U.S. PREPARES TO DISTRIBUTE H-1B VISAS WITHOUT TRUMP-DEMANDED CHANGES

Highly sought work permits have come under scrutiny over pay issues, protection of American workers

By Laura Meckler
April 6, 2018

The government is set to again distribute scarce H-1B visas for high-skilled foreign workers by lottery, without the big changes President Donald Trump promised to enact a year ago.

Demand for the visas – which are used by outsourcing firms and high-tech Silicon Valley companies, as well as by many smaller employers – has for years far outstripped the supply. The government said Friday that it had begun accepting applications on Monday and had already received enough to meet the 85,000 cap.

Winners again will be chosen by lottery for applications that are subject to the cap.

Mr. Trump said a year ago he would change how H-1B visas are distributed in a way that would have benefited high-tech Silicon Valley companies and hurt outsourcing firms, including many based in India, that have come under scrutiny.

"Right now, H-1B visas are awarded in a totally random lottery, and that's wrong," Mr. Trump said last April. "Instead, they should be given to the most skilled and highest-paid applicants, and they should never, ever be used to replace Americans."

Outsourcers have been accused of replacing American workers with foreigners and generally pay far less than high-tech companies. Average salaries at firms such as Amazon.com Inc., Google, a unit of Alphabet Inc., and Apple Inc. are tens of thousands of dollars higher than at outsourcing firms such as Cognizant Technology Solutions Corp., Tata Consultancy Services Ltd. and Infosys Ltd.

A spokesman for the agency that administers the program, U.S. Citizenship and Immigration Services, said it fully supports a Trump executive order called "Buy American, Hire American" that ordered a review of the H-1B program.

"We have provided policy guidance and are working on regulatory reforms to achieve the goals associated with reform of H-1B visas," said spokesman Jonathan Withington. He pointed to coming regulations that aim to improve the program.

It was never clear that USCIS had the legal authority to change the program's rules. One lobbyist familiar with the agency's thinking said that officials there fear being sued if they make changes without congressional authorization.

Those pressing for change, such as a professional society for U.S. engineers known as IEEE-USA, are frustrated and have been highly critical of outsourcing companies.

"IEEE-USA is disappointed that President Trump hasn't fulfilled his campaign promise on the H-1B lottery," said Russell Harrison, director of government relations for the group. "We continue to believe that moving to an auction-style system would help ensure that the H-1B visas go to the most worthy companies, and protect American jobs."

While there are no signs that the agency will change the lottery rules, it has taken a variety of other, smaller steps aimed at increasing scrutiny of visa applications.

It is sending back more applications with "requests for further evidence," particularly positions at the lowest pay level. Last year, the agency directed that adjudicators no longer pay "deference" to past determinations for renewal applications. This means an applicant's past approval won't carry any weight if he or she applies for a renewal.

It also plans to retract an Obama-era policy that authorized spouses of H-1B workers to work in the U.S. And it might pare back the Optional Practical Training program, which allows foreign graduates from U.S. colleges in science and technology an extra two years of work authorization, giving them time to win an H-1B visa.