

ISSUE BRIEF

THE CURIOUS CASE OF H1-B VISA IS COVID-19 THE END OF THE AMERICAN DREAM?

by

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Abstract

It goes without saying how far-reaching and sweeping the effects of Coronavirus have been, tacitly having seeped into nearly every aspect of our lives. Amidst this pandemic-pandemonium, Donald Trump's latest decision to temporarily ban all non-immigrant visas hits hard. Ever since President Trump came to power, there has been no stone that has been left unturned in attempts to curb the immigration policies in place. The case-in-point of the H1-B visa is no different. As widely acknowledged, Indian diaspora in the United States has been the major driving force of technological progress in Silicon Valley. The investments made by Indian IT firms and the subsequent job-creation have lifted the US economy to soaring heights. This Issue Brief will provide context to the aforementioned, while also probing into the rhetoric of whether the United States can afford to lose out on its foreign workforce at a juncture such as this. It also looks at the impact this move will have on the Indian IT firms and their employees.

Introduction

H1B visa is a temporary or non-immigrant “specialty occupation” white-collar US visa, which means the holder is employed in a position that requires specialised skills or knowledge. The institution of the H1 policy is under the *Immigration and Nationality Act, Section 101(a)(15)(H) of 1952*; which was further divided into H1-A and H1-B in 1990, for nurses and specialty occupations, respectively. The Visa is issued by the US Citizenship and Immigration Services (USCIS).

One of the main reasons as to why the Visa was instituted in the first place was because American Universities failed to generate the numbers needed to fuel the US Economy. This was intensified during the Cold War and thus, Immigration Policies were amended to keep up with the rigour of the economic process. The *Immigration and Naturalization Act of 1965* paved the way for immigration from Asia to the United States in a grand way. Not only did this legislation abolish discrimination based on race and nation of origin for the purposes of admission, it also introduced new categories within its ambit—*family reunification, professional skills, and refugee status*.¹ This policy set forth the very basis of a decent forward-thinking immigration policy for the next 25 years that were to come.

Since it was started in 1952, the H-1 visa scheme has witnessed many policy changes and decisions favouring certain categories of skilled workers in the US, with the economic situation of the country proving to be a variable factor. The economic pandemonium that follows the COVID-19 crisis is no different as, in a recent move, the US administration said it was extending the temporary 60-day ban it had imposed on immigration and non-immigrant worker visas, in the light of the pandemic, till the end of 2020.

This move will not only impact the big US tech firms who have hired countless Indians over the years,

but Indian companies like Infosys, Tata Consultancy Services, Wipro, etc, who export the finest ‘techies’. Zooming out to a bigger debate, the revocation of visas that has been laced with scrutiny ever since Trump came to power, will directly impact the US economy and perhaps even the post-pandemic recovery of the same.

Most important, however, is the question of whether these discouraging moves will eventually see Indians out of the equation and bring an end to the ‘*American Dream*’?

Background

The inception of this immigration policy stemmed mainly from two driving forces that had swept over the United States in the 1960s. The US civil rights movement had ushered in a shift towards liberal ideas about racial equality, no longer solely favouring white European immigrants. The Cold war between the United States and the Soviet Union also spurred the need for a high-skilled labour force to amplify the States’ economic prosperity and prowess.

From a socio-cultural standpoint, the policy entailed for the new Indian immigrants to brave through and overlook the earlier incidents of exclusion, hostility and denial of citizenship. The early Indian talent pool was composed almost wholly of men from elite castes and classes, who were only too eager to escape from their home country that could not offer them enough opportunity to apply their skills.

It is interesting to note how the newly introduced immigration policy was complemented further by the democracy prevailing in India, ensuring a stream of labour market who sought jobs voluntarily, unlike the migrants seeking asylum, refuge or facing persecution. Indians achieved a record growth rate of 125 per cent between 1980 and 1990, representing one of the *fastest growing immigrant* groups under the Asian-American umbrella.²

1. Williams, J. P. 2019. “Journey to America: South Asian Diaspora Migration to the United States (1965-2015).” *InTechOpen*, September 1. <https://www.intechopen.com/books/indigenous-aboriginal-fugitive-and-ethnic-groups-around-the-globe/journey-to-america-south-asian-diaspora-migration-to-the-united-states-1965-2015>

2. *Ibid*.

The boom of technology along with the ‘dot com bubble’ and the onset of the Internet age, in general, further allowed for developing nations such as India and China to send a large number of graduates willing to work at relatively low costs in the US.

