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Possible Changes May Impact Indian Outsourcing Companies

A proposed new immigration law may significantly change the applicable rules and processes associated with foreign national workers being employed in the U.S. Among other things, the proposed law includes changes to the H-1B temporary worker program and changes to immigrant visas ("green cards").

THE PROPOSED NEW LAW: GENERAL INFORMATION

On April 16, 2013, the "Border Security, Economic Opportunity, and Immigration Modernization Act" bill was introduced into the U.S. Senate. See this advisory on www.wiggin.com to view an outline of the proposed bill, prepared by the American Immigration Lawyers Association, by clicking [here](#); the complete text of the proposed bill (844 pages) is available at: <http://www.schumer.senate.gov/forms/immigration.pdf>.

The proposed bill is currently under review and being amended in the Senate. The law-making process will continue for some time, and there is no set language for the bill to date. It is, therefore, important to keep in mind that the final law may or may not be fully in line with the proposed bill.

THE PROPOSED NEW LAW: PROVISIONS OF INTEREST FOR INDIAN OUTSOURCING COMPANIES

The text of the proposed bill includes the following provisions:

- Increase H-1B annual quota of 65,000 to 110,000 (amend the current 20,000

exemption for U.S. advanced degree holders to be a 25,000 exemption for advanced degree graduates in science, technology, engineering, and mathematics from U.S. schools). In future years, the H-1B quota may go as high as 180,000 (quota will be tied to economic trends).

- Prevent H-1B workers from undercutting the wages paid to American workers by requiring employers to pay significantly higher wages for H-1B workers than under current law (and to first advertise the jobs to American workers at this higher wage before hiring an H-1B worker).
- Require H-1B dependent employers to pay significantly higher wages and fees than normal users of the program. If the employer has 50 or more employees, and more than 30% but less than 50% are H-1B or L-1 employees (who do not have a green card petition pending), the employer must pay a \$5,000 fee per additional worker in either of these two statuses. If the employer has 50 or more employees, and more than 50% are H-1B or L-1 employees (who do not have a green card petition pending), the employer must pay a \$10,000 fee per additional worker in either of these two statuses.
- Prohibit companies whose U.S. workforce largely consists of foreign workers from obtaining additional H-1B and L-1 visas. In Fiscal Year 2014, companies will be banned from bringing in any additional

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workers if more than 75% of their workers are H-1B or L-1 employees. In Fiscal Year 2015, the ban applies to companies if more than 65% of their workers are H-1B and L-1 workers. In Fiscal Year 2016, the ban drops to 50%.

- Require recruiting of American workers prior to hiring an H-1B nonimmigrant: The Secretary of Labor must establish a searchable website for posting H-1B positions; the site must be operational and online within 90 days of the passage of the new law; employers must post a detailed job opening on the Department of Labor's website for at least 30 calendar days before hiring an H-1B applicant to fill that position.
- Require all employers to enroll in the E-Verify system over a 5-year phase-in period: Employers with more than 5,000 employees will be phased in within 2 years; more than 500 employees will be phased in within 3 years; and all employers, including agricultural employers, will be phased in within 4 years.
- Eliminate the backlog for employment-based immigrants: Only Indian nationals who began the three-phase green card process prior to September 1, 2004 (second-preference) and December 22, 2002 (third-preference) are currently eligible to apply for green cards, based on the annual quotas and volume of cases. The bill would eliminate this backlog.
- On the employment-based green card categories, the bill exempts the following categories from the annual numerical limits on employment-based immigrants: derivative beneficiaries of employment-based immigrants; aliens with extraordinary ability in the sciences,

arts, education, business or athletics; outstanding professors and researchers; multinational executives and managers; doctoral degree holders in any field; and certain physicians.

- The proposed bill would then allocate 40% of the worldwide level of employment-based green cards to: 1) members of the professions holding advanced degrees or their equivalent whose services are sought in the sciences, arts, professions, or business by an employer in the United States (including certain aliens with foreign medical degrees), and 2) aliens who have earned a degree from an accredited U.S. institution of higher education and have an offer of employment in a related field and the qualifying degree was earned in the five years immediately before the petition was filed. The proposed bill increases to 40% the percentage of the yearly worldwide quota for employment-based green cards for skilled workers and professionals,

Please note that these are still proposed provisions that are all under review in the U.S. Senate. By way of information, the general process by which a piece of legislation (a bill) becomes federal law in the United States is dictated by the U.S. Constitution. The U.S. Congress is a bicameral (two chambers) legislature comprised of the House of Representatives and the Senate. Both the House and Senate must pass an identical bill, which then must be signed by the President, in order to have the force of law.

If you have any questions or concerns regarding the development of the new immigration law, please feel free to contact Niket Rele or Najia Sheikh Khalid.

This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.