

The H-1B Visa Program: Everything You Know Is About To Change (Maybe)

As we've written here before, the H-1B visa program that caters to foreign hiring is hardly a perfect one and has been in dire need of a revamp of its design.

Why? Take your pick from a multitude of reasons: The process is chaotic. Far more H-1B visa applications are accepted than those that can actually be granted. Candidates can apply to multiple firms and accept multiple offers, effectively pulling a bait-and-switch on one company choosing to sponsor that candidate in favor of another company.

Finally, we have some movement on the issue, with big changes coming to the H-1B program if they do, in fact, materialize.

The question is whether those changes are going to help or hurt those who participate in the program even more.

Let's take a closer look at these possible changes to the H-1B program and who might be impacted the most by them, should they come to fruition.

H-1B Users Will Get The 3rd Degree

The current administration wants to put the users of existing H-1Bs under *much* more intense scrutiny. That's a far cry from how it was in the past, where it was assumed that if somebody was a computer programmer and they received an H-1B visa, surely they qualified for it and everything was "clean."

With the administration proposing tougher enforcement, you can expect that they're going to question those assumptions. They're likely to be looking for something wrong rather than assume everything is right.

It's one thing to assume that everything is right simply because the theory was that the job should be first offered to a American citizen or somebody already fully authorized to work before H-1Bs would be considered for the job. Companies would run an ad that basically described somebody's resume and ask for applications. The only person who would qualify...*would be the person whose resume was used to describe the position!* If somebody were to get prejudicial on the subject, they could find something wrong with that.

Even so, a bi-partisan proposal in Congress, one that is completely separate from the administration's proposed policies, could radically change the existing lottery system associated with the H-1B program. In place of the lottery, we could see more of a merit-based system.

No More Lottery?

Up until this point, the critical factor for winning the H-1B visa has been based on a lottery. The way the H-1B program has been run, it's a completely random system. Even though the department in charge of administering H-1Bs has started accepting electronic applications instead of filling rooms with large burlap bags full of applications, the process has remained the same: The department has a cutoff date by which they stop accepting H-1B applications soon after April 1 – usually about five days – and then run a lottery. The lottery assigns visas to people in the pool. The department then goes through the applications to verify that indeed all the paperwork has been done and everybody is qualified.

However, there are several pieces of legislation in Congress, including one called **The H-1B and L-1 Visa Reform Act of 2017**, which would require employers to at least *prioritize* hiring American workers first before turning to the H-1B program for potential candidates. Employers could be audited for compliance and prohibited from hiring any additional H-1B employees if they have over 50 employees and more than 50% of those employees have been H-1B hires.

Here's another interesting part of the proposed bill – if workers have STEM degrees from educational institutions here in the U.S., those workers will be given higher priority as part of the newly designed H-1B system.

All of these alterations could significantly change the process by which H-1Bs are awarded, in essence doing away with a lottery system and engaging in a higher level of prioritizing.

Is that a bad thing? Not really. If someone went to MIT and has an offer from Google worth \$250,000, chances are that person probably will get priority under the new system compared to somebody who's still in India, went to a reasonably competent but not well-known college and who will be paid \$60,000 a year.

H-1B Visas May Go To The Highest Bidders

If these changes materialize, you have the potential that Indian firms that are big outsourcers are going to be hit hard to the point of where it will be challenging for them to effectively compete going forward for H-1B visas. Companies such as Mphasis and Tata Consultancy Services have had employees on H-1B visas before, but it's hard to see how they're going to compete for H-1B visas since their edge essentially has been *low cost*.

Who could then enjoy an advantage? Don't be surprised if the winner's column for H-1Bs going forward consists primarily of companies that are most willing to pay and are much more selective because they demand a higher level of skills.

For example, here in Chicago, we envision trading companies enjoying such an edge if the changes go into effect, partially due to their willingness to pay much more to a person who will be getting their H-1B visa. These firms are a lot like high-end tech companies – high paying for very high demand roles. So they will be in a better position to secure H-1Bs.

Users Of Outsourcing Services May Get Hit Hard Too

Of the 85,000+ H-1B visas issued annually, around 60,000 have been going to outsourcers. If the lottery is abolished, it's doubtful that the outsourcers will get practically anything.

This means that, besides the outsourcers themselves getting hit, by association the *customers* of outsourcers will have to scramble.

In theory, companies such as Microsoft, Facebook and Google are presumed to be the primary users of outsourcing services. However, in my experience, that is not the case. The typical H-1B holder I've observed works for a "traditional" medium-to-large company and the company doesn't tend to perceive itself as one that is on the "leading edge" of using technology. They tend to want middle-of-the-road, reasonable candidates, which is what the outsourcing companies have been able to provide on a cost-benefit basis.

Yet, a typical company that is looking for "reasonable" skills is not in a position to compete with a company like Google. For that matter, they're quite often not in a position to compete with many companies that are much more selective, pay more and have more interesting work, technically speaking.

3 Ideas For Firms Challenged By The New H-1B Structure

As we've mentioned, those companies that have been benefiting from a relatively low cost of talent that they could secure through the H-1B program will now have some interesting challenges as far as their next steps from here – but they are not without options.

One of those options is to try to **deploy more people offshore** because H-1B doesn't really impact that kind of move.

Another option is to **try to accelerate a move into "the cloud"** because when you're in "the cloud," you typically don't need as many people to keep your systems up-to-speed. Consequently, the beneficiaries stand to

be those companies that are heavily invested in cloud services, such as Amazon, Microsoft and IBM. Outsourcers who have less of a business model based in the cloud may find themselves vulnerable to the changes that lie ahead and at a significant disadvantage.

Third, aim to **replace “medium-skilled” people by deploying more automation.**

With ever-growing capabilities coming from machine learning and the branches of artificial intelligence – and to the degree that you need medium-level functionality while the price of that functionality is going up – you may try to substitute it with machine learning and other forms of automation.

For example, there is a company called Kensho Technologies that was originally funded as a “*Siri for finance.*” Simply ask a question about finance and the system will be able to answer it and several others. Contrast this efficiency with asking the same question of a medium-qualified analyst who pulls up a variety of spreadsheets and takes a long time to arrive at a solution that, eventually, may answer your question.

When Will The Proposed Changes To H-1B Take Place?

While Congress appears to be bi-partisan on the issue of reforming the H-1B program, let’s face it – Congress isn’t known for moving quickly. That said, these changes may very well be coming to the H-1B program by this time next year.

Regardless of your political persuasion, it’s obvious that the current administration is clearly not in the mood to increase immigration. Curiously, however, they’re not talking about cutting back on the number of H-1Bs either. As long as that’s the case, the interests of the people who benefitted from the current lottery setup of the program will be different from those people who will benefit from a potential new setup that is not a lottery. We’ll want to keep a close eye on how this dynamic plays out.

At Roy Talman & Associates, our clients are most interested in those candidates who are high achievers, typically have a Masters or PhD from one of the top universities and have already gone through the H-1B program. Regardless of whether the potential changes on the horizon for the H-1B program become reality and to what extent, we expect this group to grow significantly in the days ahead. If you'd like to evolve your hiring strategy in advance of possible changes to the H-1B program, let's have a conversation today.