

The Implications of Potential Changes to Laws and Policies on United States Employment Visas

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Executive Summary

During the past decade, employment visas that enable those from overseas to work in the United States for various periods of time under specific guidelines have increasingly become a cornerstone of the global services delivery model. There are a wide range of reasons for this trend including knowledge transfer from client subject matter experts (SMEs) in the United States to those who will bring it back to their offshore locations, the need for frequent cross border team travel, and U.S.-based yet highly skilled non-domestic and potentially lower cost resources for client companies.

However, a confluence of visa-related factors have arisen during the past twelve months that may have significant impact on third party providers, their employees and global services clients, and U.S. technology companies, including:

- **Governmental**
 - The U.S. government may introduce new legislation or changes to policy definitions and guidelines (although it's unlikely this would happen before the next election cycle)
- **Corporate**
 - Allegations against Infosys of manipulating U.S. immigration law to allow it to bring large numbers of Indian employees into the United States to do work under visas that do now allow such activities
 - Recent testimony in congressional hearings by the Infosys employee that made the allegations
 - A lawsuit against their employer by 18 workers in California claiming they were replaced by Indian H-1B workers from Cognizant in violation of the state's anti-discrimination law
 - Last year, IBM was suspended from a government program to expedite Indian work visa applications, although it has since been reinstated
- **Industry influencer**
 - The research firm CLSA Asia-Pacific issued an overall Indian IT services sector downgrade on Monday, June 20, 2011. It listed concern over potential future restrictions on work visas as one of several factors in its downgrade decision. The report also noted that rejection rates for U.S. visas from some of the largest Indian IT firms have shot up from 5 percent to almost 40 percent during the last 18 months

What are the potential ramifications of these developments? To help frame the answer to that question, we need to consider a few statistics. Currently, Indian IT companies generate approximately 60 percent of their revenue from U.S. clients. However, according to a study by an Indian industry group (the Confederation of Indian Industry), approximately 90 percent of their U.S.-based workforce is composed of foreign nationals. In addition, many U.S.-based global services and technology companies depend heavily on foreign workers. The numbers of employees involved is huge and, as noted

above, the potential impacts, both short-term and long-term, are potentially significant to a wide array of stakeholders.

Everest Group believes that this situation merits a detailed analysis and ongoing scrutiny. Following is an analysis framework to help examine the issue:

- What are the main types of visas utilized in the global services industry, who are the major players, and how big is this issue?
- What is the potential reaction by the U.S. government?
- How might this play out, and what should we be on the lookout for going forward?

What / Who / How?

The three primary types of visas used to bring foreign nationals into the United States for business purposes are:

| Visa type | Description |
|-------------|---|
| H-1B | Used by employers to sponsor foreign professionals to work in a specialty occupation in the United States. The employer must demonstrate that it is paying the required wage for this position in the geographic region where the job is located. The employee is paid in the United States and is subject to U.S. withholding taxes. Currently, these visas are valid for an initial period of three years, with the possibility of an extension for an additional three-year period. The employer does not have to test the labor market to determine if there are any qualified U.S. workers willing to fill the position. |
| L-1 | This visa is available to individuals who are transferred to a U.S. company after having worked at least one of the last three years for a related organization abroad. The L-1A visa is for employees who will work in an executive or managerial capacity. The L-1B visa is intended for employees who will work in a position requiring "specialized knowledge." The L-1 visa is normally granted for an initial period of three years and may be extended for a maximum period seven years for an L-1A or five years for an L-1B. |
| B-1 | <p>These visas are issued for business visitors coming to the United States for short stays to attend meetings, conferences or training sessions, or to install specialized equipment. B-1 visa holders are specifically prohibited from performing contract work or drawing salaries in the United States. Examples of the type of work that can be engaged in by a worker on a B-1 visa are knowledge capture and transition planning for work that is to be performed in an offshore location. Although not an exhaustive list, the following activities are currently prohibited under U.S. policy from being performed by the holder of a B-1 visa:</p> <ul style="list-style-type: none"> ■ Project planning for a project that will be undertaken in the United States ■ Requirements gathering for a project that is to be delivered in the United States ■ Knowledge transfer for work that is to be performed in the United States ■ Detailed design work of any kind while present in the United States, regardless of where the work is to be performed <p>The United States currently, under very limited circumstances, will authorize a foreign worker to enter the United States under a B-1 visa for a relatively short period of time to perform work that would normally require the issuance of an H-1B visa.</p> |

