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# Indian's H-1B for data analyst's job wrongfully denied: Court

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NEW DELHI: A STEM (science, technology, engineering, maths) student from India, who was undergoing her optional practical training with LexisNexis, can continue to work for her employer who had sponsored her for an H-1B visa.

A US district court has recently held that her H-1B visa application for the position of a data analyst was wrongfully denied. Last September, the US Citizenship and Immigration Services (USCIS), after seeking additional evidence and documentation, had rejected the H-1B application filed by Lexis Nexis on behalf of Subhasree Chatterjee. The contention of this government agency was that the sponsoring employer had not shown that the position is a 'specialty occupation'.

The H-1B visa category applies to those who will perform services in a 'specialty occupation'. The Trump administration in its spring agenda (covered by TOI in its edition of May 24) reiterated its plan to revise the definition of 'specialty occupation' so as to obtain the 'best and brightest workers.' While there has been no such revision in definition, USCIS has begun to take a closer at whether the position to be taken up by the H-1B beneficiary will be a 'specialty occupation'. This has resulted in several lawsuits.

"For the last couple of cycles of the H-1B filings, we have seen this issue coming up and the trend is likely to continue. Further, it is now also an issue that comes up regularly, not just for initial H-1B applications, but also extensions and job transfer cases.

This is most alarming, since these individuals have been working in those H-1B job positions for many years,” Snehal Batra, managing attorney at NPZ Law Group, told TOI.

International students who have obtained their degrees in the US in the STEM field are eligible to work for up to three years, under the optional practical training program (OPT). Post OPT, if the individual wishes to continue to work in the US, he or she has to be sponsored for an H-1B visa, either by the existing employer or another company.

In the case dealt with by the US district court, Chatterjee held a Master of Science in Business Administration, with a focus on Business Analytics from the University of Cincinnati. She also held a Bachelor's degree in computer science and engineering from Kolkata University and prior to obtaining her Master's degree had worked for a few years in the field of data analytics.

Justice Emmet G. Sullivan observed that: “The LexisNexis position was a distinct occupation which required a specialised course of study, notwithstanding the fact that the study included several specialised fields.” As different types of degrees would allow a person to be employed as a data analyst, USCIS had held that a data analyst position would not be specialised.

Ashwin Sharma, Florida-based immigration attorney told TOI, “In a major victory for H-B stakeholders, the court gave life to the mantra chanted by immigration attorneys that there is no requirement in the statute that only one type of degree should be accepted for a position to be treated as specialised.”

Chatterjee had had the specialised skills to perform these duties and the requisite educational requirements, the judge observed. The decision by USCIS was not ‘based on a consideration of the relevant factors’ and was a ‘clear error of judgement’, the court held.