GOVERNMENT OF INDIA
MINISTRY OF ELECTRONICS & INFORMATION TECHNOLOGY
LOK SABHA
UNSTARRED QUESTION NO. 2328
TO BE ANSWERED ON: 01.08.2018

IMPACT OF US POLICY ON IT PROFESSIONALS

2328. SHRI JAYADEV GALLA:

Will the Minister of ELECTRONICS AND INFORMATION TECHNOLOGY

(a) the details of each of the Executive Orders issued by US since December, 2016, which impact Indian IT and other professionals in the US;
(b) whether it is true that Finance Minister has recently met US Commerce Secretary and raised India's concerns before him; and
(c) if so, the response of US in this regard and the steps Government proposes to take to resolve the problems faced by Indian professionals?

ANSWER

MINISTER OF STATE FOR ELECTRONICS AND INFORMATION TECHNOLOGY
(SHRI S.S. AHLUWALIA)

(a): The US Administration has released a series of immigration-related Executive Orders, policy memos, administrative appeal decisions, and other regulatory changes that may impact Indian IT and other professionals in the US. The chronological details since 2016 are paced at **ANNEXURE**.

(b): No, Sir. However, the Hon'ble Minister of Commerce and Industry met with various U.S. Government officials during his US visit in June 2018 and raised the issues and challenges facing the Indian IT industry in the U.S. and underlined an urgent need to redress in mutual interest.

(c): The Government remains closely engaged with the U.S. Administration and the Congress on all issues relating to movement of Indian professionals including the H-1B visa programme. In these engagements, the Government has emphasized that this has been a mutually beneficial partnership which should be nurtured. Indian skilled professionals have contributed to the growth and development of the U.S. economy and have helped the U.S. retain its competitive edge and innovation advantage. Further, the Government has undertaken a consultative approach with the industry associations in the country and these are also suitably engaging with their U.S. counterparts.

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ANNEXURE

KEY EXECUTIVE ORDERS AND OTHER ADMINISTRATIVE MEASURES BY THE US ADMINISTRATION

The US Administration has released, after December 2016, a series of immigration-related Executive Orders, policy memos, administrative appeals decisions, and other regulatory changes. The key ones of significance to the Indian IT sector are as follows (listed chronologically):

- **Policy Memo**: On 31st March 2017, U.S. Citizenship and Immigration Services (USCIS) introduced a policy memo on H-1B usage, wherein the agency would be inclined to deny H-1B petitions for "entry-level computer programmers" and petitions filed at Level 1 wages. This effectively raised the floor for what qualifies as a "specialty occupation," and employers seeking H-1B visas for individuals at these levels must now provide further evidence to establish the same e.g., via higher education degrees/ higher wages.
- **"Buy American, Hire American"**: On 18th April 2017, a Presidential Executive Order (EO) entitled "Buy American, Hire American" targeted high-skilled worker visas and global outsourcing, among other items. The EO has been the framework for a number of administration policy changes and proposed changes that target the visas most commonly used by India's IT sector. US President, Attorney General Sessions, Labor Secretary Acosta and others have indicated these measures are just the beginning of what will be sought. [Note that one month prior to the EO, a draft of the EO was leaked that was far more

restrictive and expansive relative to the visas. Included were provisions to eliminate the current H-1B lottery and move to prioritize the allocation of H-1Bs by skill set and wage levels.]

- **EO on 21st June 2017**: US President signed an Executive Order that strikes part of a 2012 order signed by former President Obama instructing the State Department to "*ensure that 80% of non-immigrant visa applicants are interviewed within three weeks of receipt of application.*" This is part of the US Administration intent to quietly beef up the "*extreme vetting*" procedures for people seeking visas to enter the U.S. White House officials refer to the decision as an effort to strengthen security. Immigration experts anticipate these delays could prevent foreign workers seeking H-1B visas from entering the U.S. for their scheduled work.