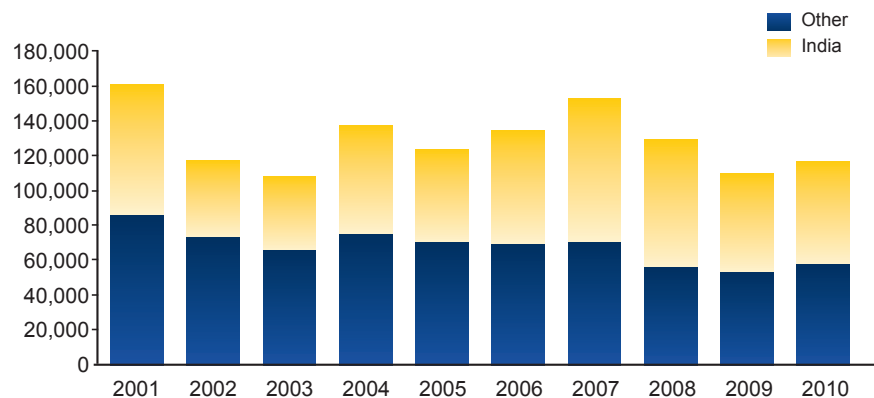
Although India-based IT firms are top of mind in this situation, there are multiple players that have a stake in this game.

| Stakeholder | Comments |
|--|--|
| Indian global services firms (Examples: Cognizant, Infosys, Mahindra Satyam, TCS, Wipro) | If U.S. government reaction to the Infosys situation leads to changes in immigration law and/or policy, the entire Indian global services industry will potentially be impacted. If irregularities with other firms are discovered, the possibility of severe action by the United States will only increase |
| U.S.- based global services providers (Examples: Accenture and IBM) | While these companies stand to be negatively impacted by changes to U.S. immigration law and policies regarding B-1, H-1B, and L-1 visas, they also stand to gain from potential market share losses by the Indian firms |
| U.S.- based technology firms (Examples: Cisco, Intel, Microsoft) | Many U.S. technology firms are highly dependent on foreign workers and could suffer significant disruptions to their staffing models |
| Clients | Clients face the prospect of increased risk (e.g., longer transitions and reduced quality) and higher fees, and could potentially face legal issues if they had reason to be aware of any visa fraud perpetrated by one of their service providers |
| Investors | Unwary investors may take a hit as this plays out, but astute investors stand to benefit from short-term overreaction |

Now let's look at the numbers. First, H-1B visas. As you can see in the following chart, the United States typically grants applications for more than 100,000 H-1B visas every year, and in most years about 50 percent are granted to Indian citizens.

EXHIBIT 1

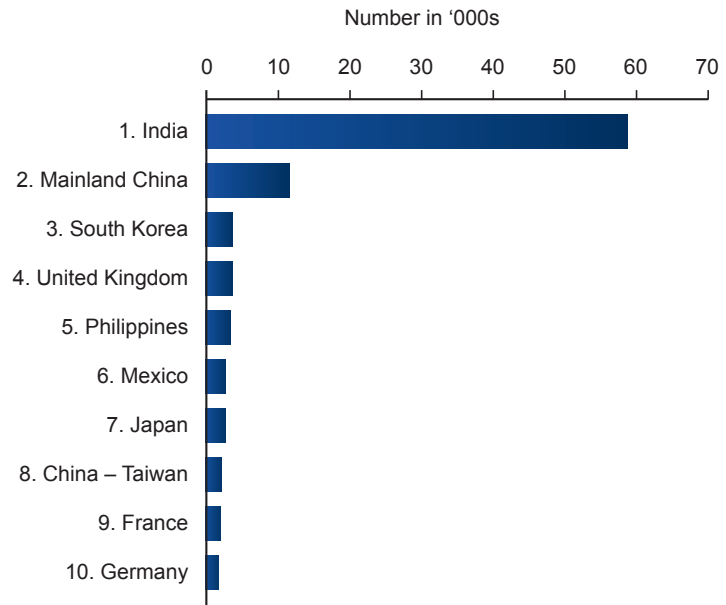
H-1B visa stats



The number of H-1B visas granted to Indian nationals dwarfs the total awarded to any other country.

