

National Foundation for American Policy

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New Research Finds Soaring Denial Rates for L-1 and H-1B Petitions at U.S. Citizenship and Immigration Services

Between 63 to 90 Percent of L-1B Petitions to Transfer Skilled Employees Into U.S. Either Denied or Delayed by USCIS Adjudicators in 2011

Arlington, Va. – Analysis of new data obtained from U.S. Citizenship and Immigration Services (USCIS) reveals the agency has dramatically increased denials of L-1 and H-1B petitions over the past four years, harming the competitiveness of U.S. employers and encouraging companies to keep more jobs and resources outside the United States, according to a new report released by the National Foundation for American Policy (NFAP), an Arlington, Va.-based policy research group. The report used official data from U.S. Citizenship and Immigration Services. The data indicate much of the increase in denials involves Indian-born professionals and researchers.

“The high denial rates belie the notion adjudications have become more lenient,” said Stuart Anderson, NFAP’s executive director and former head of policy and counselor to the Commissioner of the INS (August 2001-January 2003).

The report, “Data Reveal High Denial Rates for L-1 and H-1 Petitions at USCIS,” can be found on the NFAP website at www.nfap.com.

The evidence indicates adjudicators or others at U.S. Citizenship and Immigration Services changed the standard for approving L-1B and other petitions in recent years, beginning in FY 2008 and FY 2009. The report notes, “If one considers that in FY 2011 63 percent of all L-1B petitions received a Request for Evidence and 27 percent were issued a denial, that means U.S. Citizenship and Immigration Services adjudicators denied or delayed between 63 percent to 90 percent of all L-1B petitions in 2011.”

“U.S. Citizenship and Immigration Services adjudicators have demonstrated a capacity to keep skilled foreign nationals out of the United States by significantly increasing denials, along with often time-consuming Requests for Evidence, despite no change in the law or relevant regulations,” said Stuart Anderson.

Employers report the time lost due to the increase in denials and Requests for Evidence are costing them millions of dollars in project delays and contract penalties, while aiding competitors that operate exclusively outside the United States, the report found.

“The dramatic increase in denial rates and Requests for Evidence for employment petitions without any change in the law or regulations raises questions about the training, supervision and procedures of the career bureaucracy that adjudicates petitions and the U.S. government’s commitment to maintaining a stable business climate for companies competing in the global economy,” the report concludes.

Given the resources involved, employers are selective about who they sponsor. The high rate of denials (and Requests for Evidence) come from a pool of applicants selected because U.S. employers believe the foreign nationals meet the standard for approval. Denying employers the ability to transfer in key personnel or gain entry for a skilled professional or researcher harms innovation and job creation in the United States, encouraging employers to keep more resources outside the country to ensure predictability.

The data in the report include only petitions at USCIS, not decisions made at consular posts. Most of the increase in denials involves Indian-born professionals and researchers, the data indicate.

Among the findings contained in this NFAP analysis of official U.S. Citizenship and Immigration Services data:

- Denial rates for L-1B petitions filed with USCIS, which are used to transfer employees with “specialized knowledge” into the United States, rose from 7 percent in FY 2007 to 22 percent in FY 2008, despite no change in the law or relevant regulation. The denial rates stayed high for L-1B petitions at 26 percent in FY 2009, 22 percent in FY 2010 and 27 percent in FY 2011. In addition, 63 percent of L-1B petitions in FY 2011 were at least temporarily denied or delayed due to a Request for Evidence.

- Denial rates for H-1B petitions increased from 11 percent in FY 2007 to 29 percent in FY 2009, and remained higher than in the past for H-1Bs at 21 percent in FY 2010 and 17 percent in FY 2011.

- Denial rates for L-1A petitions increased from 8 percent in FY 2007 to 14 percent in FY 2011. L-1A visas are used to transfer executives and managers into the United States.
- The denial rates also increased for O-1A petitions, which are used for “individuals with an extraordinary ability in the sciences, education, business, or athletics.” Denials for O-1A petitions rose from 4 percent in FY 2008, to 10 percent just one year later in FY 2009, increased again to 11 percent in FY 2010, and stood at 8 percent in FY 2011.
- Along with increased denials have come skyrocketing rates of “Requests for Evidence” or RFEs, which are used by USCIS adjudicators to obtain more information in lieu of making an immediate decision on a petition. Employers note that simply the act of an RFE can result in months of delays, affecting costs and potentially delaying projects and contract performance.
- The Request for Evidence rate for L-1B petitions (to transfer employees with specialized knowledge) rose from 17 percent in FY 2007 to 49 percent in FY 2008, and, as noted, reached an astonishing level of 63 percent rate in FY 2011. As recently as FY 2004, USCIS adjudicators requested additional evidence for L-1B petitions in only 2 percent of the cases. There appears to be no reasonable explanation for the rate of Request for Evidence for L-1B petitions to rise from 2 percent to 63 percent in just 7 years.
- The Request for Evidence rate for L-1A petitions (to transfer managers and executives) increased from 4 percent in FY 2004, to 24 percent in FY 2007, up to 51 percent in FY 2011.
- For H-1B petitions, the Request for Evidence rate rose from 4 percent in FY 2004, to 18 percent by FY 2007, to a high of 35 percent in FY 2009. In FY 2011, the rate for H-1Bs was 26 percent.
- For O-1A petitions, the Request for Evidence rate increased from 1 percent in FY 2004, to 13 percent in FY 2007, and then more than doubled to 28 percent in FY 2009, 30 percent in FY 2010, and 27 percent in FY 2011.
- Country specific data on new (initial) L-1B petitions indicate U.S. Citizenship and Immigration Services is far more likely to deny a petition from an Indian-born professional than nationals of other countries. The denial rate for Indian-born applicants for new L-1B petitions rose from 2.8 percent in Fiscal Year 2008 to 22.5 percent in FY 2009, a

substantial increase that resulted in many employers being unable to transfer their employees into the United States to work on research projects or serve customers. In comparison, the denial rate for new L-1B petitions for Canadians rose from 2.0 percent in FY 2008 to only 2.9 percent in FY 2009. Illustrating the abrupt change, U.S. Citizenship and Immigration Services denied more L-1B petitions for new petitions for Indians in FY 2009 (1,640) than in the previous 9 fiscal years combined (1,341 denials between FY 2000 and FY 2008).

About the National Foundation for American Policy

Established in the Fall 2003, the National Foundation for American Policy (NFAP) is a 501(c)(3) non-profit, non-partisan public policy research organization based in Arlington, Virginia focusing on trade, immigration and related issues. The Advisory Board members include Columbia University economist Jagdish Bhagwati, Ohio University economist Richard Vedder, former U.S. Senator and Energy Secretary Spencer Abraham and other prominent individuals. Over the past 24 months, NFAP's research has been written about in the *Wall Street Journal*, the *New York Times*, the *Washington Post*, and other major media outlets. The organization's reports can be found at www.nfap.com.

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