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APR 5, 2017 @ 05:09 PM   20,969 👁   ★ EDITOR'S PICK

Silicon Valley Has Very Little To Complain About On H1-B Immigrant Visas

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FULL BIO ⌄

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A man who declined to give his name holds up a sign during Tech Stands Up, a rally against President Donald Trump, [+]

Washington has just made it a wee bit harder for India's IT firms to bring in entry-level software engineers. That's not so good for them, but it's good for Silicon Valley because Palo Alto may get a larger percentage of H1-B visa immigrants. For years, the lions share of those highly sought after visas has gone to the so-called "H1-B dependent" companies like Infosys, Tata Consultancy Services, Tech Mahindra and

Wipro. So when it comes to immigration issues, what will Silicon Valley complain about now?

In January and into early February, Silicon Valley and other tech firms filed complaints with New York courts, did the rounds on the major news networks and social media calling Trump's temporary travel ban for seven Muslim nations "un-American". But while Silicon Valley executives and their colleagues in middle management siting on Chewbacca bean bag chairs in Google offices nationwide might very well say they really do care about the plight of Muslim migrants, what matters to their daily bread is the H1-B visa.

The H1-B is, as one Indian lobbyist told me recently, "the most toxic visa in Washington." U.S. tech firms that signed onto the protest movement against Trump's executive order are less worried about immigrants in San Francisco restaurant's busting suds for minimum wage and more concerned with no longer being able to pull from a global talent pool of techies. Their disdain for Trump immigration was a shot across the bow. Let's face it, the *digerati* will bang war drums if Trump messed with H1-Bs.

Over the weekend, just as hundreds of thousands of petitions were being filed from Nebraska to Vermont before the April 7 deadline, the U.S. Citizenship and Immigration Service (USCIS) that oversees the program issued a note that got people talking: is this the end of the H1-B? No, it is not the end of the H1-B. USCIS said their policy has not changed, other than its enforcement of rules for entry-level "computer programmers".

H1-B immigration lawyers told me that this enforcement has no immediate impact on them, nor does it change the visa program. Tech reporters with close knowledge of Washington say that if you are going to pick winners and losers, the Indians lose, anti-Trump Silicon Valley wins.

Becki Young, managing partner for Hammond Young Immigration Law in Silver Springs, MD, told me it's still status quo for her.

"I cannot tell you the last time we did a petition for a computer programmer," says Young, just days after filing her last petition to the Vermont processing center. "Our clients want higher skilled petitions, so anyone filing for computer

Jeff Bezos, chief executive officer of Amazon   [+]

programmers would be the Indian IT firms. This refocus on vetting entry level computer labor may shift resources and priorities of those who grant the visas."

That shift means away from the Indian IT firms, which get about 66% of the visas according to the USCIS records for 2015.

News broke over the weekend that USCIS was advising its three servicing centers that process the applications to ignore a 2000 memo from the Nebraska center for job titles listed as computer programmers, or entry level engineers. Nebraska stopped processing applications in 2006, but were brought back on board in 2016, leading USCIS to issue a policy memo reminding everyone of the education requirements for lower level tech workers. The Department of Labor defines those workers for the companies to file under, but companies of course can get creative with titles. An entry level computer program can easily be called a junior software engineer instead.

On April 3, both the USCIS and the Department of Justice warned H1-B filing companies that they would be under more scrutiny from visa processing agents and that the onus was on them to prove they could not find a compatible worker domestically. Opponents to the visa charge that companies use foreign students and foreign workers to lower salaries, or replace older workers. Proponents say that the visa is for high skilled labor that make the same amount as their American counterparts, normally six figures in Silicon Valley.

USCIS said that the average wage for an H1-B visa holder last year was $77,000.

USCIS said the U.S. is still issuing 60,000 H1-B visas, and 20,000 H1-Bs for foreign students. There is no number for visa renewals, which are expected to be about the same as new issues. The program is definitely intact, with a higher threshold, perhaps, only for entry level users. If Silicon Valley says that they need the best and the brightest, then that is what USCIS is allegedly trying to assure Americans who --

Ramaswamu Seshasayee, chairman of Infosy[+]

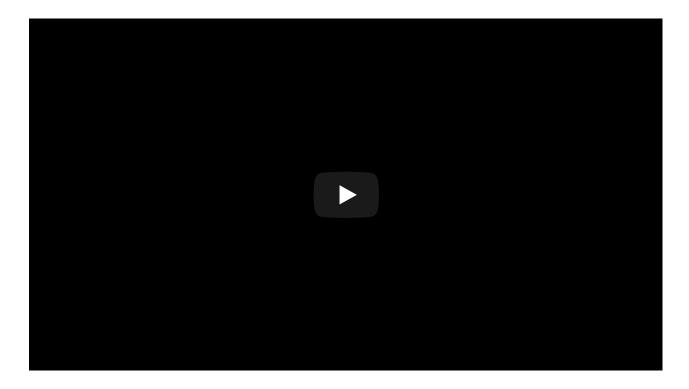in some quarters -- are saying they are being replaced for younger, cheaper, foreign IT workers.

And if the government is going to assure more of the visa holders are higher quality, then that likely means a higher pool of applicants for the same high tech firms that were bemoaning bans on Muslim nation immigrants who constitute near zero

percent of H1-B visa holders. Within the seven countries initially banned entry into the United States, only around 1,000 Iranians have come in on H1-Bs.

Prediction: now that the H1-B program is safe and sound, and the Indians are going to have to jump through more hoops, Silicon Valley executives will no longer make a ruckus about immigration.

"For the most part, the Facebooks of the world benefit from this," says computer sciences professor Norm Matloff, a vocal critic of the abuses within the visa program over at U.C. Davis. Matloff expects more changes to come under the program, primarily those designed to fight worker abuse.

"One of the biggest difference between the Intels and the Infosys' out there is that Intel will sponsor you for a green card," he says, adding that foreign workers become wedded to the company for three to six years or risk losing their shot at U.S. citizenship. Companies do this in order to avoid their hires being poached by other firms that did not go through the costly visa filing process.

Numerous loopholes have allowed companies to benefit from cheaper tech labor, namely from India. Indians constitute more than two thirds of all H1-B visa holders, making them the brunt of disdain in Washington with very little allies. But on March 19, 60 Minutes ran a segment on American workers, mostly middle aged, who were displaced by lower cost H1-B hires at companies like Disney and Eversource, not the Indian IT firms.

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