

BUSINESS

‘Need to prove IT is a speciality job’

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In an e-mail interview, Vikram Shroff, Head of HR law practice at Nishith Desai Associates, touched upon the new H-1B visa guidelines and said that with the last-minute changes, compliance will be an issue.

Can you throw more light on the new guidelines?

U.S. Citizenship and Immigration Services (USCIS), which oversees immigration into the U.S. and processes the applications, issued two separate guidance – one on March 31 and the other on April 3, both of which are independent. As such, H-1B visas are meant to be issued for speciality occupations, which include science, engineering and IT. The guidance issued on March 31 stated that it is not sufficient to be a computer programmer and use information technology skills and knowledge – the applicant must provide additional evidence to establish that it is a speciality occupation. If the application does not provide such additional evidence, the applicant is unlikely to qualify for grant of H-1B visa under its lottery system.

On April 3, the USCIS announced multiple measures to deter and detect H-1B visa fraud and abuse, including the fact that it will take a more targeted approach when making site visits across the U.S.

How do the new guidelines change the scheme of things?

The policy memorandum issued by the USCIS on March 31, 2017 is the one that may hurt the applicants the most, especially given that it was issued one working day before the FY18 window opened on April 3, 2017. The memo clarifies that it is not sufficient for the applicant to be employed as a computer programmer who uses information technology skills and knowledge to help an enterprise achieve its goals.

What do the guidelines mean for IT industry?

Technology companies, especially from India, have been one of the biggest beneficiaries of the H-1B visa program. Such a decision is likely to adversely affect their client commitments in the U.S. which remains their largest market. Several IT sector employees would have been lined up for travel to the U.S. under the H-1B visa program. Given the huge rush to submit H-1B visa application within the short time frame available, the application documents would have been kept ready much in advance. Since the memo was issued only one day before the FY18 window opened, it is too late for the applications to be revised to include the additional evidence requested by the USCIS for computer programmers.

Do you foresee more tightening ahead?

Given some of the proposals and Bills presented to the new government in the U.S., more restrictions may be expected. At least we can hope that it does not affect the H-1B visa applications in the current FY18 window. Given the uncertainty in the past few months, several IT companies would have already factored that business risk.