Senate law a crippling blow for guest worker program

SUMAN GUHA MOZUMDER

Economists, policy researchers and lawyers last week decried the amendment to the Troubled Assets Relief Program that will make it harder for companies receiving TARP funds to hire skilled foreign workers on temporary work permits known as H1B visas.

The amendment, co-sponsored by the Republican Senator from Iowa, Charles Grassley, and the Independent Senator from Vermont Bernie Sanders, was sparked by an Associated Press story that detailed how big American banks have brought foreign workers to the United States in the last six years before the financial crisis. The amendment was passed by a voice vote in the Senate.

‘Wall Street caused the crisis, millions of people lost jobs, including 100,000 in financial institutions. Now, they want to bring in foreign workers,’ Senate Sanders said in a statement.

Sanders’ office said in a statement that an investigation by AP found that a dozen banks now receiving more than $150 billion in bailouts requested visas for more than 21,800 foreign workers over the past six years to replace laid-off American employees.

“The very least we can do is to make sure that banks receiving a taxpayer bailout are not allowed to import cheaper labor from overseas while they are laying off American workers,” Sanders said.

The amended legislation would require bailed-out banks to hire only Americans for two years.

“Hiring American workers for limited available jobs should be a top priority for businesses taking taxpayer money through the TARP bailout program. With the unemployment rate at 7.6 percent, there is no need for companies to hire foreign guest workers through the H1-B program when there are plenty of qualified Americans looking for jobs,” Grassley said.

The US economy lost 598,000 jobs in January as the jobless rate rose to 7.6 percent, bringing total job losses since the recession started in December 2007 to 3.6 million, according to a Department of Labor report released in February.

But people like Stuart Anderson, executive director of the National Foundation for American Policy, an Arlington, Virginia-based policy research organization, disputed the AP report, saying analysis found that the AP report that created the whole controversy by overstating the current use of H-1B visas.

Anderson said the AP story combined six years of past data and focused on applications filed with the Department of Labor, which often exaggerate actual visa usage because employers may file applications for multiple geographic areas for one individual to comply with H1B wage rules.

“If one uses the data from the immigration service on actual new H1B petitions used by these companies, you’ll see none of the large TARP recipients use anything but a negligible number of new H1B visas each year when measured against the size of their labor force,” Anderson told India Abroad.

The American Immigration Lawyers Association was equally critical of the AP story. The articles leave the false impression that as the banks were taking bailout money, they were simultaneously firing US workers and hiring cheap foreign labor. The AP articles are based on faulty

GEORGE JOSEPH

Samir Kohli and Girija Subramianam are among the growing number of H1B visa holders who, disgusted at the inordinate delays in processing their Green Card applications, have decided to leave the country.

“I came here ten years ago,” says the Maryland-based Subramaniam, who is busy with plans to move to Canada. “I am a telecommunication engineer with a US graduate degree. I have two properties in the US. How long can I wait for a Green Card, so I can start my own company? I don’t wait till I am 50!”

“The process is never-ending, and the wait is no longer worth it,” says Kohli, who will return to New Delhi February 17. “I don’t feel bitter – everything happens for a reason, and there is no point in being mad at the system.”

Subramaniam, who has an engineering degree in electronics from Mumbai, came on a student visa and after getting her masters degree, changed it to an H1B visa. An expert in satellite communication, she once worked for Lockheed Martin. Later, she joined Texas Instruments and that company filed for her Green Card in the EB-3 category, for professionals who hold a US baccalaureate degree or foreign equivalent.

She, however, qualified for the EB2 category, for individuals with advanced degrees and at least five years progressive experience in a profession, or who have exceptional ability in the sciences, arts, or business and will substantially benefit the United States.

Her company did not apply in the EB2 category, as the other was easier to file. However, EB3 involves processing delays; she had to wait for three-and-a-half years just to get the labor certification. Her application then went to the backlog reduction center, and after much confusion, she got her I-140 approved in a year-and-a-half.

