

H-1B Visas Temporarily Suspended: RSTV- Big Picture

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What's in the News?

- The US President Donald Trump has issued a presidential proclamation announcing his decision to suspend certain categories of non-immigrant visas including the coveted foreign work visas such as the H-1B, H-4, H-2B visa, J and L visas till December 31, 2020. It will come into effect from June 24.
- According to the statistics provided by the Migration Policy Institute- this move blocks the entry of nearly 219,000 people into the US. This includes almost 61,000 people who are either H1B or L1 visa holders; and also their family members/dependents holding H4 and L2 visas.
 - H4 Visa is issued to the immediate family members/dependents of H1B visa holders, while L2 Visa is issued to dependent spouses and unmarried children under 21 years of age of L1 Visa holders.
- The reason cited by the White House behind this decision is to protect domestic American workers who have been rendered unemployed due to economic losses in the wake of the Covid-19 pandemic.
- Business houses, major tech companies, lawmakers, human rights bodies working among the immigrant communities, and the U.S. Chamber of Commerce have slammed this move saying that it would stifle the economic recovery after the damage done by the ongoing pandemic.
- An exemption has been provided to - "Those involved with clinical care or research related to the diagnosis, treatment and prevention of COVID-19, and those who are critical to the defence, law enforcement, diplomacy or national security."
- Trump has also made sweeping changes to the H-1B work visa norms, which will no longer be decided by the currently prevalent lottery system. The new norms will now favour highly-skilled workers who are paid the highest wages by their respective companies.
- H-1B, H-2B, J and L visa holders, and their spouses or children already present in the US shall not be impacted by the new worker visa ban.
- The decision is expected to impact a large number of Indian IT professionals and several American and Indian companies who were issued H-1B visas by the US government for the fiscal year 2021 beginning October 1.
- Sundar Pichai, the Indian-American CEO of Google- "Disappointed by the proclamation - we'll continue to stand with immigrants and work to expand opportunity for all."

Background

- There has been a sharp decrease in the number of visa applications to the US by Indian IT firms while the rejection rates have also shot up in the last 5 years.
- The trend was set in much before even the Trump government took charge. The total number of people hired on non-immigration work visas was almost 50,000 for top Indian tech companies in 2015. This was cut down by 50% in 2016. (As per NASSCOM data).
- This is not an immigration issue but a trade issue. High skilled worker mobility does not impact the net migration numbers to a particular country (in this case the USA). Such high skilled workers are in demand globally as well.

What are these non-immigration H-1B, H-2B, L and other work visas?

- To fill a vacuum of highly-skilled low-cost employees in IT and other related domains, the US administration issues a certain number of visas each year which allows companies from outside the US to send their employees to work on client sites.
- When a person travels to the US with a non-immigrant visa, then he/she has to depart from the US by the date of visa expiration. It allows one to work for a specific employer only.
- **H1B Visa**
 - It is most popular among Indian IT companies. Issued for a period of 3 to 6 years.
 - Meant for persons in Specialty Occupation: to work in a specialty occupation, one requires a higher education degree or its equivalent.
 - The total number of H-1B visas issued annually: 85,000.
 - Of these, **65,000 H-1B visas** are issued to highly skilled foreign workers, while the rest 20,000 can be additionally allotted to highly skilled foreign workers who have a higher education or master's degree from an American university.
 - Indian nationals have been receiving about 70% of these work permits, the majority of them, software engineers working for technology companies.
 - H-1B visa holders who are currently not in the US can still re-enter the country. This visa ban also does not impact people waiting for visa renewals who are already in the US.
- **H2 B Visa**
 - It permits employers to hire foreign workers to come temporarily to the United States and perform temporary nonagricultural services or labor on a one-time, seasonal, peak load or intermittent basis.
 - H-2B visa holders are allowed for one year, with renewal for two years.
- **L Visa**
 - Meant to transfer candidates who already work for a foreign branch of a US-based company, or are planning to open operations in the US of a foreign-based company.
 - Holders are granted an initial three years of stay in the U.S, which is subject to further extension up to 7 years.
- **The key difference between H1B and H1B1 visas:**
 - H-1B visa permits for "dual intent" which means that a foreign national will be coming to work in a professional position temporarily while also intending to immigrate to the United States at some point in time in the future. H-1B visa holders can apply for permanent residency by applying for a green card.
 - H1B1 visa applicants, however, have to demonstrate that they do not intend to immigrate to the United States at all.

Is this visa suspension an economic initiative or a political agenda?

- Immigration policy experts and lawyers have said that it appears to be driven more by political considerations than economic ones as it is a mere reflection of Trump's 'buy American, hire American' stance.
- Trump, who won the first term on the back of anti-immigration rhetoric, has encouraged policies that have favoured US technology companies for H-1B visas as against the traditional Indian IT companies.
- In January 2017, after taking over as the president of the US, Trump had hinted that the low-cost workers were hampering the economy and undercutting the jobs of citizens. The US had then hinted at reforming the "broken" H-1B visa system.
- According to the US Bureau of Labour Statistics - While overall unemployment has risen from 4% in January 2020 to 13.5% in May 2020 - In Computer Occupations it has come down from 3% in January 2020 to 2.5% in May 2020. Presently, 625000 job vacancies are still available. This shows that in the IT sector the skill scarcity is so high that the "unemployment reason" being cited is not at all economically justified.
- In the opinion of political analysts - Trump seized the opportunity provided by the economic contraction due to Covid-19 by first banning the entry of non-immigrant workers till June 23, and then extending it till December 31.

