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New H-1B visa lottery process may hit immigrants

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Mumbai:

From April, the filing season for the H-1B applications, companies hiring foreigners to work in the US through this popular work visa route will have to pre-register electronically for the annual H-1B lottery, and then file 'fullfledged applications' (referred to as petitions) for the winners.

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Currently, petitions have to be filed upfront, together with all supporting evidence, just for entry into the lottery. The documentation is exhaustive, especially for employers, such as IT service companies, who place their H-1B employees at client sites. The change will result in significant savings of administrative costs for the sponsoring companies (those hiring foreign employees). The move has been approved by the US Office of Management and Budget (OMB), a unit of the US president's executive office. A similar line of action had been proposed in 2011, but didn't fructify.

Nevertheless, given the protectionist regime of Donald Trump's administration, it is feared that the new rule will give more leeway to the US Citizenship and Immigration Services (USCIS), which is the immigration arm of the US government, in deciding who can work in America.

Law firm: New programme has potential for abuse

Annually, only 65,000 H-1B visas are allotted under the regular cap (general quota). An additional 20,000 visas are allotted under the master's cap (for those with advanced degree from US universities). Sponsoring employees have to submit applications in April first week and within days the quota is met, owing to which a random lottery mechanism is adopted. For 2018-19 season, the US agency received 1.9 lakh applications. Indians typically garner over 60% of the H-1B visas.

TOI had analysed the fall agenda in its October 19 edition. One of the items dealt with electronic registration, with the object of enabling USCIS to "more efficiently manage the intake and selection process for H-1B applications". Approval by the OMB is the first step towards a change in the H-1B filing mechanism. Next follows publication of the draft proposal in the Federal Registry, and receiving and considering public feedback — a process that can take three-six months.

David H Nachman, managing attorney at NPZ Law Group, said, "The implementation of pre-registration programme along with new information requested in Form ETA 9035 (Labour Certification form) has potential for abuse because the 'fair and random H-1B lottery' may be relegated to a closely guided and criteria-driven process."

The new labour certification form requires employers to indicate whether H-1B workers will be placed at third party (client) worksites and details of the number of workers at each site. "The data-sets available may be filtered to choose those H-1B petitions that do not require thirdparty placements. Or to select petitions of sponsoring companies that only have a certain number or less of foreign employees. It could result in a discriminatory process," he said.

PRE-REGISTRATION RULE EXPLAINED

Details of the draft proposal are at present confidential, but it could include

INITIAL REGISTRATION PERIOD |

Employers would file a short online form providing basic information about the company, job offer and prospective foreign employee. The pre-registration period would likely occur before the usual April 1 opening day of the H-1B filing season

PETITION FILING PERIOD | Full H-1B petitions and supporting evidence would be filed (within a brief time frame) only for registrations that were selected in the lottery

WAITING LIST | USCIS may create a waiting list so additional cases could be filed if the quota is not reached, say due to petition rejections or withdrawals

Source: Based on a newsletter issued by Fragomen, an immigration law firm

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