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Immigration

Is Trump Driving Down Demand for Skilled Worker Visas?

BY LAURA D. FRANCIS

The number of H-1B petitions that employers filed continued to climb from 2012 to 2016. Now it's dropped for the second year in a row.

"Employers are nervous about what this administration is doing," Sarah Pierce, a policy analyst with the Migration Policy Institute, told Bloomberg Law April 13.

"We do know that the economy's improving, that there's not a huge supply of labor right now," Pierce said. "It's hard to point to any other reason" for the drop in petitions "than this administration's policies and rhetoric around the H-1B visas."

"There's a lot of hostility in this administration to the H-1B program," which provides temporary visas to skilled workers in "specialty occupations," Los Angeles immigration attorney Carl Shusterman said. Slashing the program as a means of protecting American jobs "sounds good as a sound bite," but "it's not creating more jobs in the U.S.," he told Bloomberg Law April 13.

But the slight drop in petitions from last year isn't necessarily "indicative of a trend," Eric Ruark, director of research for NumbersUSA, said in a statement provided to Bloomberg Law April 13. "Certainly, the change is not significant on its own. And petitions don't reflect the actual number of H-1B visa holders who will come in as guest workers, since a petition may be for multiple workers," he said.

U.S. Citizenship and Immigration Services "fully supports the president's April 2017 Buy American, Hire American executive order," a Department of Homeland Security spokeswoman told Bloomberg Law April 13. "We have provided policy guidance and are working on regulatory reforms to achieve the goals associated with reform of H-1B visas," she said.

A representative for the White House didn't respond to Bloomberg Law's request for comment.

Cap Reached in First Week U.S. Citizenship and Immigration Services announced April 12 that it had received 190,098 petitions for the temporary visas for skilled workers. The petitions all were received between April 2 and April 6, the first week when employers could apply.

Only 65,000 H-1B visas are available each fiscal year, with an additional 20,000 for workers with advanced degrees. After the recession, employers first started

sending in more petitions than the cap in the first week in 2013, with 124,000. The number went up to 172,000 in 2014, 233,000 in 2015, and 236,000 in 2016.

In 2017, however, total petitions dropped to 199,000.

There's been a "steady decline" in H-1B petitions since Donald Trump became president, Pierce said. This year's tally is 4 percent lower than last year's and 20 percent lower than the number the year before, she said.

The H-1B program was one of few visa programs that Trump mentioned by name during his presidential campaign. He also singled out H-1Bs in his executive order.

More Changes to Come Since then, U.S. Citizenship and Immigration Services, which oversees the program, has subjected H-1B employers to additional scrutiny and issued a series of new policy memorandums. The agency also announced that this year, employers wouldn't be able to apply for fast-track processing of their petitions until at least Sept. 10, less than a month before the Oct. 1 start date of the fiscal year.

There are also some planned regulations in the works that could overhaul the way the program is administered. One forthcoming regulation would redefine "specialty occupation" in order "to increase focus on obtaining the best and the brightest foreign nationals," according to the most recent Department of Homeland Security regulatory agenda. It also would change the definition of employment and employer-employee relationship "to better protect U.S. workers and wages."

"The administration would definitely like to see an improvement in the quality of the candidates," Pierce said. But a drop in petitions isn't necessarily an indication that the credentials of the H-1B workers is changing, she said.

In fiscal year 2016, for example, more than half of approved H-1B petitions went to workers with a master's degree or higher, according to a recent Migration Policy Institute report. Salaries are also on the rise: The median salary in FY 2016 was \$80,000, compared with \$69,000 in fiscal 2007, according to the Pew Research Center.

Outsourcers in Crosshairs The bigger impact could come from a change to the employer-employee relationship definition, which targets information technology staffing companies that place their employees at third-party work sites, Pierce said. The largely Indian companies—such as Tata, Wipro, and Infosys—have come under fire for replacing U.S. workers at client sites with H-1B workers.

"Congress must change the law to ensure that qualified American workers are not being displaced by H-1B guest workers," Ruark said. "There is nothing to indi-

cate the number of H-1B workers who will come into the U.S. next year will not again far exceed the actual need for skilled workers from abroad.”

“They do need to clean up that legal loophole so that people can’t replace American workers,” Shusterman, the Los Angeles immigration attorney, said. The Indian outsourcing companies use “way more” H-1B visas than U.S. companies, he said. “It’s a better program when these American companies are hiring people directly,” he said.

But the Indian companies already are scaling back their H-1B petitions, said Shivendra Singh, vice president of global trade development for NASSCOM, the trade association representing them. Indian IT firms use about 10 percent to 15 percent of new H-1B visas subject to the annual cap, he said in a statement provided to Bloomberg Law April 13.

New H-1B visas received by Indian IT companies dropped by 60 percent to 65 percent from FY 2014 to FY 2017, based on a survey of both large and midsize NASSCOM members, Singh said.

“There are many reasons for this, including greater success in local hiring, significant investments in local reskilling and training programs, acquisitions that resulted in more local talent, and changes in the skill sets needed,” Singh said. “New technologies and business models” increasingly require more non-tech talent “that is more readily available in the U.S.”

But policies that may be aimed at Indian IT companies are also affecting U.S. companies, Shusterman said.

“They’ve thrown up their hands,” and many are moving operations to Vancouver—known as “Silicon Valley North”—because of Canada’s less restrictive visa policies, he said. “The U.S. government is outsourcing jobs to Canada.”

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