

Avasant Point of View

Impact of Trump Administration Immigration Initiatives on Tech Industry

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Executive Summary

The purpose of this article is to provide a brief analysis of the Trump Administration's initiatives to change certain aspects of US immigration policy, and the potential impact to the global technology services industry. Avasant has also outlined some potential adjustments by the global technology services industry in response to US policy changes.

In Avasant's view, the Trump Administration's proposed changes to work visa programs and travel entry rules will have a marked impact on the technology services industry. With respect to work visa programs, especially the H1-B visa, the Trump Administration initiatives will slow down but not completely stop the influx of foreign technology workers into the US to meet demand. The US has become skeptical of the H1-B program with respect to its use by IT outsourcing companies, but remains supportive of using it to recruit highly skilled positions requiring advanced degrees. The direction of the Administration's Executive Orders and proposed immigration legislation in the US Congress suggest that reform of the H1-B program will likely involve the following: (1) increases to minimum salary thresholds; (2) changes to the visa allocation model to favor small business start-ups, advanced degree holders, and foreigners studying in US universities; and (3) improvements in auditing and enforcement of visa rules among US based companies.

With respect to travel, the Trump Administration has made a number of different attempts to restrict entry into the US of foreigners from various countries in the Middle East. Despite setbacks in the courts on constitutional grounds, the Administration has continued to explore ways to impose travel restrictions, including a directive banning the use of certain devices larger than a mobile phone on certain flights emanating from various airports in the Middle East.

These changes, taken together, will make it less cost-effective and convenient to source foreign labor to work in the US. In Avasant's view, the likely response from global technology companies will be to adjust labor sourcing and service delivery models to flexible approaches that are based on more aggressive implementation of technological solutions and creative business partnerships. We expect that existing trends towards automation, transformation and offshoring will accelerate. Labor sourcing models will be skewed towards using a smaller number of higher skilled foreign

workers. Within the US, we expect that larger global entities will invest more in training and in partnerships with local, regional providers to meet demand to perform on-site tasks. These moves may not be sufficient to meet the overall demand or address noted skills gaps, but will likely enable global technology companies to remain competitive.

Introduction

Immigration was a core issue for Donald Trump during his 2016 campaign for the US Presidency. He promised to change the US immigration system with the stated aims of protecting US workers from foreign competition, defending against potential foreign threats to the US homeland, and addressing perceived issues with assimilation of certain groups of foreigners. Through his many pronouncements on the issue, the one clear message was that Trump would look for ways to make fundamental changes to scrutinize, restrict or limit immigration, whether it be for travel/tourism, study, work or permanent residence and a path to citizenship.

During the first few months of the new Administration, there have been many attempted changes, and other plans are reportedly in the works, that would fundamentally alter US immigration policy. The global technology services industry has been looking carefully, if not warily, at the changes, and what it means to the way that technology companies that are US based or serve US customers recruit and hire global talent for a globalized industry.

There are three (3) primary areas where the Trump Administration may impact the Technology Sector as it relates to immigration:

- Changes to Work Visa Programs
- Freedom to Travel to the US
- Changing Climate Towards Foreigners & Chilling Effects

1. Changes to Work Visa Programs

Background

The Trump Administration, with some support in Congress, has signaled changes to the US system of work visas. The political debate usually starts and ends with the H1-B visa program, the popular 3 year, renewable, work visa issued to foreigners who have an employment offer from a US employer, a bachelor's degree or higher in a 'specialty occupation', and earn at least \$60,000. There are 85,000 H1-B visas issued every year by the US Citizenship and Immigration Services (USCIS). 65,000 go to regular H1-Bs and an additional 20,000 to individuals with master's degrees or higher. Technology companies thrive off the H1-B visa program to fill the skills gap for certain high skilled jobs, particularly in the area of computer science. In 2015, there were reportedly over 500,000 computer science job postings, only 50,000 of which were filled within the US. The H1-B, L1 (intracompany transfer), E2 (investor visa), F1-OPT (allowing work in a primary field for individuals holding a student visa) are all used to fill the gap between the demand for highly skilled labor and the shortage of supply from within the US. With respect to the H1-B visa program, on an annual basis there are generally 2.5-3 times as many applications as there are visas to issue. In 2016, the USCIS reported that there were 236,000 such applications. In 2015 and 2016, more than half of the companies among the top 25 who submitted the most H1-B visa applications were IT outsourcing companies. About one-third of the approved H1-B visas in 2015 went to IT outsourcing companies.

