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US to reject multiple H-1B filings for same visa-seeker

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Mumbai: Given the high volume of H-1B visa applications that is expected to roll in shortly, the US immigration authorities have fired a salvo to deter misuse of the process. It seeks to block filing of multiple applications by 'related entities' for the same visa-seeker, for substantially the same job.
Multiple applications of such nature, which undermine the integrity of the lottery process, will be rejected and approvals revoked, said the US Immigration and Citizenship Services (USCIS) in a recent policy memorandum.

From April 2 (Monday), the USCIS will open its doors to H-1B visa applications for the 2018- 2019 season. Successful applicants who are allotted the visa will be able to work in the US from October 1, 2018 during the tenure of the visa — which may be for an initial maximum period of three years.

In a policy memorandum dated March 23, but made public recently, the USCIS states that in cases where multiple applications are filed by 'related entities' (which means a parent company, a subsidiary or even an affiliate) for the same visa-seeker, there needs to be a legitimate business need. Else, these applications will be rejected.

H-1B visas are extremely sought after by technology companies in India for sending their employees to work on client sites. It is the sponsoring company that files the H-IB visa application and not the visa-seeker (employee). An in-house immigration counsel at an IT company explains, "Under US federal law, a single company cannot file multiple H-1B visa applications for the same visa-seeker. When a company has filed an H-1B visa application, another related or affiliated company cannot do so, unless there exist two separate job opportunities. These jobs must be clearly distinguishable and supported by additional evidence such as letters from different end clients or for different projects."

Even in the past, the USCIS has cracked down on errant companies. Given the high demand for H-1B visas, the number of applicants far outstrips the quota set by the US government. Only 65,000 visas are allotted annually under the regular cap (also

known as general quota) and an additional 20,000 visas under the Master's cap (for those having an advanced degree from US universities).

To illustrate: For fiscal 2018 (12-month period from October 1, 2017 to September 30, 2018), the USCIS received nearly 2 lakh applications last April (see table). When the number of applications outstrips the general quota, the USCIS allots visas among the applicants based on a computer-generated random selection process, known as a lottery. The lottery mechanism does not take into account the visa-seeker's educational background, country of origin or past experience. Getting a visa allotted under the lottery boils down to a game of chance and multiple applications in the pool increases the odds of winning.

Any company wishing to game the lottery system can have various entities file an H-1B application for the same individual. Thus, for the purpose of the regulatory bar on multiple applications, the USCIS clarifies that the term 'related entities' includes petitioners (that is, those sponsoring the visa) whether or not related through corporate ownership and control, which file the H-1B application for the same beneficiary for substantially the same job.

NPZ Law Group managing attorney David H Nachman says, "USCIS regulations deter and penalise this tactic by requiring denial or revocation of all applications for that common visa-seeker filed by the same employer, or filed by 'related' employers if any of them has not demonstrated a legitimate business need to file those applications. Some factors that could determine that entities can be considered as related include proximity of locations, leadership structure, employment history, similar work assignments, and substantially similar supporting documentation."

In the past, the USCIS has cracked down on such misuse. Its policy memorandum illustrates one such case: Two entities 'Company S-Inc' and 'C-LLC' each filed an H-1B application for the same visa-seeker, who was a programmer analyst. The USCIS states that the applications were filed during the same fiscal year for the same visa seeker, to work in substantially the same job for the same end client through the same two vendors. As additional evidence, identical letters from the end clients and vendors were submitted in both these applications. The appeals' office of the USCIS concluded that while the two entities were at an arm's length under corporate law, there were similarities that triggered the rule against multiple filings.