



WHAT THE
U.S. IMMIGRATION BILL
MEANS TO

INDIA

The controversial Immigration Reform Bill passed by the U.S. senate in June this year has caused great anxiety among the Information Technology industry in India. We review the provisions of the bill and its potential significance for India



around the provisions which enable a pathway to citizenship for millions of undocumented immigrants. This is opposed by the Republicans who have a controlling majority in the House. The House Speaker John Boehner has declared that he will not allow a vote on the immigration bill in its present form.



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The Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744 or Comprehensive Immigration Reform Bill) is an immigration reform bill introduced into the U.S. Senate by a bipartisan group of U.S. Senators, referred to as the “Gang of Eight”. The bill, viewed as a major overhaul of U.S. immigration laws, was passed by the U.S. Senate on June 27, 2013. The bill must now be passed by the House of Representatives, a more daunting task. The main controversy over the bill is

In India, the bill has created news for other reasons. The proposed changes to the non-immigrant visa for highly skilled workers will have a profound impact on Indian information technology companies. Before we analyze why the bill is causing anxiety among

Indian technology companies, it is worthwhile to review the provisions which will have a beneficial impact for thousands of skilled Indian workers seeking employment in the U.S.

Most Indian workers start their professional life in the United States on an H-1B visa which is a non-immigrant visa that allows highly skilled foreign workers with advanced degrees to work for a specific amount of time in the U.S. The purpose of the H-1B visa is to give U.S. employers the opportunity to hire foreign professionals. Currently, the cap on the number of H-1B visas that the government will issue is set at 65,000 annually with another 20,000 H-1B visas set aside for those with advanced degrees from U.S. universities. This number is woefully inadequate, the cap is usually reached within a day or two after the United States Citizenship and Immigration Services (USCIS) opens up its application process. This year, for instance, the USCIS announced that they had received 124,000 H-1B petitions within the first week of the process and they would not be accepting anymore. A lottery was announced, leaving thousands of professionals disappointed. The limited H-1B cap is also detrimental to U.S. companies, who need to employ foreign skilled workers vital to their operations but have to depend on the vagaries of the lottery system.

The immigration bill proposes to increase the H-1B visa cap to 110,000 and in future, the cap is likely to go as high as 180,000 petitions annually, based on a “high skilled jobs demand index.” Up to 25,000 more visas are to be allotted to foreign students, who have earned a master's degree or a more advanced degree in science, technology, engineering or math (STEM). The bill also imposes new recruiting and non-displacement requirements on all H-1B employers and allows a 60-day transition



period for H-1B workers to change jobs. Since the largest share of H-1B workers is from India, the expansion of the programme will benefit skilled Indian workers.

Another problem has been the long wait for permanent residence authorization, also known as the green card, which can take years. Each country has a quota, and since a disproportionately large number of immigrants come to the U.S. from India, the wait is exceptionally long for Indians. The Immigration Bill proposes to eliminate the per country quota limits on employment-based immigrant visas to reduce the backlogs. This is especially welcome news for nationals from India and China, which have the biggest backlog.

A new non-immigrant visa is proposed for immigrant entrepreneurs who come to the U.S. and start a company easily. The INVEST visa (Investing in New Venture, Entrepreneurial Start-ups, and Technologies) for immigrant entrepreneurs will be available to overseas entrepreneurs who plan to start their own companies in the U.S. and who can demonstrate that at least \$100,000 has been invested in the relevant business or that such a business has generated no fewer than three jobs and \$250,000 in revenue. The immigrant version of the INVEST visa would have basically the same criteria just at higher thresholds.

The provisions of the Bill which are purportedly aimed at checking abuse of the H-1B visa system has caused alarm in India. These provisions if implemented will have an impact on Indian information technology companies. It is because of these provisions that the Indian government has objected to the bill, citing it as protectionist and anti-competitive.

