

NATIONAL FOUNDATION FOR AMERICAN POLICY
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H-1B DENIAL RATES: ANALYSIS OF H-1B DATA FOR
FIRST THREE QUARTERS OF FY 2019

EXECUTIVE SUMMARY

As a result of more restrictive Trump administration policies, denial rates for H-1B petitions have increased significantly, rising from 6% in FY 2015 to 24% through the third quarter of FY 2019 for new H-1B petitions for initial employment, according to a National Foundation for American Policy (NFAP) analysis of U.S. Citizenship and Immigration Services (USCIS) data. H-1B petitions for “initial” employment are primarily for new employment, typically a case that would count against the H-1B annual limit. H-1B petitions for “continuing” employment are usually extensions for existing employees at the same company or an H-1B visa holder changing to a new employer. In the first three quarters of FY 2019, USCIS adjudicators denied 24% of H-1B petitions for “initial” employment and 12% of H-1B petitions for “continuing” employment. The 12% denial rate for continuing employment is also historically high – 4 times higher than the denial rate of only 3% for H-1B petitions for continuing employment as recently as FY 2015.

Between FY 2015 and FY 2018 and FY 2019 the denial rate for new H-1B petitions for initial employment quadrupled from 6% to 24%. To put this in perspective, between FY 2010 and FY 2015, the denial rate for “initial” H-1B petitions never exceeded 8%, while today the rate is 3 times higher. This analysis of H-1B data is an update to an April 2019 NFAP [report](#) and August 2019 [study](#) on H-1B denial rates. The analysis is based on data from USCIS [H-1B Employer Data Hub](#).

While there was a “decline” in the denial rate for H-1B petitions for initial employment during the third quarter of FY 2019, that does not reflect a relaxation in restrictive administration policies but can be explained by USCIS adjudicators approving the most easily approvable cases selected in the April 2019 “lottery” for H-1B petitions that count against the annual limit – and issuing Requests for Evidence (RFEs) for other cases. Additional USCIS data support this. The third quarter of FY 2019 is from April 1, 2019 through June 30, 2019, and according to USCIS data for FY 2019, the two months with the lowest rate of “completions with a Request for Evidence” were May and June of 2019. USCIS does not separate out RFEs for “initial” employment (primarily for new employees) from those for “continuing” employment (primarily for existing employees). However, attorneys note due to the time involved, a case receiving a Request for Evidence after being selected in the April 2019 lottery is unlikely to have been adjudicated by June 30, 2019 (i.e., the third quarter of FY 2019).

The 24% denial rate for new H-1B petitions for initial employment through the third quarter of FY 2019 represents a decrease from a 33% denial rate for new H-1B petitions through the first two quarters of FY 2019. The lower denial rate is a result of the third quarter denial rate of 10% for H-1B petitions for initial employment decided between April 1 and June 30, 2019, which largely can be explained by USCIS adjudicators issuing Requests for Evidence for less easily approvable cases.

H-1B Denial Rates

Table 1
Denial Rate: H-1B Petitions for Initial (New) Employment

FISCAL YEAR	DENIAL RATE
FY 2019*	24%
FY 2018	24%
FY 2017	13%
FY 2016	10%
FY 2015	6%
FY 2014	8%
FY 2013	7%
FY 2012	5%
FY 2011	7%
FY 2010	8%
FY 2009	15%

Source: USCIS, National Foundation for American Policy. *FY 2019 data through the third quarter of FY 2019. Percentages are rounded off. Data extracted and analyzed from USCIS H-1B Employer Data Hub.

One would expect a higher denial rate for initial employment cases when data for the fourth quarter of FY 2019 become available and can be compared to the third quarter of FY 2019. USCIS statistics that combine H-1B petitions for initial employment and continuing employment show higher denial rates in the fourth quarter (July 1 to September 30, 2019) and a far higher rate of completed cases with a Request for Evidence than during the third quarter of FY 2019.

