

Will the petition against H-1B visas harm you this year?

Synopsis

Biden's administration will do what is good for the USA. That is to be expected. It is obvious that the administration is inclined to take a hard look at the possible loopholes in the system that may be causing problems such as suppression of wages.



There have been reports in the media that a group of Indian visa holders in the USA have petitioned Mr. Biden not to issue any H-1B visas until the green card backlog is resolved. This has caused much consternation and confusion amongst the H-1B workers and their employers who intend to apply this year.

I would like to note that this petition will not affect the H-1B process.

No effect on the H-1B process this year

First, Mr. Biden's administration will do what is good for the USA. That is to be expected. It is obvious that the administration is inclined to take a hard look at the possible loopholes in the system that may be causing problems such as suppression of wages. It is equally obvious that the H-1B visas are an irreplaceable source of a youthful, highly qualified, talented, and motivated workforce. This is a

matter of policy that Congress must compose and then codify into law. Both the need for due deliberation and our need for the H-1B workforce should create enough time lag to give the stakeholders sufficient notice to prepare.

Second, the contours of H-1B laws and some of the processes have been laid out by Congress in the law itself. That cannot be changed by the president, who has limited power as was demonstrated by repeated losses suffered by the Trump administration in the courts. Any changes in law will be first appropriately studied, debated, and then finally passed into laws. This could take months. Laws are never changed overnight, and legislative bodies afford stakeholders some time to prepare for the changes. Therefore, no immediate change is likely because of the petition.

Third, there is no question that the process of green cards is taking too long by any standards of reasonableness. Respectable researchers had concluded that India born applicants could face a delay of 90 years if this backlog were not addressed and resolved. There is also no question that both the executive and the legislature are aware of this problem and would like to resolve it. Mr. Biden's legislative agenda calls for action on this behalf. And, Congress has had several bills formulated at various times to address the green card backlogs.

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Their grievances are both well-founded and urgent. Decades of waiting is unconscionable amongst a populace that has contributed much, obeyed every law, and have seen no concrete action for years. Many of them have children who are “aging out.” That deprives the children of the benefit of the ability to remain in the United States based upon their parents and to derive their green cards through the parent’s employment-based green card process. These young people have known only one home through their adult life, the United States. Yet, unlike their peers, they cannot qualify for many scholarships and student loans, cannot obtain work authorizations or permissions for paid internships, and have no sense of repose regarding their continued stay in the United States. This too is unconscionable.

The delays have undermined the entire immigration scheme devised by Congress that contemplated a green card cycle lasting a few months – – not several decades. For instance, a foreign worker is expected to keep the same job year after year until their green card is completed. A promotion or change in the job often requires refiling of the H-1B and a restarting of the green card process.

Undoubtedly, Congress and various presidents have stepped in to ameliorate the harshness of the most glaring injustices. For instance: some of the balance of power has shifted from H-1B employers to H-1B employees in that government is both diligent and meticulous in investigating any complaints of wrongdoing; and moving jobs or accepting promotions has become easier and far less onerous. Nevertheless, while these reforms are welcome, they are not enough. Nine decades of waiting is just uncivilized.

It is indeed a compliment to the United States of America that we are still the most desirable destination for talent. But the path to make a home at that destination is entirely too long. This must be corrected urgently. However, the H-1B process is unlikely to be affected by a fundamentally meritorious petition without appropriate notice and participation by stakeholders.

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