The drafters of the bill proclaim that they have attempted to rectify what

they argue are abuses of the existing system, which enable companies to hire low paid foreign workers and replace American labour. Senator Dick Durbin, a Democrat who, along with Senator Chuck Schumer championed these restrictions states “Americans would be shocked to know that the H-1B visas are not going to Microsoft; they’re going to these firms, largely in India, who are finding workers, engineers, who will work at low wages in the U.S. for three years”. The Americans feel the top H-1B and L-1 employers are using the programme to substitute tens of thousands of high-wage, high-skilled American jobs and give them to non-Americans.

The bill proposes that a company that employs 50 or more employees in the United States may not hire additional H-1B or L-visa employees if the number of such employees exceeds: (1) 75% of the total number of employees for FY2015, (2) 65% of the total number of employees for FY2016, and (3) 50% of the total number of employees for each subsequent fiscal year.

These provisions are seen as directly targeting Indian information technology companies. While the U.S. operations of these companies form a large percentage of their revenue, the majority of their employees in the U.S. are foreign workers, mostly from India, working on company sponsored, temporary work visas. The new bill seeks to reduce this number to 50 per cent by 2016, forcing Indian IT companies to hire employees locally in the U.S.

Even more damaging than the effort to restrict the number of foreign workers is the so-called outplacement restriction that prohibits any company with more than 15 per cent of its workforce holding H-1B visas from placing those workers at client sites. Similarly, outplacement of L-1

visa workers (employees of an international company with offices in the United States and abroad) by an employer whose workforce is made up of at least 15% L-1 workers is prohibited.

The bill also addresses the alleged wage gap between foreign and U.S. workers by requiring employers to pay significantly higher wages to H-1B employees than currently required. In addition, the bill imposes increased filing fees on H-1B-dependent employers, depending on the percentage of non-immigrants employed by the company. Companies in which non-immigrant (both H-1B and L-1) employees constitute 30 to 50 percent of their U.S. based workforce would be required to pay a \$5,000 fee per H-1B application. The fee would double to \$10,000 per application for employers with 50 percent or more non-immigrant employees. This price increase, deals a huge blow to H-1B dependent companies, who now have dual restrictions placed on them.

The Indian IT companies’ business model, developed over the past decade, has worked well for them and their American clients. In order to manage technology contracts for a U.S. enterprise, the Indian IT companies determine an optimal balance between utilizing lower paid offshore employees for the majority of the work along with on-site employees for critical tasks. If the bill is implemented, not only will these companies have to reduce the number of their foreign workers, the cost of bringing each one over will exponentially increase. The IT companies will have to pay more by way of visa fees and pay higher wages to H-1B visa holders. Restrictions on placing on-site staff will reduce their flexibility and a larger percentage of the work would have to move offshore. Increased billing rates will lead to higher hiring costs for such companies. There will

be a severe shortage of adequately qualified workers among enterprises in all industries. All of this would disrupt the existing business model. If the bill is passed, Indian companies would look for ways to reduce the ratio of visa holders to total employees in the U.S. by either hiring more American workers or acquiring other companies.

India’s export of information technology services constitutes a significant portion of India’s gross domestic product. Moreover, contrary to perception, it is a notable contributor to the U.S. economy as well. NASSCOM, a trade association for Indian Information Technology companies, highlighted the positive impact of the Indian IT companies in the U.S. In its 2012 report, ‘India’s Tech Industry in the U.S.’ it states that the Indian IT companies support close to 280,000 jobs directly and indirectly in the U.S. and contribute nearly USD 15 billion in taxes.

The Indian government and the information technology industry have expressed their concerns over these provisions in the bill, which they argued would not only hurt Indian companies, but also India U.S. relationships. Indian Finance Minister P. Chidambaram has gone as far as to state that the possible curbs on knowledge workers amount to non-tariff trade barriers. Apart from the pressure from the Indian lobby, the bill faces serious opposition in the House of Representatives and while it is not certain if and when the bill will be passed by Congress, it is likely to go through many changes as it moves through the legislative process. It is hoped that the most detrimental provisions will be removed from the final legislation.



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