

Indians residing in US may be shielded from Trump's blow

Green card prospects may not be hit, but US may become less attractive for students

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President Donald Trump's forewarning of a temporary suspension of immigration into the United States is unlikely to impede the chances of Indians already residing there from acquiring a green card, said legal and immigration experts. They reckon the world's largest economy will, however, become less attractive to students seeking to study and build careers there, if the proposed legislation also caps the number of working visas for foreign nationals.

Trump's late-night tweet on Monday, which indicated his proposal to restrict immigration to protect jobs of Americans impacted by the Covid-19 pandemic, has triggered a wave of confusion among those awaiting grant of residency status, student and work visas. The US administration has offered no further detail with regard to the proposed executive order.

Around 227,000 Indian nationals are in line to get a family-sponsored Green Card - majority of whom have been waiting for years in the US - according to US Citizenship and Immigration Services (USCIS), the agency that administers visas. Data for those who are outside the US waiting for permanent residency is not known.

"This is not the first time that Trump is trying to restrict immigration," said Rajiv S Khanna, managing attorney at immigration law firm, Immigration.com.

May be challenged in court

"He wants to protect the US workforce but cannot affect people who are already here (in the US). He cannot take away rights that are already vested," said Khanna.

Legal experts are of the view that the proposed executive order would be challenged in court. "I predict a multitude of lawsuits that will challenge the EO," said New York-based immigration lawyer Cyrus D Mehta. "Hopefully one court or more will issue a preliminary injunction and block it. Unless the US Supreme Court hears the matter."

Trump — who came to power on an anti-immigration rhetoric and is seeking re-election in the presidential election in November — had seen a good run with the US economy growing and high employment levels before the pandemic hit US shores. Since then, groups such as US Tech Workers have called on Trump to suspend visas for foreign talent. As of April 17, the US has 22 million people claiming unemployment benefits.

Trump on Monday tweeted: "In light of the attack from the Invisible Enemy (a phrase he uses to refer to Covid-19), as well as the need to protect the jobs of our GREAT American Citizens, I will be signing an Executive Order to temporarily suspend immigration into the United States!" He did not specify details or timelines for his action.

Experts are divided on whether this will impact the work permits of Indians who have H-1B visas and students in the US including those in science, technology, engineering and mathematics (STEM) who are on optional practical training (OPT) and are selected in the H-1B lottery.

Though Trump's tweet does not talk about non-immigrants, legal experts said the term "immigration" generally refers to all foreign nationals who seek visas to enter the US.

"Whatever the US is trying to do may rebound on itself for the simple reason that today more services are delivered through technology and such a move will only go to make the US less attractive to foreign students who are a major source of revenue for the country," said Nishith Desai, founder of law firm Nishith Desai Associates.

Also, American universities may no longer be as attractive if there is a curb on H-1B visas, if students do not get a job with compensation comparable to the huge amount of money they spend on studying there, Desai added.

Indian students contribute a substantial amount to the US economy by way of university fees each year. “(US) universities will fight hard to ensure that aspiring students are not precluded from getting visas,” said Poorvi Chothani, managing partner of LawQuest, an immigration law firm with offices in India and the US.

Indian students mostly go to the US on F1 and J1 visas.

Meanwhile, lawyers and advocacy groups fear the impact of the proposed executive order on the Indian IT sector. Indian nationals account for over 60% of the applications for the H-1B visas in fiscal year 2020, a USCIS notification said in March. It did not specify how many of those shortlisted in a lottery are Indian nationals — currently the visa process is suspended due to the Covid-19 pandemic.

“The Indian IT sector would be most impacted if the executive order by President Trump alludes to suspending the H-1B programme,” said Chothani, “Indian IT companies are poised to file thousands of H-1B petitions, which must be filed no later than June 30.”

National Association of Software and Services Companies (Nasscom), the Indian IT industry lobby, declined comment saying it was seeking further details on Trump’s plan.

Indians on an H-1B visa who are currently in India will be affected, according to Anirban Das, president and founder of advocacy grouping Skilled Immigrants in America.

“They may be stuck for a long time and their return to the US remains in limbo. This latest move by the administration is another effort to use this pandemic to advance their anti-immigrant rhetoric,” he said.

Others believe that since the H-1B is a non-immigrant visa, it would not come under the purview of this order.

Amit Chandra, institutional research analyst, HDFC Securities said, “Out of the six lakh Indians in the US on H-1Bs, only 20% is used by Indian IT services players. They are also focusing more on localisation, so the immigration law will not impact the existing workforce and will restrict any fresh entry.”

(Reporting by Priyanka Sangani, Ishani Duttagupta, Rica Bhattacharya & Prachi Verma Dadhwal)