EXHIBIT 2

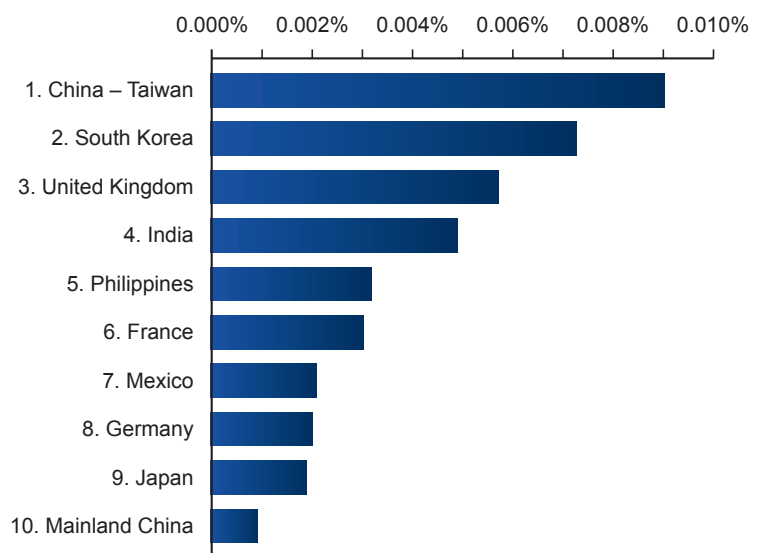
2010 H-1B visas by country



However, these numbers have to be taken in the context of global population totals. If we look at these numbers from the perspective of the number of H-1B visas awarded as a percentage of the country's total population, a different picture emerges. As you can see, from this perspective India comes in at number four.

EXHIBIT 3

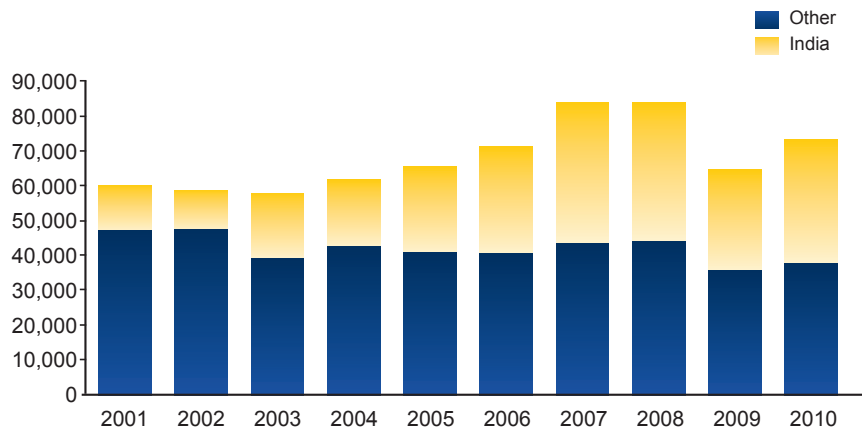
2010 H-1B visa % of population



Next, let's take a look at L-1 visas. As you can see in the following chart, the United States typically grants applications for between 60,000 and 85,000 L-1 Visas, and up to almost half of those are to workers from India. For reference, the next largest allotment in 2010 was to the United Kingdom, at about 6,000. However, as we saw with the H-1B analysis, you have to keep in mind that India has a population of about 1.2 billion people.

