

## IT Consulting Firms Trying to Force Litigation of H-1B Denials

By Laura D. Francis

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- Flood of lawsuits intended to show court extent of H-1B issues
- IT consulting companies seeing higher H-1B denial rates

A group of information technology consulting companies is trying to force a federal court ruling on a government policy they say is preventing them from accessing workers on H-1B visas.

Businesses increasingly have been willing to sue U.S. Citizenship and Immigration Services over visa denials, particularly when it comes to the H-1B skilled guestworker program. In many of those instances, the agency has reversed course and approved the visa, thus making the case moot.

That's good news for the businesses, but it also means there aren't any court rulings on the legality of the USCIS decisions or policies.

That's what the ITServe Alliance is trying to change, attorney Jonathan Wasden told Bloomberg Law.

### Multiple Challenges to Policy

With the help of Wasden and Barnwell Whaley attorney Bradley Baniias, members of the alliance have filed more than 40 lawsuits in the U.S. District Court for the District of Columbia. All of them challenge a February 2018 USCIS policy that imposes additional requirements on IT consulting companies seeking H-1B workers.

The policy is the basis for H-1B denials or approvals of the visas for only a short period of time, such as a few weeks or days. It's already the basis of two lawsuits, one of which was filed by ITServe itself and some individual members who received negative H-1B decisions.

If the cases had been filed individually, it's likely the USCIS "would've just tried to avoid the issue in litigation," Wasden said. With so many cases filed in the same court at the same time, "the court can't ignore it," he said.

The USCIS can't comment directly on matters involving pending litigation, an agency spokesman told Bloomberg Law.

### Additional Scrutiny

IT consulting companies' use of the H-1B visa program has received particular scrutiny from the Trump administration. Among the top H-1B employers, IT consultants are seeing a much higher denial rate—as high as 40 percent, compared to a 1 percent denial rate for other big tech companies like Microsoft Corp., Google, and Amazon.com Inc.

The industry received President Donald Trump's attention during his campaign, based on reports that U.S. tech workers were being laid off and replaced by H-1B workers at companies such as Southern California Edison and Walt Disney Co. In those instances, the U.S. workers' employer contracted out its IT function to one or more consulting companies, such as Infosys Ltd., HCL Technologies Ltd., or Cognizant Technology Solutions Corp.

Judge Rosemary Collyer has asked the government to meet with ITServe to discuss consolidating the various cases because of the common legal issues. The USCIS says it's opposed to doing so because the parties already are preparing briefs in the original ITServe case that will address those issues. The other cases can just be put on hold while the first one is litigated, the agency said.

Wasden, however, believes the administration may be trying to slow down the litigation to have time to "do as much damage to the H-1B program as they possibly can."

He expects that the court will consolidate the cases and issue a preliminary ruling in about two months. There's likely to be appeal from the losing side, he said.

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