

Lawsuit against US immigration body over shorter H-1B visas

TOI timesofindia.indiatimes.com/india/suit-against-us-immigration-body-over-shorter-h-1b-visas/articleshow/66209813.cms

October 15, 2018

Lubna Kably | TNN | Updated: Oct 15, 2018, 07:27 IST

Highlights

- In its lawsuit petition, ITServe Alliance contends that USCIS does not have the authority to shorten the duration of the H-1B visas.
- A copy of the lawsuit petition, obtained by TOI, shows that in one instance, the approved period of the visa was from September 17 to 29 (or for just 12 days). Other visas granted for a very short time, were for 28 days and 54 days.



MUMBAI: Taken aback by recent policy changes introduced by the US Citizenship and Immigration Services (USCIS), which have resulted in grant of H-1B visas for a few days or months as opposed to the typically requested three-year period, a US-based trade association has recently filed a lawsuit in a US district court.

In some cases, the notices of approval were sent after the approved visa-tenure had expired.

ITServe Alliance, which is a non-profit trade association of over a thousand companies in the IT service sector, in its lawsuit petition filed on October 11, points out that US laws prescribe a three-year duration period for an H-1B visa, unless the sponsoring employer requests a lesser period of time. The visa can be extended for another three-year period—the cap is of six-years. Only in some cases, such as for those awaiting a green card (permanent residency), stay in the US is permitted beyond the six-year period.

It its lawsuit petition, ITServe Alliance contends that USCIS does not have the authority to shorten the duration of the H-1B visas. A copy of the lawsuit petition, obtained by TOI, shows that in one instance, the approved period of the visa was from September 17 to 29 (or for just 12 days). Other visas granted for a very short time, were for 28 days and 54 days.

There were several instances, where approval notices bore a date post expiry of the approved period. To illustrate, the approved period was June 15, 2018 up to August 10, 2018 (which works out to 56 days) and the approval notice date was August 29, after expiry of this period.

The genesis of this new development, of granting shorter tenure visas, largely stems from the policy clarifications issued by the USCIS in its memorandum dated February 22, 2018. The memorandum covered instances of both initial H-1B requests and extension requests, if the employees were to be placed at third-party (or customer) work sites, which is the typical business practice adopted by IT Service companies.

Visa applications in such instances had to be accompanied by a host of evidence in the form of detailed customer contracts and itineraries of employees. The sponsoring employer also had to demonstrate that the employer-employee relationship would be maintained even if the employee was working at a customer-site. USCIS also obtained the discretion to limit the approval period to that duration of time, for which it could be proved that the employee will be placed in a specific, non-speculative project requiring specialisation.

Under the Immigration and Nationality Act, the role of USCIS is limited to determining whether the position to be filled by the H-1B employee is a 'speciality occupation' which requires at least a bachelor's degree. The lawsuit states that the requirements in the memorandum such as of submitting a detailed itinerary are beyond the scope of the USCIS's role and are unlawful.

Arlington-based, Rajiv S Khanna, managing attorney at Immigration.com, told TOI: "If a sponsoring employer is unable to supply an itinerary for the entire requested period (say three years), USCIS approves the H-1B only for the duration for which contract documents are available. The employers are thus put in a position where they must periodically spend thousands of dollars, to keep extending the H-1B, and even worse, be held hostage to the uncertainty of a processing time that runs into several months."

"The lawsuit points out that the USCIS has directly contravened the law and usurped the power given to the Department of Labour (which has been exercised by the department). Thus, not only has the USCIS acted unreasonably, it has also acted illegally in taking over the role of a sister agency as well as of US Congress," sums up Khanna.
for Latest .