EXHIBIT 4

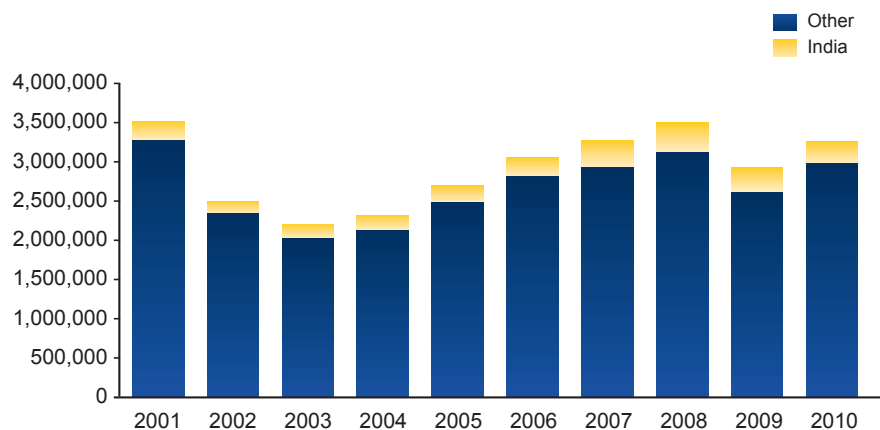
L-1 visa stats



Now, let's examine the B-1 visa numbers. Indian workers only make up about 10 percent of the total population of this category, but at about 300,000 visas per year, the number dwarfs the other two categories combined in terms of sheer numbers for Indian workers arriving in the United States every year. However, the Indian total lags mainland China and is only marginally larger than Brazil.

EXHIBIT 5

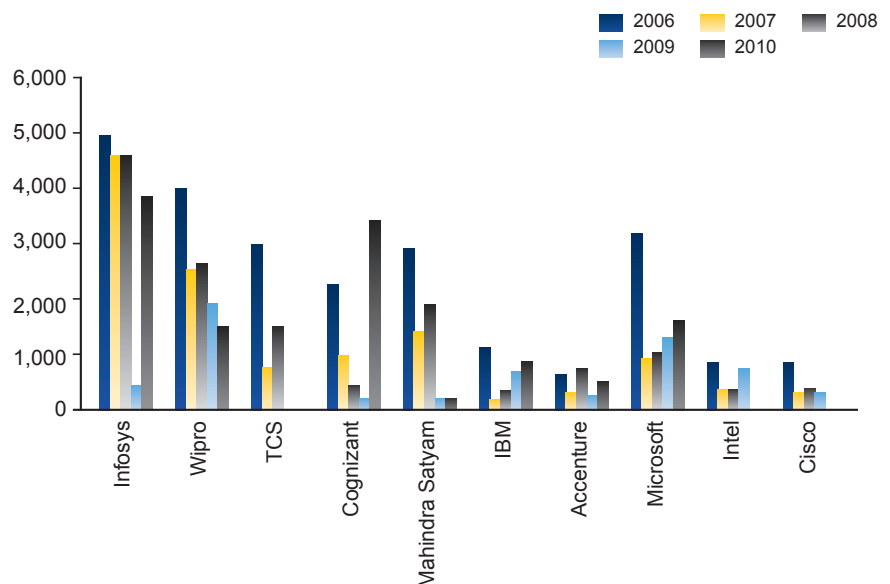
B-1/B-2 visa stats



Earlier in this paper we discussed the stakeholders involved in the issues, and controversies surrounding the U.S. visa programs for foreign workers. Traditionally, the debate has centered on the H-1B visa program. The U.S. Citizenship and Immigration Services department maintains detailed statistics on the H-1B visas that are awarded, so it is actually possible to see what organizations sponsor employees under this program. Unfortunately, the same level of detail is not available for B-1 and L-1 visas. A review of the top ten participants shows that there are five Indian service providers (Infosys, Wipro, TCS, Cognizant, and Mahindra Satyam), two U.S. global services firms (IBM and Accenture) and three U.S. technology firms (Microsoft, Intel, and Cisco). The heavy weighting toward the Indian firms correlates to the fact that about half of all H-1B visas are awarded to Indian citizens.