Table 2
Denial Rate: H-1B Petitions for Continuing Employment

FISCAL YEAR	DENIAL RATE
FY 2019*	12%
FY 2018	12%
FY 2017	5%
FY 2016	4%
FY 2015	3%
FY 2014	3%
FY 2013	3%
FY 2012	3%
FY 2011	3%
FY 2010	5%
FY 2009	6%

Source: USCIS, National Foundation for American Policy. *FY 2019 data through the first three quarters of FY 2019. Percentages are rounded off. Data extracted and analyzed from USCIS H-1B Employer Data Hub.

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Data from additional quarters will provide more information but it is worth noting that between the second and third quarters of FY 2019 there was little change in the denial rate for H-1B petitions for “continuing” employment – cases not subject to selection in the April 2019 lottery. The denial rate for H-1B petitions for continuing employment (primarily for employers seeking extensions for existing employees) declined from 10% in the second quarter of FY 2019 to 9% in the third quarter. While both figures are lower than the denial rate of 18% for similar types of petitions in the first quarter of FY 2019, the overall denial rate of 12% for H-1B petitions for continuing employment in FY 2018 and FY 2019 remains historically high. In comparison, USCIS adjudicators denied only 3% of H-1B petitions for continuing employment in FY 2015, and only 5% of such petitions as recently as FY 2017.

Given the time and expense involved with filing H-1B petitions, employers generally only file cases for individuals they believe qualify for H-1B status, which is why high denial rates should not be expected. A key goal of the Trump administration – achieved through memos and policy changes – has been to make it more difficult for well-educated foreign nationals to work in America in science and engineering fields. It is expected additional measures will be forthcoming to increase the level of difficulty for employers and high-skilled foreign nationals.

Recent [research](#) by Britta Glennon, an assistant professor at the Wharton School of Business at the University of Pennsylvania, concluded, “Restrictive H-1B policies could not only be exporting more jobs and businesses to countries like Canada, but they also could be making the U.S.’s innovative capacity fall behind.” In response to being unable to hire high-skilled foreign nationals, U.S. companies increase their hiring overseas, which causes more innovation by foreign nationals to take place in other countries, benefiting those nations. In sum, H-1B visa restrictions, such as the type now being implemented by the administration, push jobs outside the United States and lead to less innovation in America.

UNDERSTANDING THE DATA

The data analyzed in this report are from the USCIS [H-1B Employer Data Hub](#). USCIS defines an “initial” petition as “new employment,” typically a case that would count against the H-1B annual limit, or “new concurrent employment.” The agency defines a “continuing” petition as “continuing employment [with the same employer], change of employer and amended petitions.” *Cases are counted in the fiscal year USCIS decides them.* NFAP analyses differ from USCIS’s presentation of the data by separating out initial employment (mostly new employees) and continuing employment (mostly an extension for existing employees) to allow a clearer picture of adjudications.

In categorizing an “initial” petition in the H-1B Employer Data Hub, USCIS uses the following definition: “*Initial Approval/Denial*: H-1B petitions with ‘New employment’ or ‘New concurrent employment’ selected on Part 2, Question 2 of the Form I-129 whose first decision is an approval/denial.”¹ For companies, most H-1B petitions for “new employment” would be cases that count against the annual H-1B “cap” of 65,000 and the 20,000 exemption from the annual limit for individuals with graduate degrees or higher from U.S. universities.

In categorizing a “continuing” petition in the H-1B Employer Data Hub, USCIS uses the definition: “*Continuing Approval/Denial*: H-1B petitions with anything other than ‘New employment’ or ‘New concurrent employment’ selected on Part 2, Question 2 of the Form I-129, whose first decision is an approval/denial. This includes, for example, continuing employment, change of employer, and amended petitions.”²

WHY HAVE THE DENIAL RATES INCREASED?