She then moved to another company using the provisions of the American Competitiveness in the Twenty First Century Act (AC21), but the USCIS refused to approve the transfer. “They flouted their own rules in this,” Subramaniam says. “If you do not allow the market forces to work in the employment field and allow workers to move out, the employers will exploit the workers.”

She said talk of America as a country of immigrants is meaningless. “There is no transparency in the system; a lot of body shopping is going on. We waited in queue, while illegals got special amnesty in 2001. Now I have reached a point of frustration,” she says.

She plans to sell the two homes she owns, but with the real estate market down, that is easier said. “If I don’t get good prices now, I might have to come back later when the market is better,” she said.

Moving to Canada is, for her, no hardship – with her qualifications and area of specialization, she is sure to get a job. But that, she says, is not the point. “I want to start something of my own,” says Subramaniam, who incidentally was a volunteer on the incident was a volunteer on the Barack Obama’s January 20 inaugural.

Ironically, the company that she works for now has been actively trying to hire one more person with her qualifications, but after a year of head hunting, hasn’t managed to find a suitable candidate. When she leaves, the company will struggle further.

Kohli, meanwhile, came to the US in 1999 on an H1B visa. After one-and-a-half years in New Jersey, he moved to Atlanta. His I-140 has been approved, but to move to another company is not easy, since the regulations insist that the job profile has to be exactly identical.

He now plans to start a company in New Delhi, with US clientele. Harassment and exploitation of people on H1B visas is rampant, he says. “Sometimes, you cannot travel. You have to go to India to get the visa stamped. You begin to realize that all this is not worth your while.”

Red flags on Green Cards

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Since early December 2008, Sreehari Gopalakrishnan has applied to 176 firms, and the rate of call back has steadily declined.

"Earlier, it used to be from 20 to 30 places but now it is less than 10 percent," says Gopalakrishnan, an analyst with a firm in Connecticut that does relocation management. With the current economic downturn and the housing slump, his company has several houses in its inventory worth millions of dollars.

His current firm hired him over three years ago on an H1B visa. When the visa expired in December 2008, the company gave him an extension for two months. "They knew me and liked my work, so they gave me the extra time," said Gopalakrishnan. However, that extension expires at the end of February.

His firm cannot ask for another extension. It has filed for a Green Card in his name, but that application is still in its final stages of processing. The company has over 200 people working on H1Bs, he says, of whom many have been asked to leave, while others await with anxiety the day their employment will be terminated.

Gopalakrishnan has been sending out job applications at a frenetic pace, but responses are increasingly few and far between, he says. Many of the companies that do respond are eliminated because of his visa scenario. "No one wants to go that extra mile of sponsoring you," he says, adding that companies prefer workers who have residency. In some cases, he says, he reached the last round of interviews, but then lost out because of his visa situation.

As the problem mounts, workers in US companies have begun seeking jobs in Canada, various European countries and also in Asian countries like Hong Kong. "They are not hit as bad," Gopalakrishnan says. "Plus, the grass is always greener on the other side."

For Varun Sharma, an associate with Merrill Lynch on an H1B visa, the next few weeks will be crucial. As on date, his position with Bank of America seems secure – but that can change overnight, he says. Against the background of talk that companies caught up in the financial crunch will first lay off guest workers, tensions have been mounting.

"When such talk begins, you realize that this is not your country; that you can get kicked out at any time," Sharma says. "In this situation, there is considerable anxiety, fuelled by rumors."

Sharma believes that his visa will automatically transfer from Merrill Lynch to Bank of America, but even so he has started taking measures to guard against potential problems. "I was never extravagant, but now I am even more careful," says Sharma, discussing the ways he has been cutting down on spending. "I don’t randomly spend $100 like I used to." Friends who took cabs to work now take the subway, he says. "It is a tough time. Everybody has to cut down."

竞争对手 have been laid off have begun seeking jobs in India. "People are not talking about it clearly, but they are considering options back home even if the pay is less," he says. Others are looking for opportunities in small hedge funds, and are willing to work for really low pay.

