Here's What's Really On Silicon Valley's Mind Regarding Immigration

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Ramaswamu Seshasayee, chairman of Infosys. Infy is the No. 1 user of H1-B immigration visas, a visa Indian corporate [+]

The Titans of Silicon Valley may be up in arms over immigration, and plastered on the cover of newspapers and magazines disgusted by Donald Trump's immigration policies. But the soldiers on the front line of this fight are really the IT executives from India. Some recently came to Capitol Hill to discuss what one foreign lobbyist referred to as the "most toxic visa in Washington." They're not here to discuss bleeding heart issues like deportation orders and "dreamers". They are here to speak about what Silicon Valley executives like Mark Zuckerberg rarely speak about: H1-B visas. Instead, they provide loose overtures to not being able to hire global

talent, but that has absolutely nothing to do with illegal immigration and Middle East travel bans.

The H1-B visa is much less controversial, but a lot more important. It is the hallmark of every Indian IT company operating in the U.S. Infosys, Wipro. Tata Consultancy, Tech Mahindra and HCL Technologies are the top Indian-owned companies importing foreign workers. In fact, of the top 10 companies that petition for the 85,000 H1-B visas issued annually, five are Indian. Cognizant, Accenture, Amazon, IBM and Deloitte are the biggest U.S. users. For them, it is best to let India take the slings and arrows. Because if it becomes harder for Indian companies to bring in foreign workers under the program then, in theory, those workers would go to India's rivals instead.

As it is, 70.9% of all applicants were from India in 2015. China came in distant second at 9.7% and Canada was in third at an even more distant 1.3%, according to the U.S. Citizenship and Immigration Service (USCIS). The only country on Trump's previous seven-nation travel ban that has participated in the H1-B visa program is Iran. They account for 0.4% of all H1-B applications.

India IT firms fear Trump will either stop Indian companies from importing workers temporarily, or make it harder to provide evidence that Infosys is hiring from Bangalore because it cannot hire from Boston. These so-called "H1-B dependent" entities account for the majority of foreign workers. The three year visas are renewable for another three years, and because of that renewal, USCIS says it has no idea how many H1-B workers are currently floating around the United States.

"There is no proposed legislation that would impact the numbers of people allowed in," says Becki Young, a managing partner at Hammond Young Immigration Law in Silver Springs, MD. "I can tell you what everyone is talking about though and that is H1-B getting higher compensation. Silicon Valley is very worried about the future of those visas right now."

The average salary of an H1-B holder in 2015 was $77,000. Some politicians like California Democrat Zoe Lofgren wants to see the salary raised to $130,000. For Lofgren, that would eliminate the abuses largely blamed on the Indians for bringing in lower cost software engineers. But downmarket, at smaller companies, including those in Santa Clara, this prospect of higher wages is a bad idea. Call it the unintended consequences of government mandated wage guarantees.

"We hired about 400 people last year and for a mid-sized company that is a lot of hires, and it is not easy to find them, even here in the Valley," says Raj Mamodia,

CEO of digital consultancy Brillio. He says around 10% of his 2,500 global employees are on an H1-B. Their average pay is $100,000. That may seem like a lot. But the average income in Santa Clara is $93,500 and the average home price is a little over $1 million. "I think that is very good compensation. If I have to pay 30% more to foreign workers, what do I do with my American citizen workers? They will want more too. If they require salary minimums at that level it will undercut small to mid-sized businesses like mine. I won't be able to bring in the best and the brightest where I need it and all the talent just goes to the bigger firms in the Valley."

This is also the argument of the big Indian lobbies, who know the U.S. tech companies would benefit by having access to a larger talent pool; a pool which is geared towards the Indian IT firms currently. One Washington lobbyist on Capitol Hill told me he expects Trump to keep the H1-B program in tact. But he said Indian companies will take the biggest hit of all.

"We are bracing for the worst," he said, adding that they are now trying to hire locally.

For Silicon Valley, it's a no brainer: fire shots at Trump on big picture immigration, sing Michael Jackson's "We are the World"...and let Bangalore, India take the brunt of the firepower on H1-B. The harder it becomes for the Indian firms like Tata Consultancy to bring in foreigners, the easier it is for Tata rivals like IBM to get them instead providing they are not subject to the same rules as "non-dependent" users of the H1-B.

