

May 10, 2017

OK, I've had it. I've had that one of every 100,000 persons having and expressing opinion about H1B visa has clue what he/she (from here on out: "he") is talking about when it comes to H1B visas their pros and cons. Tragically, the "remaining" 99,999 include the President of the United States. His only excuse that he obviously has never actually read the law, he was advised by his circle (who –apparently also didn't read it and has no clue about it). I've been seeing articles and comments in the WSJ; neither the writer of the piece, nor the commenter has any clue what he is talking about, --- but they seemingly enjoy the conversation.

Since I've gotten tired of educating people in the WSJ over and over again, I thought I'll do a short cut; write about it here. Let me start with some basics:

- 1- Between 1996-2000 my company (that I owned) managed to receive over 190 H1B visas, brought the visa holders to the US and employed them;
- 2- The H1B visa and its process are under the Immigration and Nationality Act, Section 101(a)(17)(H);
- 3- Relevant (to this discussion) part of the actual process of the H1B is copied into the footnote of this piece;

What is the problem? Well, the problem is coming from the fake news media on one side and people in Congress (who have zero information how H1B works) on the other. In between are the millions of Americans, who love to join the cheering section.

What is the fake news?

- 1- That companies employ H1B people at far lower wages
- 2- That companies actually bring H1B people from abroad, and have their American employees train them before they fire said American employee
- 3- That H1B is a scam
- 4- That we in the US have plenty of people to employ, but those dirty high-tech companies want to save money by bringing H1B visa employees

NOT ONE WORD OF THE ABOVE IS TRUE OR CORRECT. NONE.

(and please read this carefully, because I'm tired to say the same thing like a well trained parrot)...

In a nutshell, this is what happens **BY LAW** (read this 5x). Let's assume:

- XY.Corp in Dallas, TX needs "a" software developer
- They (from their previous experience) know, it is highly unlikely they will find someone in the US with applicable experience, so they start the search in the US and expand it to India

...then the process starts.... Which **BY LAW** must be like this:

- 1- They must advertise the position in various predetermined media outlets
- 2- They must interview all US candidates (while interviewing Indians as well)
 - *Side note: if ONE US candidate reports to the Texas Workforce Commission –TWC- that "the interview was fake", XY Corp will be in the world of trouble.
- 3- Let's assume they determine that "Vivek" from India is the best one
- 4- XY Corp. now must file with TWC a lengthy document, consisting the following information:
 - a. Copy of the job postings
 - b. Report of no. of US candidates and the procedure how they interviewed them
 - c. Exact job description
 - d. Prevailing wage in the company comparable to Vivek's in experience and position

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- e. Prevailing benefits in the company
 - f. Vivek's CV
 - g. The salary and benefits the company offers to Vivek
 - h. Several other documents but these ones are relevant to the discussion
- 5- TWC will decide if the offered salary and benefits (to Vivek) are comparable to the prevailing standard in the company and in the industry
 - 6- Once the company received TWC's approval, then (and only then) they can file with the INS

NOW: anyone with a half a brain reads (and comprehends) this, can conclude: if any part of the urban legend about sobbing (on TV and radio) poor sw developer who was forced by Disney to train his own H1B replacement then was fired by Disney is true, ---then the local Workforce Commission (where Disney filed) ***IS DEEPLY CORRUPT***. As simple as that. There is no way under existing law that "a" company can pay even 10% lower wage to H1B employees than what they pay to their own ONLY IF THEY RUN A CORRUPT SCAM AT THEIR LOCAL WORKFORCE COMMISSION. No other option is possible.

Why is this so important?

- 1- Because of the 190+ workers I brought into this country, only three were laid off when the IT market collapsed in 2000 (they must have represented high value to their employers where my consulting company used them)
- 2- Because every single one of them had become a US citizen; a TAX PAYING, high value US citizen, who love this country
- 3- Because the H1B process is about "the" best procedure we have to evaluate a person. As oppose to a "Syrian immigrant" who can lie about all of his parameters including his age, H1B people have references, work history, companies they worked at; information we can track. Not only that; an H1B can be revoked at any time, is valid for three years, and could be extended only twice (total of 9 years). Under which the visa holder must manage to get a Green Card --which is another screening process- or he has to leave the country.

In short, and finally:

- It is completely idiotic not to increase the annual H1B quota to 500,000, and get highly qualified, hard working, intelligent, tax paying people and their families into the US;
- These people **DO NOT TAKE ANYONE'S JOB** (read this 10x); they cannot. It is not possible by law;
- We collectively better start to think if we need a bunch of people we have no clue about (as to what kind of citizens they will be) or people who are correctly verified;
- There is only one modification I've been proposing for about two decades to the law: make sponsoring companies responsible for their H1B employees as far as national security is concerned. They sponsored them; they are responsible for them.

H1B Visa - 'Regular' Application Process:

1. Offer & Acceptance of H1B Employment - H1B Sponsoring Company files a petition on your behalf.

An employer can be an individual, partnership or corporation. Applications are "job specific." If your situation changes (for example, you lose your job or change locations), your new employer must file a new H1B visa petition. The visa is only valid for work with the employer that filed the original petition. The USCIS requires employment letters which provide:

- » Specific information addressing the positions held
- » The exact duties of the position
- » The exact dates of employment
- » Information regarding the supervisors and co-workers of the beneficiary.

2. The 'Prevailing Wage' and actual wage must be determined and compared. The H1B sponsoring company is required to pay the higher of the two.

The prevailing wage is determined by the State Employment Security Agency by completing a special form, which asks the employer for the responsibilities, skills and experience needed for the job. The actual wage is determined by comparing other workers in the same positions with the same level of experience.

3. File the Labor Certification Application (LCA).

This is a form that contains information about the H1B Sponsoring Company. By completing and signing the form, the sponsor company is agreeing to pay the higher of the two wages, that the employment of this individual will not adversely affect the conditions of other workers and that there is no strike for their occupation at the workplace. Recently, Congress determined that H1B sponsor companies must attest that they will offer H1B visa holders the same benefits as their other workers. This includes health, life, medical, retirement, stock options and bonuses.

4. When the LCA is approved, the Department of Labor (DOL) will return a certified copy to the H1B sponsoring company.

5. The sponsor company must post notices at two conspicuous places at their business of the H1B visa filing for 10 days or provide notice of the filing to the collective bargaining representative for their employees. The LCA form can be used for the actual posting as well. After the Department of Labor accepts the LCA, then your employer can file your H1B visa petition.

6. H1B Petition assembled & filed with appropriate USCIS Service office.

The filing must include the required forms, fees, documents and information; form I-129, education & experience evaluation & documents, training certificates, professional memberships, resume, employment agreement and letter of support.