EXHIBIT 6

Top 10 H-1B users



The United States issues up to 85,000 H-1B visas annually to commercial enterprises, with 20,000 set aside for foreign advanced-degree graduates from U.S. academic institutions. Prior to the recession, the cap was routinely achieved within one month of the initial application date. The demand for H-1B visas has fallen off sharply in recent years due to the weak U.S. economy, as well as a US\$2,000 increase to the application fee that was imposed by Congress in 2010. However, many observers feel the drop may also be at least partially driven by a shift in focus to L-1s and potentially, at least in the case of Infosys, to B-1 visas. In any event, it is very likely that the downturn in demand for H-1B visas is temporary in nature.

To have a full context regarding the staffing model employed by the Indian firms, let's revisit a few points made earlier. While these companies derive about 60 percent of their revenue from the United States, only 10 percent of their U.S. workforce is made up of U.S. citizens. This leads to the question of whether or not they are trying to alter this model going forward. TCS recently reported that it planned to hire more than 1,200 staff in the United States this fiscal year, a slight increase from the 1,150 that it hired in 2010. Infosys, the

second largest Indian outsourcing firm (after TCS) reported that it planned to hire 1,500 local U.S. workers this year, up from 800 in 2010. Given that the two firms have indicated they plan to hire more than 100,000 new employees globally this year, the U.S. component of the global staffing plan is not significant.

Potential U.S. Government Reaction

While it remains to be seen whether changes will be made to immigration law or policies, it is certainly more probable now due to the Infosys situation as well as the continuing high level of U.S. unemployment. It's important to note here that Nasscom, the Indian software and technical services trade association, has indicated it is working with the U.S. embassy in India to set a standard for visa processing. Whether or not the Indian players will be able to influence the U.S. government's approach going forward is something to keep an eye on.

It is highly probable that changes in U.S. immigration policies and/or law that make it more difficult and/or expensive to do work onsite with H-1V visa holders will result in an increase in the amount of work moved to offshore locations. This could have a negative impact on the U.S. economy via reduced domestic spending and tax revenues. It will also reduce outsourcing firms' revenues. In the event that the U.S. restricts H-1B resources, the other staffing options for Indian service providers are to do more onshore hiring and/or subcontract work to smaller American firms. Either of these options will result either in reduced margins, higher prices, or possibly both.

Senator Chuck Grassley (R-Iowa) has been a long-standing critic of the heavy reliance by Indian IT firms on H-1B visas for work performed in the United States. The Infosys lawsuit has now drawn his attention to the B-1 visa. On April 14, 2011, he sent a letter to the U.S. State Department in which he: 1) requested that it suspend the approval of visas for Infosys until all current litigation and investigations are concluded; 2) asked them to review and consider changes to the B-1 visa program; and 3) challenged the State Department's policy of issuing "B-1 in lieu of H-1B visas" for short-term work that meets specific requirements.

In its response to Senator Grassley's letter on May 13, 2011, the State Department indicated that it had been stepping up efforts to screen applicants in India for B-1 visas, and had increased the rejection rate by up to 25 percent. It also indicated that it was currently working with the Department of Homeland Security to review the current policy surrounding "B-1 in lieu of H-1B visas" with an intention to consider substantially amending or even eliminating this policy. The State Department also estimated that there are fewer than 1,000 B-1 in lieu of H-1B visas issued in any given year. In contrast, Indian nationals were issued 294,120 combination B-1/B-2 visas in 2010. It also indicated that in the recent past it had suspended five large

employers from the “Business Executive Program (BEP),” a program for expediting Indian visa (B-1, H-1B, and L-1) requests for selected service providers, and that reviews of applications from these companies had been beefed up. Sources report that these companies included Cognizant, HCL, IBM, and TCS; however, IBM and TCS have been reinstated.

[Livemint.com](http://www.livemint.com), a media partner of the *Wall Street Journal* in India, reported on June 17, 2011 that the United States is scaling back the BEP from more than 500 firms to about 300.