Meanwhile, for the American firms, the biggest concern remains debate over income guarantees and the likelihood of Trump doing away with or reducing the current three-year renewal for the visa.

Some investors wonder if Trump supporter   [+]

The "Best & Brightest" Visa

Trump said he wants to bring in the best and brightest immigrants. This is the H1-B immigration visa.

The Immigration Act of 1990 created the H-1B visa. Previously, there was just one H-1 category for skilled professionals that was uncapped and had no labor restrictions. The 1990 act imposed a cap for the first time and required that H-1Bs be paid the "prevailing wage" for their occupation in the area of employment. The theory was that U.S. businesses would have no reason

to prefer foreign workers if they had to pay them as much as they paid Americans. It is the Indian firms that have been blamed for most of the abuse in terms of salary, but these disputes are never cut and dry.

"Silicon Valley likes using the Indians as their scapegoat," says Norm Matloff, an outspoken critic of H1-B abuses and a professor at the University of California in Davis. "The story is that IBM hires H1Bs instead of Americans and Infy hires H1Bs to replace Americans; that's the hook. To Americans in tech, it doesn't matter if they are replaced or simply not hired in the first place because of this visa program. They agree the system is widely abused, but it's not wage related. It's about job availability and opportunity, really. Because at about the age of 35 you become less attractive to employees here and they hire the foreign students on H1-Bs. No one wants to speak out about it in Palo Alto because they get blacklisted if they do."

Proponents argue that they cannot find the right talent, like a Java developer, either because of where they are located, or due to their company size. Opponents say that the U.S. has sufficient science, math and engineering graduates. But this depends on where those graduates are choosing to live after graduation. It is harder to easier someone in Palo Alto than it is in Salt Lake City.

"I can tell you what is going on here in Utah, where the taxes are lower than California, but the weather and the cache isn't as nice. We have some 4,000 high tech vacancies here and there is not any H1-B visas because they either go to California or get poached by Californian companies," says Jake Muklewicz, chair of the employment immigration section at Kirton McConkie in Salt Lake. "No one in Washington is really looking at the data behind what is happening with this visa, where these people are going and staying," he says.

Maybe Trump will?

Big investors are watching immigration reform closely, especially in the tech space. Sam Zell, chairman and founder of[+]

If so, the new president's America first promise could mean that the Indian multinationals get less of their own country's best and brightest, and the American multinationals get them instead. Good for Silicon Valley power players, bad for Indian companies that have grown dependent on them.

Some 99% of H-1B visa workers have a bachelor's, masters, PhD, or professional degree. The number of H-1Bs issued annually for American firms is capped at 85,000 – 65,000 from abroad and 20,000 for foreign students. When the economy is growing, these few H-1B slots fill up within days of becoming available. Applications cost time and treasure, with many lawyers getting the process going in August for an application window that opens March 31 and shuts soon after. There is no guarantee that a company will get an H1-B applicant. Applicants are chosen by a lottery system. Silicon Valley wants more H1-Bs in the system. Over 300,000 applications were sent to USCIS last year. The application pool is easily over 250,000 annually. Trump is unlikely to give it to increase the numbers allowed in, but over time, if he can make peace with Silicon Valley, then the H1-B can become his best example of immigration reform.

Conservative Cato Institute says the H1-B "has many upsides and no downsides" for American productivity, innovation, and entrepreneurship.

Raj Mamodia was the only H1-B CEO that spoke openly about the program. In a very generalized sense, his concerns are not much different than that of Facebook. "Without H1-B, I would not be able to fulfill all of my staff requirements. We wouldn't be able to drive the amount of innovation we need to stay in business," he says. Earlier this month, over 97 tech companies, all American, filed an amicus brief in a New York courthouse against Trump's seven-state travel ban, now defunct. Once again, they never mentioned the H1-B, preferring to make the brief more about Trump's ban against those Middle East nations.

Mamodia did not lend his autograph to the cause. Nor did Cognizant, IBM, Accenture, Deloitte and Amazon, all top 10 users of the H1-B.

"We have to partner with Washington on this rather than keep bantering on and on about Trump," Mamodia says. "There is a real problem here that is bigger than the Indian firms and it is about skill level, and niche technological needs that are hard to find on a job board. Even if you curtail this program, you still have to develop your home talent pool. We are becoming more automated. We need people who understand technology, either how to develop new software or how to use it."

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