Sharma believes he is safe, but has been keeping his eyes open for opportunities. He visited the London office of Merrill Lynch to see how operations there are doing, "I am obviously talking to people, but not as seriously," says Sharma, arguing that he is reluctant to jump ship because those who survive the recession will likely emerge stronger.

"It is only a matter of time," he believes. "The recovery will not be as fast as we wish, but the economy will recover." He believes that people from India who seek work visas need to understand that the US is not the dreamland people perceive it to be; when you get here, he says, you are forced to tone down your expectations. "When I came here, I wanted to buy a car in my second year and a house in my fourth year, but all that has to change," said Sharma.

The situation is far more critical for those who have lost their jobs, and have a deadline to vacate the country. Vivek Joshi never imagined that on February 6, he would come in to work and realize that he no longer had the job he has been doing for two years, in the Minneapolis office of a consulting firm.

Joshi worked with the company’s health and financial services, setting up business processes. On that day, he was asked to leave, without any notice. "They have provided me a severance package which they are going to provide as a lump sum amount," said Joshi. He now has 30 days to look for another job so that he can transfer his H1B and remain in the US – and he cannot afford to be picky. Any firm that will transfer his visa, and give him employment commensurate with his qualifications and experience, will do, he says.

John Miano, founder and treasurer of The Programmers Guild, an organization of technology workers that oppose the guest worker programs, sees nothing wrong in laying-off workers who are on H1B visas.

"The situation you describe, where someone who is on a guest worker visa loses his job and has to return home, is a natural consequence of a guest worker system. If guest workers do not return home when their employment ends, they are not really guest workers," said the New Jersey-based Miano, arguing that ‘guest workers’ cannot overstaying their welcome.

"The problem, of course, is that a large number of people who come on H1B visas do so with the expectation of remaining permanently. The current H1B and Green Card systems are designed to benefit lawyers, not potential immigrants," he said. Miano calls for a reduction in the number of H1-Bs allowed each year. "Many politicians have called for market-based caps on H1B visas. Clearly, the caps need to be adjusted downward to reflect the reality of the job market," he argues, "The H1B system is in serious need of reform. The current system does not work for H1B holders, employers or US workers. It is a system intended to benefit lawyers."

Ron Hira, an Indian American who is assistant professor of Public Policy at Rochester Institute of Technology, however believes sending back those on H1B visas "is terribly unfair to those workers and their families." He is no supporter of making the H1B program permanent, but supports giving permanent residence (Green Card) to those on H1B rather than bringing in new people each year. "The H1B program has many flaws, but its biggest one is that the employer, rather than the worker, holds the work visa. That's why America should increase permanent immigration rather than rely on work permits," he said.

Expat workers say that while no one can predict how long the economic crisis will continue, it is a sure bet that the labor markets tend to take longer to recover. The bottom line, says Hira, is that the worst on the job front is yet to come.

Philadelphia attorney Morley J Nair is no fan of the H1B program either, but his grouse relates to the clunkiness of the program. Getting a visa is a time-consuming process and involves considerable time, money and effort, he says. "Even then, at the end your client may not win in the lottery. Then all your efforts are lost," he noted.
Satyam employees in Green Card fix

**GEORGE JOSEPH**

Of the approximately 11,000 employees of Satyam USA, 7,000 are on H1B visas, says Mathew Daniel, a vice president of US operations with the company.

Though Satyam has been facing considerable problems following the confession by its chairman Ramalinga Raju of fraud, Daniel says Satyam has no plans to lay off any employees. Though insurance giant State Farm became the latest client to withdraw its contract with the scandal-tainted company, Daniel said Satyam has acquired 15 new clients in January alone.

On the ground, though, reports suggest that many Satyam employees have begun shopping around for alternate employment. Further, those applied for Green Cards through the company could face problems, according to Buffalo, New York-based, Danielle Rizzo. “Satyam’s cards through the company could face shopping around for alternate employment,” she said.

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