The H1-B visa program, however, generates political controversy. While many companies with a need for highly skilled programmers and engineers, like Apple and Google, use the H1-B visa program to meet skilled labor shortages, it is the use of the program by IT outsourcing service providers, like Cognizant, Wipro, and TCS that draws the most controversy. Critics believe that the outsourcing of some jobs to IT service providers, and performed in part by H1-B visa holders, violates the spirit of the Immigration and Nationality Act, because these jobs require less skill, and there is an ample supply of such labor within the US. In some cases, IT outsourcing companies and their corporate clients have been accused of 'abusing' the H1-B system to replace American employees with cheaper foreigner workers of no better skill. In addition, it is alleged that the foreign replacements have required significant knowledge transfer to understand the corporate processes, environment and delivery expectations.

The issue that is often missed in the critiques of outsourcing/offshoring models is that in many of these cases, companies have determined that they no longer desire to spend as much on IT operations, because they have concluded that it is a commodity service that can be delivered more efficiently and cheaply as a managed service with more automation and modernization (transformation). Most companies do not desire to

maintain a high internal operational cost for IT services, and look for ways to free up capital through cost reduction and modernization to enable investment in revenue generating areas. Outsourcing represents one means to achieve such operational cost savings, and the use of the H1-B program is but one option available to such companies. If this outsourcing model leveraging H1-B visa holders were not available, companies would look to other means like near-shoring, offshoring, automation, onshore hosted cloud services, service integrators and traditional staff augmentation. In other words, the jobs and associated tasks in question would likely be sourced out of the company to third parties because companies either no longer consider the roles strategic and/or believe that there are more efficient and cost effective ways to obtain such services.

Proposed Changes

There are at least 3 separate bills in the US Congress which look to reform the H1-B visa program. The key changes in these bills which could make it to final legislation include: (1) raising the minimum salary threshold from the current \$60,000 to \$100,000 (or higher); (2) Adjusting the threshold limits for companies with more than 50 employees who are deemed H1-B dependent (e.g., more than 50 employees total and half are work visa holders) to limit or cap how many H1-B visa holders such companies can add; (3) changing the system to award H1-B visas from a lottery to a preference based approach which favors students enrolled in US universities, individuals with advanced degrees, and provides preferences to start ups; and (4) increased auditing and compliance.

The USCIS issued, on March 3, 2017, a temporary suspension of premium processing for all H1-B petitions for an initial period of 6 months. It affects all H1-B petitions filed on or after April 3, 2017. This would mostly impact H1-B petitions for FY 2018 (October 1, 2017 – September 30, 2018). Expedited processing may be performed if certain expedited criteria are met. The stated reason for this change is to address a backlog of longer standing petitions.

In addition, on April 18, 2017, President Trump signed an executive order (EO) entitled “Buy American, Hire American”. The general purpose of the EO is to instruct various federal agencies to propose new rules and issue new guidance to protect the interests of US workers with respect to the US immigration system.

Of particular note is Section 5b of the EO, which instructed Federal agencies to “suggest reforms to help ensure that H-1B visas are awarded to the most-skilled or highest-paid petition beneficiaries.” Although the executive order does provide great detail, observers

believe that the Administration will use the executive order to address reforms such as the elimination of the H1-B lottery, give preference to highly skilled and highly paid workers & advanced degrees, as well as more rigorous auditing and enforcement. Based on the press conference in which the EO was introduced, IT outsourcing companies are a target and focus, as the Administration believes that these entities pay low wages, submit bulk applications to obtain the most H1-B visa approvals.

Moreover, the Trump Administration is considering changes to other work visa programs: J1 (summer work travel), OPT (allows foreign students to work during college and remain post-graduation), and E2 (investors). The Trump Administration is also going to increase auditing, site visits and mandatory checking for compliance. This is expected to be applied to monitor the use of L and H1 visas.

Avasant View

In Avasant's view, US based companies should anticipate that it will take longer to get H1-B visa applications approved in 2017 and into 2018 as the Trump Administration and Congress debate formal changes to the program. The Trump Administration is signaling that it will slow down the approval process, and institute more auditing of companies. The Administration may also consider ways to address, through executive order, some of the key reform features in the current House and Senate bills (e.g., minimum salary threshold increases), should Congress be unable to produce new legislation for implementation in FY 2018. There does not appear to be, for the moment, any plans to completely scrap or do away with the H1-B visa program.

Nonetheless, companies which rely on H1-B visas will likely plan for a more restrictive environment and for higher labor costs. They will begin the process of prioritizing H1-B applicants based on higher skill and salary thresholds, reduce the number of H1-Bs to include as part of the workforce to align with expected threshold requirements, and look to offshore or automate those roles which to date have been performed on site by H1-B visa holders. In addition, one should expect that sourcing deals of the future will involve more rebadging of US based employees to IT service providers and training for roles that cannot effectively be performed offshore, as well as partnerships with smaller, US based regional players to supply or train talent. Moreover, the proposed changes to and increased scrutiny of the H1-B visa program taken together with the various attempts to restrict travel to the US will increase transaction and efficiency costs of sourcing foreign labor. This may have the effect of stimulating different offshoring models, and accelerating automation and transformation trends.