<http://www.livemint.com/2011/06/17002515/US-may-reduce-access-to-busine.html>

U.S. President Obama has indicated that reform of laws on technical visas (H-1B and L-1) is a priority, but to this point he has not put forward any specifics. However, in June 2011, Representative Zoe Lofgren, the senior Democrat on the immigration subcommittee of the House Judiciary Committee filed a proposed sweeping reform of the H-1B visa and green card programs. There are several provisions that specifically curb the use of H-1B visas by outsourcing service provider firms:

- Eliminates the possibility of a three-year extension for “exclusively temporary workers”
- Raises salaries for H-1B workers by eliminating the lowest level of the prevailing wage scale and creating three levels instead of four
- Eliminates the lottery system for awarding visas and replaces it with a system wherein the highest wage levels are considered first
- Specifically prohibits the displacement of U.S. workers
- Adds a requirement to first attempt the recruitment of a U.S. worker, except in a situation in which the wage for the position equals or exceeds the mean prevailing wage
- Requires that the Department of Labor audit at least five percent of employers who file H-1B applications in a given year

The legislation as currently drafted also places additional restrictions on the use of L-1 visas for employers seeking to bring in an L-1B “specialized knowledge” worker for longer than 18 months over a three-year period, and gives the Department of Labor authority similar to that in the H-1B program to investigate violations of the L-1 visa program. When, or even if, this bill will be passed is unknown at this time. Not everyone shares the views held by Senator Grassley and Representative Lofgren. Several major players in congressional discussions on immigration reform (Senators John Cornyn (R-Texas) and Orrin Hatch (R-Utah), and Representatives Darrel Issa (R-Calif.) and Lamar Smith (R-Texas), have all voiced support for expanding the H-1B visa program. U.S. global services and technology firms also support this approach.

Potential Outcomes

At this point we can only speculate how this situation will play out going forward. However, we do know a few things with certainty. First, the government is investigating Infosys, and the disposition of that investigation will have a significant impact going forward. Next, the State Department, in its response to Senator Grassley and others, has indicated that it is already changing policy in some instances to include increased scrutiny on B-1 visa applications, a reduction in the number of companies participating in the BEP, and a review of the B-1 in lieu of H-1B program. We also know that legislation has already been put forward that would have a major impact on the number of foreign workers that both Indian and U.S. companies could bring to the United States.

While it is impossible to predict with certainty how any of the above will play out, we can identify some of the more likely outcomes and, by extension, predict what the potential impacts might be:

| Focus | Example outcome | Potential impact |
|--|--|--|
| Changes in U.S. immigration law | 1. Enactment of currently proposed legislation to significantly restrict the use of H-1B visas | 1. Increase of costs and prices combined, more aggressive approach to offshoring, potential loss of market share to U.S. service providers |
| | 2. Other legislation to place restrictions on B-1 and L-1 visas | 2. Could have severe impact to timeframes, costs, and risks associated with transitions |
| Changes in U.S. immigration policies | 1. Suspension from, reduction in or elimination of the Business Executive Program | 1. Negative impacts to transition timelines and to business and solution development efforts for service providers |
| | 2. Mandatory audits of H-1B visa applications | 2. Potential for processing freezes for habitual abusers |
| | 3. More aggressive screening of B-1 and L-1 visa applications | 3. No significant impact for firms that abide by existing rules |
| | 4. Restriction in or elimination of the B-1 in lieu of H-1b program | 4. No significant long-term impacts |
| | 5. Changes in definitions applied to H-1B and L-1 visa applications | 5. Potential shift in staffing model from Indian to U.S. workers, with resultant increase to costs and prices |
| Criminal litigation initiated by either the government or clients | 1. Prosecution of Indian and/or U.S. service providers for violation of U.S. immigration law or criminal fraud | 1. This would most likely lead to significant loss of market share and reduction in stock price |
| | 2. Prosecution of customers for criminal violation of U.S. immigration law | 2. This could lead to a long-term reduction in outsourcing and offshoring of global services |

