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# America’s SC: Courts need not defer to federal agency decisions – it’s a mixed bag for the Indian diaspora

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MUMBAI: The US Supreme Court in its recent decision has overturned a 40-year-old tenant (set earlier in the Chevron case) that courts should give substantial deference to federal agency decisions. Overturning the earlier judgement has wide-reaching implications in the realm of immigration laws and is a mixed bag for the Indian diaspora.

According to immigration attorneys, it could boost the chances of success for US employers who hire immigrant employees (such as those on H-1B visas) while challenging unfavourable decisions taken by the US Citizenship and Immigration Services (USCIS) – such as on visa extensions on grounds that the occupation is not ‘specialized’. However, it could also mean that work authorization available to H-4 visa holders (spouses of H-1B who are on track for a green card), could be subject to a fresh bout of litigation.

In late June, while deciding the case of Loper Bright Enterprises, Chief Justice John Roberts, held that courts must exercise their independent judgement in deciding whether an agency has acted within its statutory authority. Rajiv S. Khanna, managing attorney at Immigration.com told TOI, “The Loper Bright decision cuts both ways, helpful and harmful. Because of this order, courts can now review both the beneficial and pernicious decisions made by USCIS and the Department of Homeland Security (DHS) based on their interpretation of various factors. Agency interpretations are not presumptively entitled to judicial deference.”

It is a mixed bag. It could, in some cases, give US employers who hire H-1B workers or L-I workers - on an intra-company transfer to have a better chance of fighting their case. Cyrus D. Mehta, a New York based immigration attorney, told TOI, "Without Chevron, federal courts will no longer pay deference to a government agency's interpretation of a provision in the Immigration and Nationality Act (INA). Hence, employers may be able to find a court willing to give a more favorable interpretation of a statute granting H-1B or L visa classification to a noncitizen worker."

"Similarly, the USCIS in recent years provided an interpretation to the 'extraordinary ability' or 'outstanding researcher' categories in employment-based first preference petitions that was difficult to meet. Removing deference to these interpretations will more likely result in successful challenges to these denials in federal court. The USCIS will be held to the strict language of the statute and its expansive interpretation of the statute may no longer be allowed to stand," added Mehta.
Save Jobs USA, an advocacy group of tech workers, which has been challenging the H-4 employment authorization documentation (EAD) rule, has an appeal pending in the DC Circuit Court of Appeals. They are contesting that because of the Loper Bright decision, the court should quash the H-4 EAD program because the US Congress has not delegated the power to create it. So far, courts have held that the DHS does have the authority to issue work authorization to lawfully admitted individuals. Khanna points out that the earlier court decision, which upheld the EAD rule, did not rely on the overturned legal doctrine.

Nearly a lakh Indian spouses (largely women) on H-4 dependent visas, hold an employment authorization documentation (EAD), which enables them to work or be self-employed. The EAD rule was introduced by the Obama administration in 2015, to mitigate the problems faced by certain sections of immigrants (such as the Indian diaspora) who faced backlogs running into several decades to obtain an employment based green card. Under the EAD rule, in those cases where the H-1B visa recipient is on track for a green card or has got an extension beyond the permitted six years, the spouse holding an H-4 visa can apply for employment authorization. With a fresh bout of litigation challenges, anxious times lie ahead for such families.

Mehta states, "Even if Chevron no longer helps, there is also a clear authorization in the INA for the USCIS to issue

work authorization to noncitizens and to set time and other conditions for nonimmigrants under the INA without having to rely on an expansive interpretation of the statute to issue such benefits."