2. Freedom to Travel to the US

Background

a. Travel Ban 1.0

On January 27, 2017, President Trump issued Executive Order 13769, "Protecting the Nation From Foreign Terrorist Entry Into the United States" (the "Executive Order"), which suspended for 90 days the entry into the US of foreign nationals from 7 majority Muslim countries (Iraq, Iran, Syria, Yemen, Libya, Somalia and Sudan); suspended refugee admissions from 6 of the 7 countries for 120 days; and indefinitely suspended the entry of all Syrian refugees. The stated purpose of the travel ban was to guard against the risk of terrorism from nationals of these countries, in part due to civil unrest, conditions and that the US needed to review the visa process to ensure that those that entered the country did not pose a terror threat.

Enforced with immediate impact by the US Customs & Border Patrol (CBP), the Executive Order created chaos at multiple US airports as even those who had legally issued and valid visas, from tourists to students to temporary workers to permanent residents, were impacted. People were prevented from boarding flights to travel to the US; others were held in detention centers; others were forced by CBP to surrender their visas; and over 60,000 previously issued valid US visas were revoked.

Law suits filed by the State of Washington on January 30, 2017 (and later joined by the State of Minnesota) challenged the constitutionality of the Executive Order. The State of Washington argued that the impact of the Executive Order damaged the State's economy and public university system, and violated the 1st amendment constitutional rights to religious freedom (as they argued that the Executive Order was in intent and effect a ban on Muslims) and the 5th amendment right to due process of its impacted residents. The US tech industry reacted to the travel ban with disapproval, and 127 companies signed an amicus brief (friend of the court) supporting the State of Washington's constitutional arguments. Tech companies voiced concern about affected employees from such countries, their ability to recruit in the future, and also made a values argument that the Executive Order was not in alignment with their corporate value of diversity and equal respect. This list included well known giants like Apple, Facebook, Microsoft, Tesla, Intel and HP.

After a lower court issued a nationwide injunction on enforcing the travel ban, the US Federal 9th Circuit Court of Appeals made what ended up being a definitive ruling on the matter in response to a request by the Trump Administration to lift the lower court injunction. The Court unanimously ruled the Executive Order unconstitutional on the grounds that it discriminated on the basis of religion by targeting Muslims, denied due process to affected individuals, and failed to adequately show that the ban was necessary to achieve stated objectives to avoid harm or irreparable injury.

b. Travel Ban 2.0

Following the defeat of the 1st Travel Ban in the Courts, the Trump Administration issued a second one a few weeks later on March 6, 2017. Though having the same title as the first, version 2.0 was narrower in scope: it removed 1 country from the list (Iraq), limited the scope to refugees and those without current visas. However, Travel Ban 2.0 has, for the moment, met the same fate as version 1.0, as an injunction was imposed by a Federal District Court in Hawaii on similar grounds (and a second court in Maryland). In particular, the Court held that the State of Hawaii did suffer economic harm and that the executive order discriminated based on religion in violation of the US Constitution (1st Amendment establishment clause) and the Immigration and Nationality Act. Citations of statements made by Administration officials as to the intent of the second executive order seem to have played an important role in the Court's decision to ascertain discriminatory intent. The Administration has appealed the decision by the Maryland Federal district court.

Despite the initial Court setbacks, the Administration appealed the decisions in Maryland and Hawaii (Travel Ban 2.0) to the appellate courts. Oral arguments have taken place in both cases, and no matter the results, the matter may eventually get appealed to the US Supreme Court. With the recent addition to the Supreme Court of conservative Neil Gorsuch to replace Justice Antonin Scalia, Gorsuch could provide a nominal conservative majority (5-4). It is, therefore, possible that some form of Trump's travel ban may be upheld, due to case law tending to favor executive discretion on matters of immigration and national security, and the tendency of conservative and liberal justices to vote in blocs in alignment with their philosophical or ideological leanings.

c. Directive on Electronic Devices (Travel Ban 3.0)

In light of court setbacks, the Government has taken a different tack to address travel into the US from certain foreign countries. The US Department of Homeland Security issued, on March 21, 2017, a directive banning certain devices larger than a mobile phone from being carried on airplanes flying into the US from several airports in majority Muslim countries including: Jordan, Egypt, Turkey, Saudi Arabia, Kuwait, Morocco, Qatar, and the United Arab Emirates. Rather than restrict who can fly into the country, this restriction limits what devices people can use on in-bound flights. The stated purpose of the ban is to address perceived gaps in airport security. The restrictions apply only to non- US carriers. The types of banned devices include laptop computers, tablets, cameras, travel printers and games bigger than a phone. These devices could be carried in checked baggage. The ban is of indefinite length and could be expanded. The ban will initially affect nearly 50 flights per day into the US.

