

National Foundation for American Policy

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New State Department Data Show L-1 Visa Approvals Declined Significantly at U.S. Posts in India in 2011

Arlington, Va. – The number of L-1 visas issued at U.S. posts in India declined by 28 percent from 2010 to 2011, according to data obtained from the U.S. Department of State in a new report by the National Foundation for American Policy (NFAP), an Arlington, Va.-based policy research group. The official data from the State Department show that L-1 visa approvals went from 35,896 in Fiscal Year (FY) 2010 to 25,898 in FY 2011, a drop of approximately 10,000 visas. At the same time that L-1 visas issued in India declined by 28 percent, L-1 visas issued in the rest of the world rose by 15 percent (from 38,823 in FY 2010 to 44,820 in FY 2011), according to State Department data. (FY 2011 data are considered preliminary by the State Department but any changes in the final data are typically minor, according to a State Department official.)

Increased denials of L-1 visas when attempting to transfer personnel into the United States from India on L-1 visas is having a negative impact on growth, projects and product development in the United States, according to companies. “The release of the L-1 visa data makes it difficult for U.S. government officials to argue that nothing different is going on in India when compared with the rest of the world,” said Stuart Anderson, executive director of the National Foundation for American Policy. Anderson served as head of policy and counselor to the Commissioner of the Immigration and Naturalization Service from August 2001 to January 2003. “The information that L-1 visas declined in India comes after the U.S. embassy in Delhi announced the number of H-1B visas issued there increased from 2010 to 2011. A decline of 28 percent in L-1 visas issued in India from 2010 to 2011 at the same time that employers have seen an increase of 15 percent in L-1 visas issued in the rest of the world, using the same law and regulations, indicates something is amiss.”

The report can be found on the NFAP website at www.nfap.com.

NFAP’s analysis concludes that the State Department data “show an enormous gap in visas issued as well as, it must be assumed, approval/denial rates between posts in India and the rest of the world, raising policy questions as to whether this great disparity is the result of a conscious

policy at U.S. posts in India.” The analysis goes on to note, “This confirms what many observers have believed: an increase in denials over the past 12 to 18 months is making it far more difficult for employers to transfer employees based in India into the United States on L-1 visas.”

Company executives say L-1 visas are important as a means of moving – and integrating – personnel around the world. L-1 visas allow U.S. companies to transfer executives, managers and personnel with specialized knowledge from their overseas operations into the United States to work. To qualify, L-1 beneficiaries must have worked abroad for the employer for at least one continuous year (within a three-year period) prior to a petition being filed. Also, based on U.S. Citizenship and Immigration Services regulations, an executive or manager is limited to seven years, while an individual with specialized knowledge can stay for five years.

The National Foundation for American Policy requested the L-1 visa data after the U.S. Embassy in New Delhi issued a press release on October 25, 2011, headlined, “U.S. Mission to India Reports 24% Year-on-Year Increase in H-1B Visas Issued.” However, that press release contained no information on whether L-1 visas had increased or decreased in the past year, which prompted NFAP’s inquiry to the State Department.

Since all U.S. consulates and embassies operate under the same laws and regulations, the data raise legitimate questions about what is happening to U.S. company applications to transfer important personnel into the United States from India. “There has been no change in the qualifications of applicants at Indian or any other posts. Nor has there been any change in the rules and regulations governing eligibility for L-1 visas,” said Crystal Williams, executive director, American Immigration Lawyers Association, in a statement. “Instead, there has been an attitudinal change in adjudications. Recent adjudications have ignored the flexible statute enacted by Congress that was meant to accommodate the increased globalization of the economy, facilitate the ability of businesses to bring employees with needed skills into the United States and to operate competitively in the United States and across the globe.”

A key issue is how U.S. Citizenship and Immigration Services adjudicators and consular officers interpret or have “re-interpreted” the phrase “specialized knowledge” in the context of L-1 visa holders. “Specialized knowledge” is defined in the Immigration and Nationality Act as “special knowledge of the company product and its application in international markets” or “an advanced level of knowledge of processes and procedures of the company.”

In response to an NFAP question for the reason for the decline in L-1 visa issuance, a spokesperson for the Bureau of Consular Affairs replied in writing, "On the question about decline, we have heard concerns from some companies that they are experiencing high refusal rates. We have seen an uptick in unqualified applicants in this category due to a much broader use of complex 'specialized knowledge' provisions as the basis of L-1 application, which may account for the perception of increased refusals. We work proactively with companies and business associations to ensure that we explain the requirements for this visa in complete detail."

However, employer groups reached for comment by NFAP disagreed that the issue is one of perception. "The data clearly show that there is a serious problem," said Randel K. Johnson, senior vice president for labor, immigration and employee benefits at the U.S. Chamber of Commerce. "Our member companies believe they have and are submitting adequate applications for visas, and sense that there has been some change in policy at the State Department in how these applications are handled. Whatever the reason, we jointly need to work together to rectify the growing denial rates."

Diane Farrell, executive vice president and senior director, U.S.-India Business Council (USIBC), said, "The recent uptick in L-1 visa refusals is making it very challenging for our members to bring skilled, experienced professionals to work in the U.S. This is of great concern to USIBC as it is forcing these companies to look outside the U.S. for investment. The data reinforce the need for visa policies that work to ensure strong trade, investment and job growth in both the U.S. and India."

The L-1 visa issue is considered economically important by many employers. "ACIP members are facing continued competition for skilled global talent and need consistency in adjudications to stay globally competitive," said Lynn Shotwell, executive director, American Council on International Personnel (ACIP), which has many multinational corporations as members. "Our members work hard to train and develop their global workforce and need flexibility to transfer their employees around the world as needed."

The State Department has suggested that since India receives a large percentage of the L-1 visas issued each year that means there is nothing wrong with the L-1 visa approval process at U.S. posts in India. "That line of argument is questionable," said NFAP's Stuart Anderson. "The fact that India has a large and growing pool of skilled professionals tells us nothing about whether when employers apply for L-1 visas the individual cases of such professionals are decided properly."

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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