Many Indians, since the 1980s, have revolutionised the IT sector in the US, namely the Silicon Valley. Two of the biggest tech firms in the world today are headed by Indians, Microsoft’s Satya Nadela and Google’s Sundar Pichai. Other prominent figures include Vinod Khosla, Ajay Bhatt, Vinod Dham, Sabeer Bhatia linking to Java programming, Intel’s growth, Pentium processors and Hotmail, respectively.

Visa and its Provisions

With the clear mention of ‘specialty occupation’, jobs that suit the H1B visa typically need a university degree or equivalent, which otherwise account for 3 years’ work experience for each year that would normally be spent at university. The H-1B visa is issued for three years, with one possible additional three-year extension, making six years’ maximum stay in total.

Any H1-B application must be sponsored by a *valid* company. The individual must have an offer of work, education or internship prior to submitting the application. The US government has a cap of 85,000 total H-1B visas for each year. Of this, 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 already have a higher education or master’s degree from an American university.³

Indians have received between 67–72 per cent of the total H-1B visas issued by the US in the last five fiscal years. What is worth knowing furthermore is that out of the 2.75 lakh applications received by USCIS for H1-B visa as of April 1, 2020, Indian applications accounted for 1.84 lakh.⁴ In 2018, there were as

many as 4,19,637 foreign nationals working in the US on H-1B visas, out of which, 3,09,986 were Indian visa holders.⁵

While major legislations since the 1990s have governed the dynamics of the US immigration, it was much of the fine tuning of the visa processes in the past decade that has yielded the visa maximum popularity and competitiveness. Following are some of the recent landmark policy moves.

Policies under Obama Administration

Between 2009 and 2017, Obama’s Administration undertook significant policy measures to further streamline the workings of the H1-B and other immigration policies linked. One of the initiatives was to empower the spouses of high-skilled immigrants to put their own education and talents to work: those on H-1B visas, who are also on the path of obtaining lawful permanent residence status (green card), were permitted to pursue employment themselves. The families of those women and men or “*Americans-in-waiting*” were often stuck for years in lengthy green card backlogs as a result of the initially broken immigration system.

This measure was seen as a way to put their skills to use, thus reducing the strain on their families during that waiting time. This H-4 visa amendment went into effect in May 2015. More than 35,000 spouses received work authorisation under Obama’s tenure, by the end of 2015 itself.

The administration also sought to improve *clarity* and *consistency* for a visa category that allows global companies to temporarily transfer specialised knowledge workers to the United States for the purpose of launching or assisting a US operation. This L-1 guidance went into effect in August 2015. As many as 33,454 L-1 visas were approved with a *success rate of 84 per cent*, in the fiscal year of 2015.

3. H1B Visa. OnlineVisas. <https://onlinevisas.com/visas/us-visas/h1b/>.

4. “More than 184,000 Indians Applied for H1B Visa for FY20-21 Says US.” 2020. Business Insider, April 1. <https://www.businessinsider.in/india/news/more-than-184000-indians-applied-for-h1b-visa-for-fy20-21/articleshow/74938489.cms>.

5. “Three-fourths of H1B Visa Holders in 2018 are Indians: US Report.” 2018. The Economic Times, October 20. <https://economictimes.india-times.com/nri/visa-and-immigration/three-fourths-of-h1b-visa-holders-in-2018-are-indians-us-report/articleshow/66289772.cms?from=mdr>.

To retain the immigrant scientists and engineers who received their education in the United States, the administration strengthened and extended *on-the-job training* for some of the world's most talented Science, Technology, Engineering and Mathematics (STEM) graduates from the US universities. The "OPT STEM rule" went into effect in October 2015.

These policy measures undertaken by the Obama Administration⁶ have sustained and streamlined the 'broken immigration system' paving the way for encompassing a wider plethora of immigrants into America's economic machinery.

Protectionism under Trump Administration

Meanwhile, the US government has earned an anti-immigrant reputation owing to President Donald Trump's protectionist rhetoric and the administration's incessant attempts to curb the visa misuses as much.

Under the Trump administration, Indian IT services companies have seen *rejection rates* jump from 6 per cent in 2015 to 24 per cent in 2019. It has instead favoured US technology companies such as Google, Facebook, Amazon and Apple. In 2018, the *top six Indian IT firms* had received about 16 per cent of the total visas issued. In 2019, there were only two Indian companies among the *top ten visa recipients*, which got 1,966 visas compared with 8,898 for the other eight firms.