Attorneys note that the denial rates have risen to high levels without changes to the law or new USCIS regulations. “One thing that is clear to me is that the data backs up what employers have been saying for the last two years: USCIS has raised the legal standard they use to decide whether enough evidence has been presented with petitions to approve them, without any legal authority to do so and without any notice to the public,” said William Stock, a founding member of Klasko Immigration Law Partners, LLP.³

Jonathan Wasden, who has filed several lawsuits against USCIS for employers, believes administration policies have damaged the system for petitioning for high-skilled foreign nationals. “USCIS has systematically rewritten the rules on H-1B visas, without following the law, and destroyed any sense of predictability in the system.” He finds the agency biased in its decisions against information technology services companies. “Providing proof of the exact

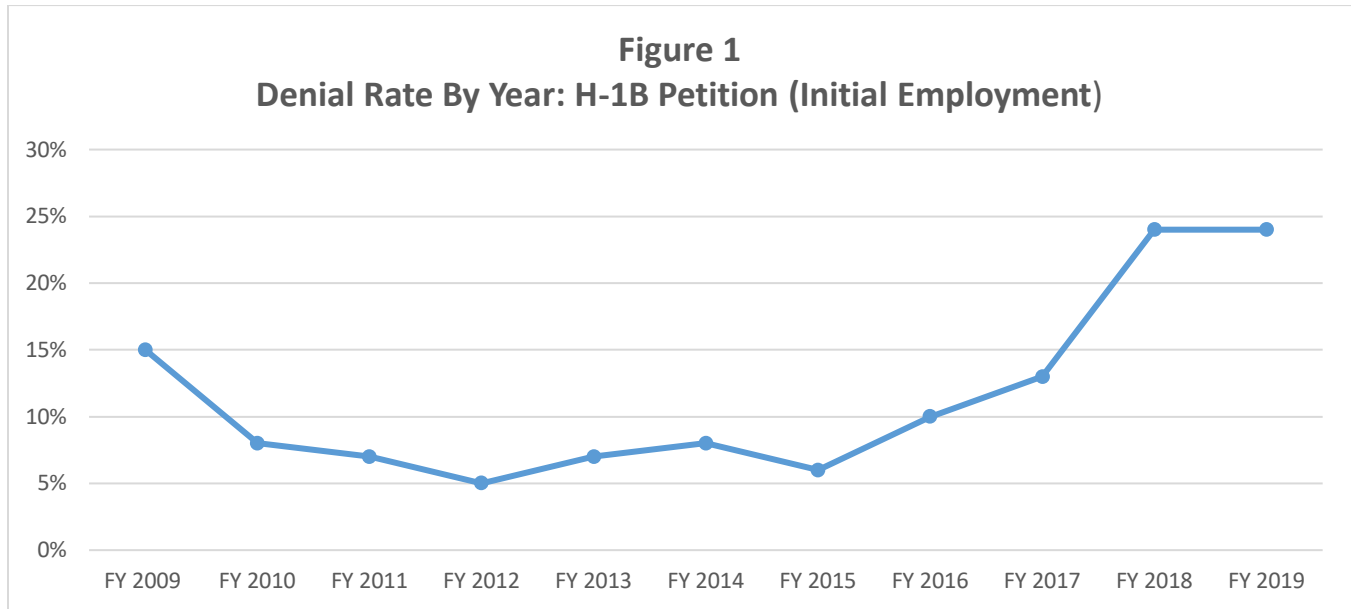
¹ USCIS H-1B Employer Data Hub.

² USCIS H-1B Employer Data Hub.

³ Interview with William Stock.

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projects the employee will work on for three years going forward accounts for many denials for these firms.” He points to the increase in denials as proof USCIS has changed what qualifies as a “specialty occupation.”⁴



Source: USCIS, National Foundation for American Policy. *FY 2019 data through the third quarter of FY 2019. Data extracted and analyzed from USCIS H-1B Employer Data Hub.

USCIS issued a Request for Evidence (RFE) in 60% of “completed” cases in the first quarter of FY 2019. In later quarters of FY 2019, the agency issued an RFE in approximately 40% of H-1B cases with “completions.”⁵ That compares to a Request for Evidence rate of approximately 20% historically. Requests for Evidence lead to longer delays and can cost employers up to \$4,500 in additional legal expenses.⁶ The [top reasons](#) USCIS has cited for an RFE are “The petitioner did not establish that the position qualifies as a specialty occupation . . . The petitioner did not establish that they had a valid employer-employee relationship with the beneficiary, [and] . . . The petitioner did not establish they have specific and non-speculative qualifying assignments in a specialty occupation for the entire time requested in the petition.”⁷ Lawsuits have challenged USCIS denials based on these and other grounds.