| Focus | Example outcome | Potential impact |
|---|---|--|
| Civil litigation initiated by either clients or employees | 1. Civil suit for direct damages for breach of contract or loss of reputation | 1. Loss of market share for the service provider |
| | 2. Civil suit by employees for loss of employment | 2. Loss of market share for the service provider and retrenchment from outsourcing by the client |
| Client reactions to the Infosys situation and to other providers that come under the same scrutiny | 1. Retrenchment with current service provider and/or switch from Indian to U.S. service providers | 1. Loss of market share and reduction in stock price for the service provider |
| | 2. Accelerate offshoring to captive operations | 2. Permanent change in service portfolio from outsourcing to shared services |
| | 3. Switch from Indian to U.S. service providers | 3. Loss of market share and reduction in stock price for the Indian service providers |

The category described as potential changes in policies deserves some additional discussion. While we have provided some example scenarios, it could take many directions and could lead to significant disruption even without substantial legislative changes. We believe that there are three primary approaches that might play out on changes to policies, beyond blanket approaches incorporating elimination of or reductions to existing programs or more stringent screening.

| Approach | Description |
|-----------------------|---|
| By nationality | This implies targeted efforts at the consular level for specific countries and/or specific cities within a country. There is anecdotal evidence to suggest that service providers are aware of which consulates are less stringent in screening of visa applications. Targeted enforcement could eliminate these types of gaps if it is determined that a higher level of abuse exists in a particular country or at a specific consulate |
| By work type | This would potentially involve changes to the guidelines and definitions applied to the type of work and or education appropriate for specialty occupations in the H-1B visa program, or the specialized knowledge required in the L-1B visa program |
| By firm type | One example of this is development of policies specific to firms that employ foreign nationals as a majority of their U.S. workforce. Another is development of policies that are specific to a particular type of company e.g., global service firms engaged in outsourcing, or high-tech manufactures versus other types of manufacturers. Yet another example might be where the enterprise is headquartered for tax purposes |

Conclusion

We don't know how this situation will play out in terms of legislative changes or changes to definitions and policies as there are too many uncertainties and dynamics in play. But if it does occur, the fallout impact will likely be felt by all stakeholders in the global services industry. Service providers – both domestic and offshore – stand to lose revenue due to higher cost domestic labor, as do U.S.-based technology firms. Buyers face increased risk and prices. Firms alleged to have engaged in visa wrong doings may suffer reputational damage, and, by proxy, their employees will as well. And the U.S. economy could suffer another blow due to reduced domestic spending and tax revenues.

Given the severity of the situation, we will be closely monitoring it and keep you updated as new incidents occur. Among the many questions that we will be attempting to answer are:

- Will this lead to an increase in reliance on captives versus outsourcing?
- Will clients potentially rebalance their approach to outsourcing solutions and trade some labor arbitrage cost savings for a lower risk profile, thus reversing a long-term trend towards higher offshore ratios?
- Will customers engage in a “flight to quality” by seeking to do business with service providers that they perceive as being of exceptional integrity?
- Will customers alter their approach to governance by attempting to police compliance with U.S. immigration law?
- Will service providers and technology companies attempt to reduce their reliance on temporary visas through expanded use of videoconferencing technology or other mechanisms?
- Will a change in visa usage affect the quality of services?
- Will changes affect the profitability of the offshore third party providers?

About Everest Group

Everest Group is an advisor to business leaders on the next generation of global services with a worldwide reputation for helping Global 1000 firms dramatically improve their performance by optimizing their back- and middle-office business services. With a fact-based approach driving outcomes, Everest Group counsels organizations with complex challenges related to the use and delivery of global services in their pursuits to balance short-term needs with long-term goals. Through its practical consulting, original research and industry resource services, Everest Group helps clients maximize value from delivery strategies, talent and sourcing models, technologies and management approaches. Established in 1991, Everest Group serves users of global services, providers of services, country organizations and private equity firms, in six continents across all industry categories. For more information, please visit www.everestgrp.com and research.everestgrp.com.

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