- As per popular opinion, this is a method by the US President to reach out to the voter base. US tech companies are also not happy as they are one of the largest users of H1B1 visas.

The Response of Indian Tech Giants

- Indian tech companies like Infosys, Wipro and TCS are progressively ramping up their presence in the US by stepping up local hiring, either setting up local innovation centres or tying up with local universities to work in newer technology areas.
- These companies are associating with local technical varsities to help in promoting STEM (Science, Technology, Engineering and Math) education.
- A recent announcement was made by Infosys, India's second-largest IT services company, that it will open its next technology and innovation centre in Hartford, Connecticut, the second of four such units in the US, and hire 1,000 American workers in the state by 2022.
- Cognizant, recently formed a \$100-million non-profit foundation to support STEM, digital education and skills initiatives for US workers and students.
- Tata Consultancy Services (TCS) has recently given a grant of \$35 million to Carnegie Mellon University to fund a new facility and student scholarships.
- Rajesh Gopinathan, CEO and Managing Director of TCS- "US is massively supply-constrained when it comes to technology, by various estimates. There is a gap of more than a million (people) between the demand and where the current supply is. Our approach to it is that it won't get fixed unless we attack at the school level".

What are the disadvantages of this move to the US tech sector?

According to expert estimates, this policy on work visas is only going to hurt the US's own competitiveness, inhibit economic investment, and have a counterproductive effect:

- Skilled workers that have been travelling to the US under the H-1B visas and L-1 one visas have also enabled the necessary talent to go in and augment American workers in support of specialised technology fields, which will now come to an end.
- Many of the companies that utilise H-1B workers are also using and creating training programmes to create integrated teams that can support the work and which can train more American workers in the skills that are necessary for high skilled IT jobs. This is a major loss to the US economy.
- Such politically motivated policy will likely divert highly talented STEM-educated workforce to other high growth countries.
- Industry body Nasscom opines - "The move is misguided and harmful to the US economy and it could possibly force more work to be performed offshore since the local talent is not available in the country".
- According to the US Chamber of Commerce - H1B1 visa holders have enriched the US Tech industry and this move means that entire job opportunities and investments are going to Canada. In fact, it is like a "Gift to Canada".
- Lack of talent being flown in would negatively impact Research & Development in the US tech sector.

Challenges caused to Indian IT Sector

- Foreign nationals outside the US, who were to begin work on an H-1B visa or even L-1 visas (intra-company transfer) – but do not as yet hold a valid visa, as well as dependents who were to accompany them (be it spouses or dependent children) will have to wait longer, till the ban expires.
- H-2B aspirants and select category of J-1 exchange program participants (interns, trainees, teachers, camp counsellors and summer work travel participants) who are outside the US and are not holding a valid visa will also be impacted by the ban.
- The H-1B cap lottery process for the fiscal 2020-21 (which commences on October 1) has been completed. Sponsoring companies have up to June end to file complete applications for H-1B cap

beneficiaries who have been selected in the lottery. The United States Citizenship and Immigration Services (USCIS), is expected to open premium processing for the H-1B cap category in the latter half of June. Companies hiring such employees had hoped to have them on board from the start of the fiscal year, presuming international travel bans would be lifted. These companies have to wait longer now.

- As per the United States Citizenship and Immigration Services (USCIS) - typically between 60-70 percent of the new H-1B visas are issued to Indians, the sponsoring employers comprise both MNCs and Indian headquartered companies, with the former hiring in larger numbers in fact. “This ban disproportionately impacts Indian nationals.”
- L-I visa applicants do not even directly compete with the US workforce as they are foreign executives, managers or specialised knowledge employees of global and international organizations being transferred to the related US entity. It does not make sense to suspend their entry.
- The marginal and low wage employees are to be the worst hit by the changes brought about in the H1B1 visa system.

Benefits of the move for the Indian tech industry

- Newer opportunities for Indian high skilled workers in the IT sector in other countries outside of the US - NASSCOM's Virtual Trade Mission To Canada during 22-25 2020 - The program was a first-of-its-kind opportunity to understand **Canada's** rich tech and innovation ecosystem. It was participated by 63 member companies.
- H1B1 has drawn away the best talent from India for decades. This move may cause reverse brain gain for better growth of the Indian tech industry.
- Better Innovation, Research & Development for nurturing the growing start-up sector in India.
- Most of the companies have become capable of handling their work remotely in the wake of the COVID-19 pandemic. This has provided resilience to the Indian tech sector against international mobility restrictions.

Will this move impact the bilateral ties between India & the US?

- The freezing of non-immigration work visas is more of a US election-related issue rather than an indication of any mutual problems between India and the US.
- India & US share global strategic partnership, based on shared democratic values and similarity of interests on bilateral, regional and global issues. However despite this strong bond and despite hectic talks at diplomatic levels between India and the US, the Trump administration decided in favour of implementing the ban.
- The issue becomes a sensitive one as US cooperation becomes strategically necessary for India amid its border tensions with China and ongoing skirmish with Pakistan.
- Nasscom has been seeking exemptions for Indian tech workers on grounds that they come under the category of essential workers.
- Shivendra Singh, Vice President & Head, Global Trade Development at NASSCOM said that the impact will be on both Indian and global companies, and if the US wants to successfully combat COVID-19, IT employees need to be exempt from suspension.

