

New H-1B visa rule irks IT companies

Shilpa Phadnis, TNN | Jun 2, 2015, 07:12AM IST

BENGALURU: A new ruling by the United States Citizenship and Immigration Services' (USCIS) requires employers of H-1B visa holders to file a fresh Labour Condition Application (LCA) if the employee is moved to a worksite in a different city.

The USCIS has also issued a 90-day guideline to employers to comply with the decision and if the amended petition is not filed before August 19 for those who have already moved workers, USCIS could revoke the H-1B worker status or deny request for extension.

An employer of the H-1B applicant is required to submit an LCA to the US Department of Labour well in advance of the intended start date of employment. The LCA, once certified, is to be included in support of the H-1B application. The LCA needs to identify, among other things, the intended places of employment.



The United States, which received nearly 124,000 applications for the H-1B visas, has used lottery to determine who all would be given the most sought after work visas among IT professionals.

Vikram Shroff, head of the HR Law practice at law firm Nishith Desai Associates, said that with the new ruling, the US government has clarified its stand that a proposed change to the place of employment (a place which was not mentioned in the original application documentation) will require the employer to file a new LCA along with an amended H-1B petition.

"While the exceptions may provide some relief, this ruling is likely to affect employee mobility under the H-1B visa regime by reducing flexibility to move employees to different locations or client projects in quick time," he said. The exceptions include moves to other cities for up to five days for things like conferences, and short-term placements of up to 30 days in a year.

Rakesh Prabhu, partner immigration practice in ALMT Legal, said the order does not come as a surprise. "Change in the location of an employment, than what has been indicated in the existing LCA, will certainly amount to 'material change'. So an amended or a new H-1B petition (along with LCA) needs to be submitted by the employer."