The H-1B denial rate as a whole for FY 2019 was 32 per cent, up from 24 per cent in 2018. To put this in perspective, the denial rate from 2010-2015 never exceeded 8 per cent, today's rate is 4 times higher. The time taken to process H-1B application rose from 3.2 months in FY2018 to 5.2 months in FY2019.⁷ This has forced Indian IT firms to be more cautious while filing their applications, which results in an increased cost for the firm.

The recent move, as Donald Trump said, was to

6. "The President's Actions to Promote High-Skill Immigration." 2016. TheWhitehouse, January 28. <https://obamawhitehouse.archives.gov/blog/2016/01/28/presidents-actions-promote-high-skill-immigration>.

7. Anderson, S. 2019. "Latest Data Show H-1B Visas Being Denied At High Rates." *Forbes*, October 29. <https://www.forbes.com/sites/stuartanderson/2019/10/28/latest-data-show-h-1b-visas-being-denied-at-high-rates/#70fdb32454c3>.

8. <https://www.washingtonpost.com/business/2020/06/05/may-2020-jobs-report/>.

protect domestic workers who had been impacted due to a contraction in the economy in the wake of the COVID-19 pandemic. The overall unemployment rate in the United States nearly quadrupled between February and May of 2020—producing some of the most extreme unemployment rates ever recorded by the Bureau of Labor Statistics. While the rate of unemployment in May of 13.3 per cent reflects a marked decline from April, millions of Americans remain out of work⁸.

In another move, the Trump administration also revoked the lottery system of selection of visas. The new norm will now favour highly-skilled workers who are paid the highest wages by their respective companies, as it is mostly the companies who fund the visa for the hired workers. However, not only will this make the jobs and visa more competitive, it will also additionally burden the margins of the hiring firms—both Indians and the Americans alike—who will now have to pay higher wages.

Conclusion

While it is not contentious that Indian employees will benefit from the higher wages and India can expect an increase in remittances, whether the US economy needs such a policy move in the context of COVID-19 is highly questionable.

The IT sector along with health and financial services has been in the forefront of providing COVID-19 related services. The most prominent service exports from India to the US have been in the field of telecommunications, computer and information services, research and development, and travel sectors. Technological advancements made in the field by immigrants are pushing for productivity and competition across sectors, to the point where there has been a 1 per cent decline in the price for US IT products and a whopping 7.4 per cent decrease for Indian products.

US imports of services from India were an estimated \$29.6 billion in 2018, 4.9 per cent more than in 2017 and 134 per cent greater than 2008 levels, according to the US Trade Representative. Most prominently, the H1-B visa has been instrumental in the rise of India's \$155 billion IT services industry. Adding on, over 100 Indian companies made an investment of \$15.3 billion and this accounted for nearly 91,000 jobs created directly, along with a contribution of \$20 billion in federal taxes. Indian IT companies directly employ about 1,00,000 US citizens and support jobs indirectly for three times as many Americans.

We are at the brink of a potential political turnover with the US presidential election just around the corner. Even the slightest possibility of Trump's move being an election gimmick, tacitly superseding the concern of the pandemic, will only prove to be detrimental as Indians account for 1.5 million of the voters in the States, according to 2016 electoral data.

It is a fact worth noting that all of these substantiate the undeniable dependency of the US on Indian migrants, and will further play an inevitable but crucial role in post-COVID recovery. The Migration Policy Institute has been cited predicting that up to 2,19,000 workers would be blocked as a result of Trump's proclamation. Another major implication of Trump's move would be the employers returning to hiring locals and some Indian IT companies are already considering alternatives to placing people on-site with US clients, such as creating clusters of workers in countries like Mexico or Canada.

It is unfortunate that the Americans have not taken enough accountability for the plight of many Indians who have been stranded in India and are away from their livelihood in the US due to the H1-B visa issue. They are presently working night shifts to keep up with the remote work. But this could open up a new prospect—expanding India's own IT industry further by engaging the workforce that potentially lost out on the H1-B, or are unwilling to cope with the uncertainty that comes with the visa today. The argument of India's brain drain will also find a new stance.

There is a clear collision of globalisation and

protectionism with respect to the US meting out its policies. The US economy has had its bitter share of the pandemic and it is estimated that the US economy will take at least a decade to fully recover from the shock of the pandemic. The impact of the pandemic being so generalised across sectors and countries, so universal in its nature, calls for universal solidarity as well. How the Trump administration plans to revive from COVID-19, after curbing an entire chunk of the economy's driving factor, remains the biggest and contentious question at hand.

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