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COMMENTARY

Current H-1B Visa Policies Darken IT Talent Outlook

Meanwhile, the IT skills gap widens

A woman leaves the U.S. Citizenship and Immigration Services offices in New York, Aug. 15, 2012. **PHOTO:** KEITH BEDFORD/REUTERS

By Gary Beach

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Today, as the United States Citizenship and Immigration Services begins to accept H-1B visa applications for the federal government's fiscal year 2020, the program is under siege. Frustration levels shared among workers, corporate sponsors and politicians continue to rise while application filings have dropped 20% since 2017. More erosion is expected this year leading some to speculate if the 29-year old visa is in the initial throes of a death spiral.

What issues are causing H-1B application filings to fall?

Availability of skilled talent is not one of them. India, which supplies 52% of H-1B workers, employs four million information technology workers. China, at 10% the second largest country of origin for H-1B workers, touts a workforce that includes 4.7 million science and engineering undergraduates. Skilled labor from those countries alone – without including potential H-1B

workers from Japan, Canada or South Korea - could meet the current annual cap of 85,000 H-1B visas for decades into the future.

Nor is the drop off rooted in less demand for technology workers. CompTIA, a U.S. industry trade group, says there are currently 732,000 unfilled information technology jobs in the United States. Gartner warned in January 2019 that "talent" is now the top emerging threat for C-level executives.

The imbalance created by the demand for, and supply of, talent has created a widening skills gap which now poses "one of the greatest threats to our nation's long-term economic prosperity," according to Johnny Taylor, CEO of the Society for Human Resource Management.

Perhaps the decline in H-1B visa filings can be traced to the massive amount of administrative red tape chief information officers must navigate through to sponsor a H-1B visa. The USCIS site lists a mind-boggling 95 forms a sponsoring company must review before completing an application. Then there's cost. In addition to a $1,500 non-refundable filing fee for each application, firms must budget for additional expenses incurred by legal, human resource and IT departments which can tally as much as $20,000 per visa application.

Strict enforcement of the Trump administration's "Buy American, Hire American" executive order of April 2017 by the USCIS is clearly a significant factor muting interest in the H-1B program. In 2014, five percent of H-1B applications were rejected by the USCIS. In 2018, 25% were denied. Moreover, 60% of applications are now returned to sponsoring companies asking for additional information via "request for evidence" mandates. In 2016, 30% of applications were returned seeking more evidence.

The National Foundation for American Policy, a Virginia-based policy group, says "employers report the time lost due to the increase in denials and requests for evidence has cost millions of dollars in project delays and contract penalties, while aiding competitors that operate exclusively outside the United States."

A new policy under consideration for implementation by the USCIS could deliver a crippling blow to the program. Reports claim the agency has drafted, and sent to the White House Office of Management and Budget for approval, a recommendation that would rescind the H-4 Employment Authorization Document visa, a very popular visa introduced in 2015 which allows spouses of H-1B visa holders to live and work in America. Sarah Pierce, a policy analyst at the Migration Policy Institute, says this proposal, if implemented, could be "devastating for H-1B families forcing them to self deport or be separated from their spouses." A former H-1B worker who moved to Canada in January 2019 told First Post, an Indian news site, "our families are getting hit, our spouses are upset because they may be denied working rights, it is coming at us from all sides and frankly, we can't take it anymore."

Finally, an uncontrollable force, which has nothing to do with H-1B workers, their families, government policy or administrative red tape, now presents the H-1B visa with its most serious challenge. The deployment of emerging technology poses the greatest existential threat to the H-1B visa. Here's why. Since 1990, H-1B workers have often worked in mid-skill level IT jobs such as coding, application development, business process outsourcing, IT services, customer services and data entry. Now, many of those jobs are being replaced by AI algorithms, robotic process applications or smart machines. Business investment solutions that don't need visas. Just capital. To remain relevant, and market-based, the H-1B visa program must shift its focus to recruitment of workers skilled in artificial intelligence, the internet of things, cybersecurity and blockchain technologies, the pillars of an innovative economy.

Much has been written about how immigrants have founded 40% of Fortune 500 firms. Bill Kerr, a professor of business administration at Harvard Business School, adds a new data point to consider. Based on research he has done, Mr. Kerr says, "In 1970, foreign nationals were granted one in 12 patents by the U.S. Patent Office. In 2019, immigrants now account for one in every 3.5 patents."

The current H-1B selection process is broken and tactical fixes proposed by the USCIS – such as rejiggering the selection process to include more masters candidates and introducing an electronic filing system in 2020 - are akin to rearranging the deck chairs on the Titanic. Talent provided by H-1B workers, or some other to-be-created visa in the future, will be pivotal to America's capacity to invent and innovate. Political leaders in Washington, D.C. need to understand that and focus on creating policy that welcomes, rather than caps, foreign national talent.

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