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US to continue existing H-1B visa selection process in FY22

Synopsis
A Trump administration proposal seeking to prioritise grant of H-1B visas to high wage earners has been delayed from 9 March to 31 December, US Department of Homeland Security says.

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Pune: The United States will continue with its existing system of issuing **H-1B visa** this April — a welcome move for IT services providers and Indian students.

A Trump administration proposal seeking to prioritise grant of these coveted visas to high wage earners — which would have made it expensive for companies to hire H-1B workers — has been delayed from 9 March to 31 December, the US Department of Homeland Security announced late on Thursday.

The new rule sought to replace the existing lottery system with a process where applicants with higher salaries automatically gain precedence in the queue for visas. It was aimed at ensuring that foreign workers do not displace Americans in lower wage roles.

"This is very good news for all companies, especially small, medium and Indian IT services companies that employ people in H-1B status at level 1 and 2 of occupational employment statistics prevailing wages," said Poorvi Chothani, managing partner, LawQuest, an immigration law firm. Typically, engineers on H-1B work visas earn between $65,000 and $120,000, depending on their skill levels.

Legal experts are of the view that the United States Citizenship and Immigration Services (USCIS) will not be able to sustain the wage-based visa selection process in court.

"(The new rule) would've created a new method of selection, with restrictions over and above what the statute provides. Wages are not a method of selection specified by the statute," said Rajiv S Khanna, managing attorney at immigration.com.

He said the Joe Biden administration is likely to put a lot more thought into a new selection process that is legal and not deleterious for the local workforce.

The temporary status quo in the **H-1B selection process** will also help foreign students applying for a work visa after completing their optional practical training (OPT). The higher wage requirements in the new ruling would have made it impractical for companies to sponsor their applications.

According to the 2020 Open Doors report, there were over one million international students in the US in 2019-20, of which about 200,000 were from India. About 60% are estimated to be studying science, technology, engineering and mathematics subjects, most of whom transfer to an H-1B visa once their optional practical training is completed.

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