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# H-1B visa applications see spike in inquiries from US authorities

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MUMBAI: Indians working in the US may find it more challenging to transition from a work visa (such as H-1B) to a green card. From October 1, the United States Citizenship and Immigration Service (USCIS) has made an in-person interview mandatory in such cases. In technical parlance, it refers to an I-485 adjustment of status interview. This announcement was made on August 28.

On another front, US immigration attorneys are seeing an uptick in the number of 'Requests For Evidence' (RFEs) being issued by the USCIS. These RFEs relate to petitions (applications) filed on or about April 2017 for H-1B visas that will be valid from October 1, 2017.

As regards the amendment made for adjustment of status to that of a green card, NPZ Law Group managing attorney David H Nachman explains, "USCIS currently requires interviews for family-based green card and naturalisation (obtaining citizenship) processes. But most of the time, it waives the interview requirement for the above category of applicants. While interviews for those transitioning from employment-based visa status to green cards were standard a decade ago, waivers have been regularly granted since then.



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Under the new policy, there will be no further waivers. Thus, the new process will lengthen the waiting time for green card applicants."

A vast majority of those to whom green cards are allotted comprise those who are already working in the US on temporary visas.

During the four-year period up to 2014, over 2 lakh green cards were allotted to H-1B visa holders, according to a report by the Bipartisan Policy Centre.

Latest available data released by the USCIS — which was analysed by TOI — shows that during 2015, as many as 34,843 Indians adjusted their temporary visa status and obtained green cards. Of this, 25,179 were holding jobs in the US (primarily under the H1-B category).

H-1B inquiries spike Immigration.com managing attorney Rajiv S Khanna says, "A new wrinkle in the inquiries is that, as USCIS had warned, they will not accept level-1 wages to be given in H-1B cases easily. They are questioning level-1 wages almost uniformly."



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He explains the various levels and illustrates the wages. Level-1 category relates to entry-level jobs and, at the other end, is the level-4 category which calls for a more technical and leadership role.

The prescribed wage at level 1 for a software developer in San Jose is \$88,733 a year, which rises to \$155,147 annually at level 4. Khanna adds, "It is the USCIS position that level-1 salary indicates a non-professional position that does not require a specific college degree and is a job that would be inappropriate for an H-1B visa.

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There are often situations where level 1 is indeed the appropriate level — even the largest consulting firms in the US do send out entry-level professionals for assignments."

NPZ Law Group has seen a sharp hike in the RFEs — by 55% to 65% as compared to the past numbers.

Nachman explains, "The question that continues to arise in the RFEs is to prove that the position that the H-1B applicant will be taking is in a speciality occupation. The new set of questions that we are seeing has to do with why the level-1 wage has been chosen if the position is a 'speciality position' calling for a complex set of duties. As you can see, the US government is requiring us to argue that the position is 'complex' and then, on the other side, asking that if it is so complex why is a lower salary being assigned?"

The increase in inquiries is an administrative cost for all, and is especially challenging for those employers (mid-tier companies) that had designated level 1 even for more experienced visa applicants.