⁴ Interview with Jonathan Wasden.

⁵ Link to RFE data can be found here:

https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I129_Quarterly_Request_for_Evidence_FY2015_FY2019_Q4.pdf?mkt_tok=eyJpIjoiTURCaE1UQmtNV001TjJFNSIsInQiOiJPaW5WVFJRYlpcLzBqYXIBR3NmY3JpZjIqemFRQzh0WDRSc1I0TnFLeThjUHVFbDIROXhld2hoZk9GazRFUG55SEZ0RDI6TU1PXC9pTDdGZWRYnFzeVpKblIDbzZWZWRGZlRjZWQ4QXFlck1meE5uNVwwXC9YUGJQTWdNSHFEOVUifQ%3D%3D

⁶ *Employer-Paid H-1B Visa Fees for College Scholarships and Job Training*, NFAP Policy Brief, National Foundation for American Policy, April 2019.

⁷ “Understanding Requests for Evidence (RFEs): A Breakdown of Why RFEs Were Issued For H-1B Petitions in Fiscal Year 2018,” USCIS.

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Table 3
Denial Rate of H-1B Petitions for Initial Employment: FY 2015 vs. FY 2019

Employer	FY 2015 Denial Rate (Initial Employment)	FY 2019 Denial Rate (Initial Employment)	Change in Denial Rate in Percentage Points from FY 2015 to FY 2019
Amazon	1%	6%	+5
Microsoft	1%	8%	+7
Intel	1%	7%	+6
Google	1%	3%	+2
Ernst & Young	0% (0.3%)	18%	+18
Apple	2%	2%	<i>no change</i>
Facebook	0%	2%	+2
Deloitte	18%	43%	+25
Tech Mahindra Americas	4%	41%	+37
TCS	6%	34%	+28
Cognizant	8%	60%	+52
Larsen & Toubro	2%	18%	+16
Accenture	4%	52%	+48
Wal-Mart	3%	3%	<i>no change</i>
IBM	3%	34%	+31
Cisco	1%	8%	+7
JPMorgan Chase	1%	9%	+8
Cummins	2%	2%	<i>no change</i>
Wipro	7%	53%	+46
Capgemini	5%	55%	+50
HCL America	2%	35%	+33
Mphasis	2%	19%	+17
Mindtree	3%	5%	+2
PricewaterhouseCoopers	1%	30%	+29
Infosys	2%	45%	+43
Syntel	1%	63%	+62
Randstad Technologies	6%	8%	+2

Source: USCIS, National Foundation for American Policy. *FY 2019 data through the third quarter of FY 2019. Data extracted and analyzed from USCIS H-1B Employer Data Hub. Percentages are rounded off. Note: IBM and IBM Private India were combined, as were Amazon and Amazon Corporate, and Larsen & Toubro and L&T Technology Services. Employers listed in order of number of initial H-1B petitions approved in FY 2018.

*H-1B Denial Rates***DENIALS OF INITIAL H-1B PETITIONS AND CHANGES IN THE 3RD QUARTER**

Table 3 shows increases in the denial rate for H-1B petitions for initial employment for nearly all leading companies, particularly for information technology services companies. At least 12 companies that provide professional or IT services to other U.S. companies, including Accenture, Capgemini and others, had denial rates over 30% through the first three quarters of FY 2019. Most of these companies had denial rates between 2% and 7% as recently as FY 2015.

The denial rate for initial H-1B petitions has risen from 6% in FY 2015 to 24% in FY 2018 and FY 2019 (through the third quarter of FY 2019). (See Table 1.) Between FY 2010 and FY 2015, the denial rate for H-1B petitions for initial employment never exceeded 8%, while today the rate is 3 times higher.

