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New Visa Fees ‘Likely’ Violate Trade Rules, Study Finds

A month ago India’s top commerce official, Rahul Khullar, slammed a U.S. law that raises skilled-worker visa fees, and which is likely force some Indian outsourcing firms to pay tens of millions of dollars more to continue operating in the U.S., as an “unfair trade practice.”

A Washington, D.C.-based think tank, the National Foundation for American Policy, appears to back India’s stand that the new fees run counter to the World Trade Organization’s General Agreement on Trade in Services. Usually referred to as GATS, the 1995 treaty to reduce trade barriers in services was the result of the Uruguay round of global negotiations.

“The United States made a commitment under the GATS to allow the temporary admission of (nonimmigrant) specialty workers,” said a 14-page legal analysis by Stephen Claeys, a former official in the anti-dumping and countervailing duties section of the U.S. Department of Commerce. “Restricting the availability of H-1B and L-1 visas through the increased fees could violate the commitment.” The first type of visa allows companies to hire non-U.S. workers with special skills for niche jobs while the second allows companies to temporarily transfer their managerial or specialized staff from other countries to the U.S..

The analysis wanted to get to the bottom of why Congress decided to increase fees in first place. The extra funds will go towards improving border security measures.

“Senator Charles Schumer (NY-D), who introduced the amendment to include the higher fees in the legislation, explicitly stated that the purpose of the fees is to restrict the availability of L-1 and H-1B visas. Thus Congress’ overall intent was reducing the visas’ availability, not budget neutrality,” the brief said.

That could go against the GATS requirement that measures affecting trade in services be applied in a “reasonable, objective and impartial manner,” the analysis says.

The law raised fees by \$2,000 for H-1B visas and by \$2,250 for L-1 visas for firms that have more than 50 employees in the U.S., and who have more than half those employees on skilled-worker visas.

“The combination of the amount of the fees and their limitation to certain companies makes it possible that they impede, if not entirely preclude, a company from a WTO member from supplying services in a particular sector,” Mr. Claeys wrote. “If the effect of the fees is in fact to impede or preclude companies from Bangalore from supplying services in a certain sector, then the United States could face a GATS violation in this regard as well.”

Indian technology industry trade group Nasscom says the increased costs to Indian technology companies through September 30, 2014, when the law was originally set to expire, total as much as \$250 million. The law was extended by one year to 2015 to help raise medical funds for 9/11 first responders.