

US intends to continue with its H-1B reform agenda

Synopsis

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The US government intends to continue with its [immigration](#) agenda of reforming the [H-1B](#) visa process, including amendments to the regulations governing H-1B speciality workers and more flexibility to foreign students on F-1 visas, according to the 2021 Regulatory Agenda published last Friday.

The semi-annual agenda provides a listing of all regulations under active consideration of the US government's labour department in the coming year.

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“If the changes hinted at in the summary are implemented it will benefit many of the thousands of students studying in the US,” said Poorvi Chothani, managing partner, LawQuest, an immigration law firm.

Indians are the second largest nationality of foreign students in the US, many of whom stay on under the optional practical training (OPT) to work in the country.

As reported by ET on December 13, this comes even as a bill to do away with the OPT programme, along with more stringent norms for big tech companies employing [H-1B workers](#), was introduced in the US House of Representatives last week.

US tech firms such as Amazon, Facebook, Microsoft and Google have been among the top recipients of H-1B visas in recent years.

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“Right now, no final decisions have been made. It is also believed that the USCIS (US Citizenship and Immigration Services) will back away from implementing a wage-based selection of H-1B candidates and that the H-1B lottery process will continue,” said Rajiv S Khanna, managing attorney at immigration.com . “It appears highly unlikely that in the current environment of a paucity of workers, the Department of Labor or the UCIS would want to make it more difficult for US businesses to fill their vacancies.”

The Notice of Proposed Rulemaking for this will be issued in March 2022, after which it will be kept open for public comments. “Subsequent to the notice period the government takes into consideration these comments but does not always modify the proposed rule. In this case there is a lot at stake, and I think the large IT based companies like Google, Facebook, Microsoft, etc., will lobby hard to avoid these or at least modify the changes,” said Chothani.

A proposed regulation of the H-1B visa programme proposes revising regulations relating to the “employer-employee relationship” and bringing in flexibility for startup entrepreneurs. It also said that the government would implement new requirements and guidelines for site visits including in connection with petitions filed by H-1B dependent employers.

“Site visits by immigration and customs enforcement (ICE) under the Department of Homeland Security have been on the rise and it appears they will provide specific guidance on how and when these will be conducted. With work from home for many H-1B employees it may become very difficult for companies to monitor compliance and address ICE visits or audits,” said Chothani.

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