Cases for initial employment in the two first quarters of FY 2019 would be primarily cases selected in the April 2018 lottery that were not completed by USCIS until after October 1, 2018 (the start of FY 2019), though could also be “new concurrent employment” (i.e., an existing H-1B visa holder with additional employment).

Table 4
Denial Rate FY 2019: H-1B Petitions for Initial (New) Employment

FISCAL YEAR	APPROVALS	DENIALS	DENIAL RATE
1st Quarter (FY 2019)	33,366	15,345	32%
2nd Quarter (FY 2019)	15,407	8,125	35%
3rd Quarter (FY 2019)	39,551	4,237	10%
OVERALL FY 2019	88,324	27,707	24%

Source: USCIS, National Foundation for American Policy. *FY 2019 data through the third quarter of FY 2019. Percentages are rounded off. Data extracted and analyzed from USCIS H-1B Employer Data Hub.

Cases for initial employment in the third quarter of FY 2019 would be primarily cases selected in the lottery held in April 2019 lottery (for an H-1B visa holder starting work in FY 2020). The NFAP analysis shows a denial rate of 10% for initial employment in the 3rd quarter of FY 2019, as compared to denial rates of 32% and 35% in the first and second quarters of FY 2019.

While there was a “decline” in the denial rate for H-1B petitions for initial employment during the third quarter of FY 2019, that does not reflect a relaxation in restrictive administration policies but can be explained by USCIS adjudicators approving the most easily approvable cases selected in the April 2019 “lottery” for H-1B petitions that count against the annual limit – and issuing other cases Requests for Evidence (RFEs). Additional USCIS data bear this out. The third quarter of FY 2019 is from April 1, 2019 through June 30, 2019, and according to USCIS data for

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FY 2019, the two months with the lowest rate of “completions [completed cases] with a Request for Evidence” were May and June of 2019.⁸ (USCIS does not separate out RFEs for “initial” employment (primarily for new employees) from those for “continuing” employment (primarily for existing employees). However, attorneys note due to the time involved, a case receiving a Request for Evidence after being selected in the April 2019 lottery is unlikely to have been adjudicated by June 30, 2019 (i.e., the third quarter of FY 2019).

“Based on how the agency processes cases, this data suggests the environment has not improved for employers,” said Lynden Melmed, a partner at Berry Appleman & Leiden and former Chief Counsel for USCIS. “‘Cream of the crop’ cases would have been approved during that time period, but cases where the government issued a Request for Evidence would likely not show up in that data set because they would not be decided until much later.” He called attention to the fact that the government denied up to 10% of H-1B petitions for initial employment likely without issuing a Request for Evidence, which suggests adjudicators are giving companies fewer opportunities to cure deficiencies.

The 24% denial rate for new H-1B petitions for initial employment through the third quarter of FY 2019 represents a decrease from a 33% denial rate for new H-1B petitions through the first two quarters of FY 2019. The lower denial rate is a result of the third quarter denial rate of 10% for H-1B petitions for initial employment decided between April 1 and June 30, 2019, which mostly can be explained by USCIS adjudicators issuing Requests for Evidence for less easily approvable cases.

One would expect a higher denial rate for initial employment cases when data for the fourth quarter of FY 2019 become available and can be compared to the third quarter of FY 2019. USCIS statistics that combine H-1B petitions for initial employment and continuing employment show higher denial rates in the fourth quarter (July 1 to September 30, 2019) and a far higher rate of completed cases with a Request for Evidence than during the third quarter of FY 2019.⁹

It is possible companies and attorneys have adapted to the new reality by providing more upfront evidence to adjudicators to improve the chances for an approval. Companies may have become less likely to submit applications for H-1B visa holders that are similar to those USCIS has denied in the past, which, if true, would contribute to lower