- **Proposed Changes to LCA**: On 3rd August 2017, the Department of Labor (DoL) sought comments from relevant agencies on proposed changes to the Labor Condition Application (LCA) forms. NASSCOM believes the proposed addition of new fields (i.e. name of secondary employer and university from where H-1B employees qualify) is not authorized by the H-1B visa statute, and hence not necessary for DoL's proper performance of its LCA responsibility. Further it will have no practical utility, and could potentially harm innovation and competitiveness in key segments of the economy.
- **Justice-State Coordination**: On 11th October 2017, as part of the continuing attack by the U.S. Administration, the Departments of Justice and State announced that they have formalized a partnership to share information and resources, and pursue claims of discrimination based on national origin, among other things. This entails breaking down interagency barriers and increasing information sharing and coordination on these matters. A similar "Memorandum of Understanding" was issued between DoJ and USCIS in May 2018.
- **Proposed changes to H-1B and H-4**: On 14th December 2017, the Department of Homeland Security and the U.S. Citizenship and Immigration Services (USCIS) published notices that they intend to propose several changes to the H-1B and H-4 visa programs. These were part of the US administration's semi-annual report on future regulatory actions, and include:

  a) Moving to rescind the current policy allowing H-4 visa holder spouses of certain H-1B visa holders to work while they are in the U.S. (This proposal was expected in February 2018, but USCIS has pushed the anticipated release back to June.)
  b) Establishment of a pre-certification scheme to be administered by USCIS and set between the LCA and H-1B visa petition adjudication processes. (This proposal was expected in February, but has been pushed back with no new release date announced yet.)
  c) Changes in the adjudicatory criteria for H-1B eligibility, establishing explicit employer responsibilities for clients of companies sponsoring H-1B visas, and adding additional restrictions relative to wages (with a notice of proposed rulemaking expected in October 2018). Under this proposal, DHS will propose a rule to revise the definition of "specialty occupation" for H-1B eligibility to "increase the focus on truly obtaining the best and brightest." It would also revise the definition of employment and the employer-employee relationship and add new requirements designed to ensure that employers pay appropriate wages to H-1B workers.
  d) Also expected to be released in October 2018 is a proposed rule to scale back the STEM OPT program, i.e. optional practical training work visas, which allow foreign students to stay in the US a bit longer after completion of their studies. The expected change would reduce the number of degree programs eligible and the length of time someone can stay to the pre-Obama-expansion rules.

  Note: these are all intended changes. Each of these will be subject to a lengthy rule-making process, beginning in 2018. The process will take many months and could be subject to court challenges. The agency is required to solicit public comments on proposed changes.

- **February 22nd 2018**: USCIS issued a policy memorandum mandating stricter adjudicatory standards and oversight for H-1Bs that will be placed at 3rd party sites (client sites). The memo also directed adjudicators to routinely limit the time period H-1B visas are approved for when the non-immigrant will be working at a client site. The memo largely reiterates current practice as applied to the Indian and Indian IT services companies. It formalizes such practices and directs that they be applied to all H-1B petitions and H-1B beneficiaries involving 3rd party placements. For the Indian and Indian-centric companies, it increases administrative burdens and the associated costs, e.g., more and more complicated RFEs, need to file more petitions. That said, these norms make the whole process of getting and renewing visas more onerous and expensive
- **May 9th 2018**: The Office of Management and Budget (OMB) released the regulatory calendar confirming various USCIS plans on proposed and final rule makings as outlined above
- **May 11th 2018**: The US Justice Department and US Citizenship and Immigration Services (USCIS) announced a new Memorandum of Understanding (MOU) between the two agencies, outlining steps they will take to collaborate in the

enforcement of the nation's immigration laws, particularly with respect to "discrimination by employers bringing foreign visa workers to the United States. The overall impact of the MOU is likely to be increased oversight and scrutiny.

- In addition, we have observed a significant increase in administrative oversight and enforcement actions that include:
  1) Initial reports of increased denials and RFEs (Requests for Evidence)New adjudicatory standards for certain classes of individuals, such as Level 1 or Level 2 beneficiaries and younger computer programmers
  2) Vastly expanded inspection and audit schemes by DoL
  3) Significant increase of audits and inspections at client sites
  4) Visas are being approved for shorter durations
  5) Reports of enhanced scrutiny of approved visa holders at the port of entry
  6) A new and increasingly hostile tone to the visa interviews where the starting point seems to be to look for a reason to deny the petition, particularly when it involves a consulting arrangement
  7) Proposed changes to the required labor certification forms in order to collect and make public sensitive, proprietary information
  8) Selective aggregation and public release of previously unavailable government data on the visa programs in order to put them and the major sponsoring organizations in a negative light. For example, aggregating the number of H-1B initial approvals and approvals for extensions and presenting these figures as if they represented only new visas. Similarly, releasing wage data submitted by companies on LCA forms rather than the higher actual wages often paid.
  9) The Administration seeking to reinterpret US Civil Rights laws and use them to possibly discriminate against and prosecute the sector.
  10) Continue to charge 50:50 companies thousands of dollars more in fees than other users of the H-1B and L-1 visa programs.

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