump administration will focus on Indian IT firms more than before remains to be seen. I think they will. However, the basic H-1B law can only be changed in Congress. It cannot be altered through a guidance on the USCIS website,” said Mr. Mehta.

“The U.S. remains a highly litigious country. Lawsuits on such policy changes, especially last minute and where adequate justification may not be given, cannot be ruled out. At the same time, the government controls its immigration policies and has the right to change it. Accordingly, I would expect more litigation surrounding claims of H-1B visa fraud and abuse,” Vikram Shroff, Head of HR law practice at Nishith Desai Associates said.

Brokerage Jefferies in a recent report said while the recent changes does not mean much for the Indian IT firms, the risk of larger immigration reforms remain.



Printable version | Apr 7, 2017 5:25:27 PM | <http://www.thehindu.com/business/Economy/h-1b-visa-guidance-may-lead-to-an-increase-in-litigation/article17852281.ece>

© The Hindu