

TECH VISA LOOPHOLE CLOSED BY CONGRESS; PROGRAM ABUSED, CRITICS SAY

San Jose Mercury News (California)

November 25, 2004 Thursday MORNING FINAL EDITION

Copyright 2004 San Jose Mercury News All Rights Reserved

Section: FRONT; Pg. 1A

Length: 969 words

Byline: KARL SCHOENBERGER, Mercury News

Body

An immigration reform measure quietly passed by **Congress** could sharply limit how Indian offshoring companies use low-wage technology workers on temporary **visas** in the United States.

The little-noticed legislation, tucked in a massive spending bill passed Saturday, would **close** a **loophole** in regulations for the L-1 **visa**, which is intended to allow foreign firms to transfer managers and employees with specialized knowledge to their offices in the United States.

Critics of the offshoring industry **say** that L-1 **visas** are used far more broadly and are being exploited to evade caps on the H-1B **visa program** for admitting temporary skilled workers. Last year, 57,245 L-1 **visas** were granted - nearly one-third of them to Indian nationals.

The H-1B **visa program**, which helped provide workers for much of Silicon Valley's **tech** boom, has been controversial. Some **tech** workers and political leaders argue that the **visas** make it too easy for low-paid foreign workers to replace highly paid Americans in software **programming** and other skilled **tech** jobs.

Under political pressure from the **critics**, the annual quota for H-1B **visas** has been reduced to 65,000 in recent years -- not nearly enough to meet new demands from the offshoring industry. In response, India's largest software contractors have dramatically increased their reliance on L-1 **visas**. L-1 **visas** issued to Indian nationals increased by nearly eight times between 1998 and 2003, according to the State Department.

The leading offshoring companies -- Wipro, Infosys Technologies and Tata Consultancy Services -- **say** they follow the letter of the law when sponsoring L-1 workers. Typically, L-1 and H-1B employees work on site with U.S. clients to provide support for contract work being done by their colleagues in India. The offshoring companies **say** L-1 workers are legitimate in that role because they don't work directly for the client.

But **critics say** the offshore companies, known derisively as "body shops," are using the L-1 **visa** as a "back door" into the U.S. labor market while denying American **tech** workers fair access to jobs and driving down wages.

The new legislation, which President Bush is expected to sign soon, would require companies to keep L-1 **visa** holders under their direct management control when working with a customer. L-1 **visa** holders couldn't work as subcontractors or be supervised by the customer.

The tightening of the L-1 regulations by **Congress** will make it more difficult for offshoring firms to dispatch manpower to client locations, **said** Greg Siskind, an immigration attorney in Memphis who advises L-1 employers. "The L-1 was not being used properly by these companies" when they put workers at customer facilities, he **said**.

TECH VISA LOOPHOLE CLOSED BY CONGRESS; PROGRAM ABUSED, CRITICS SAY

However, Victor Chayat, a Tata spokesman, **said** Wednesday that the legislation would not affect Tata's operations in the United States because the company is already in compliance with the regulations. "We're providing software development projects to our customers, not bodies," he **said**.

In a statement Tuesday, the National Association of Computer Consultant Businesses, a Washington, D.C., trade group, applauded **Congress** for prohibiting "the **abuse** of the L-1B **visa** by foreign IT consulting firms."

But advocates of more stringent reform **said** the measure did not go far enough. Unlike the H-1B **visa program**, there is no limit on the number of L-1 **visas** that can be approved, and there is scant oversight of how the **visas** are being used.

"The body shops are probably going to find a way to to go around this," **said** Jack Martin, special projects director for the Washington-based Federation for American Immigration Reform. "And it's going to be very difficult for a consular official overseas to know how the applicant will be managed at the work site to maintain compliance with the law."

The number of H-1B **visas** issued to Indian nationals is still about double that of L-1 **visas**.

In tightening the L-1 **program**, **Congress** also passed a provision Saturday to make available 20,000 more H-1B **visas** to foreigners who have earned graduate degrees in U.S. universities. But these additional **visas** won't directly apply to India's offshoring companies.

Tata, based in Mumbai, is one of the heaviest users of the L-1 **visa**. Chayat **said** it had about 4,700 L-1 and 2,600 H-1B workers in the United States at the end of March, but would not provide numbers for earlier years because Tata was privately held until August.

Tata's L-1 workers were at the center of a highly publicized flap that triggered calls for congressional reform.

In 2002, about 20 American employees at a Siemens plant in Florida were forced to train their Tata replacements or lose their severance packages.

The laid-off employees questioned the logic of a **visa** intended for workers with exclusive technical skills, when in fact they had to be trained by Americans laid off ostensibly because they lacked such skills. They concluded it was all about wages -- calculating that their Tata L-1 replacements made about a third of their \$70,000 salaries.

"There was nothing unique to Tata in what they were doing," **said** Michael Emmons, 42, one of the Florida workers. "Their long-term goal was to take the whole thing to India, but they couldn't do that without knowledge transfer. And the L-1 **visa** is the golden egg for knowledge transfer -- and taking our jobs overseas."

CHART: MERCURY NEWS

High demand for L-1 **visas**

Total H-1B and L-1 **visas** issued to Indian nationals

[Chart not taken in database]

CHART: MERCURY NEWS

High demand for L-1 **visas**

Total L-1 **visas**

[Chart not taken in database]

CHART: MERCURY NEWS

High demand for L-1 **visas**

TECH VISA LOOPHOLE CLOSED BY CONGRESS;PROGRAM ABUSED, CRITICS SAY

Offshoring companies' reliance on visas

[Chart not taken in database]

Graphic

Charts (3)

Classification

Language: ENGLISH

Subject: PASSPORTS & VISAS (92%); FOREIGN LABOR (91%); TECHNICIANS & TECHNOLOGICAL WORKERS (90%); LEGISLATION (90%); EMPLOYMENT VISAS (90%); OFFSHORING (90%); IMMIGRATION (89%); WAGES & SALARIES (89%); SUBCONTRACTING (78%); TEMPORARY EMPLOYMENT (78%); MANAGERS & SUPERVISORS (78%); FACTORY WORKERS (78%); CRAFT & TRADE WORKERS (78%); LABOR SECTOR PERFORMANCE (78%); APPROPRIATIONS (78%); LAWYERS (70%)

Company: INFOSYS LTD (84%); TATA CONSULTANCY SERVICES LTD (54%)

Ticker: INFY (PAR) (84%); INFY (NYSE) (84%); INFY (NSE) (84%); TCS (NSE) (54%)

Industry: FACTORY WORKERS (78%); COMPUTER SOFTWARE (72%); LAWYERS (70%); SOFTWARE DEVELOPMENT & ENGINEERING (67%); CONSULTING SERVICES (50%)

Geographic: SILICON VALLEY, CA, USA (79%); UNITED STATES (94%); INDIA (92%)

Load-Date: September 2, 2005