The reaction to this latest directive will unfold over the following weeks. It is possible that these restrictions will be open to challenges of trade discrimination, as foreign carriers are discriminated against, while US carriers remain untouched, and discrimination based on race and national origin, as once again the source target is a subset of majority Muslim countries and carriers based in such countries, many of which are partly state owned.

From the perspective of the tech industry, this ban will complicate travel for tech workers, including engineers, consultants, analysts and executives who travel regularly from the Middle East and Indian Subcontinent, as airports like Dubai represent major hubs for such travel, and carriers like Emirates are preferred airlines. These individuals will not be able to work on airplanes, and will not likely be able to undertake the risk of placing a laptop with sensitive information in checked baggage, for fear of getting such items seized or lost in transit.

Avasant View

Although the Administration's attempts to restrict travel from certain foreign countries into the United States has run into trouble in the Courts, the recently issued directive on electronic devices suggests that the Trump Administration will continue to experiment with ways to tinker with travel restrictions for individuals entering the US from certain foreign countries. The directive on electronic devices arguably makes business and tourist travel more difficult from the Middle East and South Asia, regions which supply a large amount of skilled labor, and also do millions of dollars of business within and with the US.

Companies should expect that their foreign based or sourced employees, contractors and outside consultants will be forced to deal with more inconveniences, restrictions and costs resulting from changes in US policies. The government's proposed changes, including the ability to search devices, suggest that cybersecurity concerns are going to push more companies to implement cloud solutions for everyday use and storage, and avoid sensitive information from being exposed to risk of seizure, search or loss/theft.

3. Changing Climate Towards Foreigners & Chilling Effects

The 2016 campaign and the subsequent focus on immigration may lead to a chilling effect among the visa applicant pool and immigrant community, due to a perceived general change in the US climate towards foreigners. To some, the US might not be an ideal place for foreigners to work or study. Many may seek other markets like Canada and Europe, which may be perceived to have a more stable environment at present by comparison. For those businesses with a high demand for higher skilled labor, the increased challenges of dealing with that skills gap through the H1-B program could slow down growth.

In addition to the proposed changes to visa programs and travel, the Administration's added focus on accelerating the deportation of undocumented immigrants and those with expired visas within the US may also impact the technology industry. Visa holders and family members could be subject to a higher risk of deportation. Even Permanent Residents (Green Card Holders) are likely to be scrutinized for any past transgressions as the standards by which the US Immigration and Customs Enforcement agency (ICE) may seize, detain and deport individuals (following a judgment of an immigration court) have been loosened and broadened.

Moreover, one cannot ignore the increase in reported racially motivated hate crimes across the US during 2016, and since the Presidential election. Per FBI statistics, hate groups and hate crimes increased over 2016, and there have been many reported spikes of racially motivated incidents, including a high profile one near Kansas City, KS (February 2017) in which an Indian IT worker was shot and killed. That incident was widely reported in India and around the world, and is viewed in some quarters as representative of a more hostile climate towards immigrants, particularly those from the Middle East or South Asia.

Taken together, the proposed or contemplated visa program changes, travel restrictions and general change in climate will likely slow down, but not stop, the H1-B program or the influx of higher skilled foreign workers into the US over the next few years. As companies deal with labor shortages and skills gaps, there will be an acceleration of trends already present in the marketplace towards automation, transformation, and offshoring. In addition, one should expect an increase in rebadging, local hiring, training and strategic partnerships within the US to address the need to supply locally based staff.

About Avasant

Avasant is a leading management consulting firm focused on translating the power of technology into realizable business strategies for world's largest corporations. Specializing in digital and IT transformation, sourcing advisory, global strategy, and governance services, Avasant prides itself on delivering high-value engagements through industry focused innovation and flexible client based solutions.

Our seasoned professionals have an average of 20 years of industry-honed expertise, having conducted 1000+ engagements in over 40 countries. Avasant's next generation consulting and advisory methods have made it the top-ranked firm in its class, with recognition from numerous organizations, including: Vault, NOA, IAOP, and Wall Street Journal.

Avasant's engagement in the global market has inspired a strong commitment to community and purpose. Avasant Foundation supports technology and skill development programs to create employment opportunities for youth across Africa, Asia, the Caribbean and Latin America.

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