

The H-1B Visa is Under Attack. Again!

November 4, 2020

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In the run up to the election, the Trump administration has doubled down on immigration, taking another swipe at the H-1B visa program to boost its America First platform. That means US companies, which have long relied on the H-1B visa to hire highly skilled immigrant workers, will find it even more difficult and expensive to bolster their workforce with qualified foreign hires.

At Ismael Leyva Architects (ILA) in New York, HR Manager Anupama Nayar has been processing the H-1B applications of new recruits sponsored by her company, for the last six years. “These graduates from top tier STEM programs at US campuses already have degrees from storied universities in their home country,” says Nayar. “They also bring 2 to 3 years of work experience and cutting edge skills – like knowledge of Revit, a building design software – that make them valuable contributors to ILA.”

A Brookings Institute study supports her view. “More than half (56 %) of the world’s engineering bachelor’s degrees are earned in Asia, compared to just 4 % in the United States.” It found that US employers have “significant difficulty in finding resident workers to fill STEM and other specialty occupations,” because the US educational system is unable to supply enough highly skilled resident workers that will keep US companies globally competitive.

What gives the US an advantage is its status as the global hub of academic training – in 2020 over one million international students made up 5.5% in higher education enrollment. So US companies seeking highly skilled members, especially in the metropolises, have a wealth of talent within their reach to help bridge that gap.

At ILA, a small Manhattan-based architectural firm, Nayar fills the requirement for skilled workers by hiring masters graduates from universities like Columbia or Cornell to bolster its roster of highly skilled employees. Most of the new hires are foreign students.

“The majority of the H-1B visas we sponsor are for students from India, China and South Korea,” says Nayar. Since 2014, ILA has sponsored up to ten applications a year through the H-1B lottery system. Once candidates and their petitions are approved, usually 6 to 7 employees receive their H-1B, a visa that’s valid for three years with a three year extension.

Usually, every job she lists attracts almost 70 applicants from highly qualified foreign graduates from top architecture schools; but with the pandemic and the economic downturn, fewer

applicants are being hired. However, since 2017, says Nayar, changes to immigration law have starkly reduced the number of H-1B visas that ILA sponsors.

“In the last 3 years it’s been difficult keeping up with immigration changes. We are abandoning sponsorship because a record number of our H-1B hires went back to their own country,” says Nayar. Last year she processed only three H-1B applications for ILA and received just one H-1B approval. Her company no longer sponsors green cards – the next step to the path on citizenship, because of USCIS policies that have created green card quota backlogs.

Immigration wait times for Indians have more than doubled. Indian-origin employees now could wait a lifetime (more than 50 years) to get their green card status. The high cost of fees and sponsorships that accompany the H-1B process, says Nayar, isn’t worth the investment.

“It’s just a loss for us as an employer.”

Behind this shift is a Trump directive issued in June to ‘put American workers first’ by suspending several job-related nonimmigrant visas, including “H-1Bs, H-2Bs without a nexus to the food-supply chain, certain H-4s, as well as Ls and certain Js.”

The directive to “restore American greatness” aims at preserving jobs for American citizens in the economic recovery from the coronavirus. The Department of Labor (DOL), tightened regulations on H-1B visas by forcing companies to pay substantially higher wages to hire foreign recruits, and justified the wage increase by claiming that H-1B migrants displace native-born American workers and reduce wages of native-born Americans.

That move “has essentially shut down the legal immigration system,” said Alex Nowrasteh of the Cato Institute, at an Ethnic Media services briefing on October 30. Nowrasteh, the Director of Immigration Studies at the Cato Institute’s Center for Global Liberty and Prosperity, called the rise in H-1B minimum wage levels “enormously destructive.” It will force H-1B workers to find new jobs or leave the US, and deny businesses the opportunity to invest in new talent by making them unaffordable.

He pointed out that wage increase was based on “incomparable datasets” from old economic research and will in the long term, “reduce legal immigration to US.”

The reforms are proving to be an effective deterrent. They require companies to pay high skilled workers at the 95 percentile of their profession’s category, up from the 65 percentile.

“Of course we’re not going pay a salary of \$80 to \$90 thousand for a new associate,” states Nayar.

However, the idea that immigrants are taking away jobs from Americans is a myth, reports the George W. Bush Policy Institute. Rather than taking America jobs, “72% of 7.6% of immigrants were self-employed compared to 5.6% of native-born Americans and they founded more than 40% of Fortune 500 companies.” Immigrants have been responsible for half the labor force growth over the last decade and immigrant-owned businesses tend to have an average of 11 employees. In fact, Nayar’s own company ILA, was founded by an immigrant who strongly believes in giving opportunity to talented immigrants.

That sentiment, however, will not inform the immigration policies of a second Trump term. Civil rights advocates at the briefing reiterated that bans to protect the protect American labor market and prevent job losses caused by the virus, are likely to stay in place if Trump is re-elected; 14th Amendment protections on citizenship and naturalization could also be under attack, warned Ali Noorani, President & CEO of the National Immigration Forum.

“If we see a second term, there will be a steady stream of executive orders or even litigation to chip away at those rights.”

Noorani recommended that immigration advocates pursue opportunities to build coalitions with policy makers both conservative and moderate, to support constructive immigration reform.

Or, in a second term, the administration is likely to continue its war on immigrants.