

# H-1B visas set to get tougher as US moots stricter norms on 'specialty occupation'

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## Highlights

- This barrier is likely to be strengthened if a proposal mooted in the fall agenda of the Trump government becomes a reality.
- According to the fall agenda, the purpose of these proposed changes is to ensure that H-1B visas are awarded only to individuals who will be working in a job which meets the statutory definition of 'specialty occupation'.




MUMBAI: The American Dream could get more distant for Indian aspirants. In recent times, officials of the US Citizenship and Immigration Services (USCIS) have been rejecting several H-1B applications, (including for extensions) on the grounds that the job is not a 'specialty occupation'. This barrier is likely to be strengthened if a proposal mooted in the fall agenda of the Trump government becomes a reality.



## Closely engaged with Trump administration, says India as US plans major changes in H-1B visas

The proposal, titled 'Strengthening the H-1B non-immigration visa classification program,' indicates that the Department of Homeland Security (of which USCIS is a unit) will revise the definition of 'specialty occupation' to focus on obtaining the best and brightest foreign nationals via the H-1B program. The definition of employment and employer-employee relationship is also proposed to be revised and DHS will also propose additional requirements to ensure employers pay appropriate wages to H-1B workers. The anticipated date for the policy change is August 2019.

<p><b>What's A Specialty Occupation?</b> US immigration law defines a specialty occupation as one that requires the attainment of a <b>Bachelor's or higher degree - or its equivalent - in a specialised field</b></p>	<p>degree in a specific subject</p> <p><b>Other Major Proposals</b></p> <ul style="list-style-type: none"> <li>➤ Spouses of H-1B holders to <b>lose freedom to work in US</b></li> <li>➤ Reforms to ensure H-1B visas are awarded to the <b>most skilled or highest paid</b> beneficiaries</li> <li>➤ Authorisation for <b>international students</b> to stay in US should be for a <b>specified time period</b>, rather than the entire duration of their holding student status</li> </ul>
<p><b>Stringent Definition</b> In recent times, US Citizenship &amp; Immigration Services (USCIS) has denied H-1B petitions for titles including <b>programmer, systems analyst, business analyst, market research analyst, project manager, general manager, operations manager, and construction manager</b>. It has also dismissed cases where an MBA is required, saying an MBA is not a</p>	

According to the fall agenda, the purpose of these proposed changes is to ensure that H-1B visas are awarded only to individuals who will be working in a job which meets the statutory definition of 'specialty occupation'. Any such change in the rule is likely to be contested in court (a law suit has already been filed in one case, where USCIS denied the H-1B extension on the ground that it was not a specialty occupation).

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An H-1B is a work visa for professional workers, in specialty occupations that normally require a bachelor's degree or equivalent as a minimum requirement. The technology sector, predominately hires H-1B workers, a significant chunk of whom are from India. To illustrate, during the 12-month period ended September 30, 2017, USCIS approved 3.65 lakh H-1B visa applications (including for visa extensions), of which 2.56 lakh or 70% went to Indians.

#### **Read also: H-1Bs may go only to best and highest paid**

Leslie K Dellon, staff attorney at American Immigration Council (AIC) told TOI, "In the fall regulatory agenda, the agency continues to list its proposal to 'revise' the definition. However, the Immigration and Nationality Act defines 'specialty occupation' so I believe any definition change would require a new legislation and not an agency regulation."

Similarly, Rajiv S Khanna, managing attorney at Immigration.com said it would be a herculean task for DHS to try and curtail a common-law definition of an employer-employee relationship by a mere regulation. Setting new criteria for wages is also likely to be problematic as it is a violation of Department of Labour regulations, he said.

American Immigration Council is a non-profit which works to achieve justice and fairness for immigrants under the US laws. According to Dellon, "From what we've seen, USCIS is denying more H-1B petitions on the ground that the job is not in a specialty occupation. These include cases where the foreign national has been working in H-1B status either in the same job or in a similar job, that is in the same occupational classification which USCIS now claims is not a specialty occupation."

Khanna explained, "The problem with the USCIS interpretation of specialty occupation is that it is almost impossible to comply with, in many areas of professional endeavour. For instance, USCIS has been dismissing cases where an MBA is required, stating that an MBA is not a 'specialty occupation,' because it is not a degree in a specific subject."

"Many of the denials handed out by the USCIS appear to be pretextual rather than meritorious. Where the Department of Labor's own documentation ([Occupational Outlook Handbook](#)) states that a degree is required for a particular occupation, the USCIS tries to take the position that the degree required is not in a specific subject or field of study," added Khanna.

USCIS' unreasonably narrow interpretation affects a variety of occupations. "Notoriously they deny H-1B petitions for titles including programmer, systems analyst, business analyst, market research analyst, project manager, general manager, operations manager, construction manager, to name a few. This is true even in cases where the salaries are in the top 5% of the US job market," Khanna told TOI.

### **Law suit filed for denial of H-1B extension**

After USCIS denied an application for extension of H-1B on the ground that a construction manager's occupation was not a specialty occupation, Anubhav Shandilya moved court. Shandilya had served his employer organisation for six years and Balfour Beatty Construction had sought an extension to enable him to continue to work. A law suit was filed against USCIS in a district court on October 16. Leslie K Dellon, co-counsel to the suit, explains: "We're challenging USCIS' failure to consider the employer's evidence that the job is in a specialty occupation. We maintain that USCIS wrongly concluded that "engineering" is not a specific specialty."

H-1B visas: Trump administration proposes major changes

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