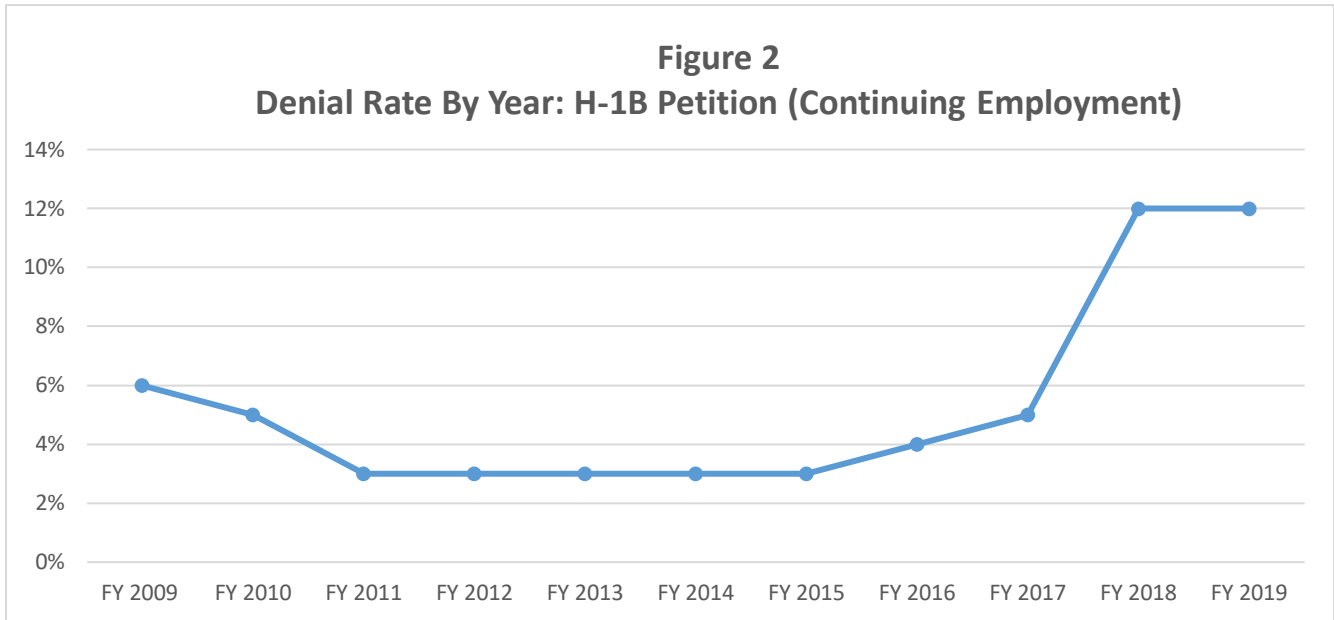
⁸ Link to RFE data can be found here:

https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I129_Quarterly_Request_for_Evidence_FY2015_FY2019_Q4.pdf?mkt_tok=eyJpIjoiTURCaE1UQmtNV001TjJFNStlnQiOiJPaWZjcW5WVFJRYlpcLzBqYXIBR3NmY3JpZjIqemFRQzh0WDRSc1I0TnFLeThjUHVFbDIROXhld2hoZk9GazRFUG55SEZ0RDl6TU1PXC9pTDdGZWRYnFzeVpKbllDbzZWVGZWVXRjeWQ4QXFick1meE5uNVwvXC9YUGJQTWdNSHFEOVUifQ%3D%3D

⁹ Ibid.

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denial rates. There is also a possibility that the April 2019 lottery produced a greater number of H-1B applicants with advanced degrees from U.S. universities, which was the intention of a USCIS regulatory change, and USCIS adjudicators were more likely to approve (or at least approve quickly) such applicants.



Source: USCIS, National Foundation for American Policy. *FY 2019 data through the third quarter of FY 2019. Data extracted and analyzed from USCIS H-1B Employer Data Hub.

DENIALS OF H-1B PETITIONS FOR CONTINUING EMPLOYMENT

In the first three quarters of FY 2019, USCIS adjudicators denied 12% of H-1B petitions for “continuing” employment, compared to denying only 3% of H-1B petitions for continuing employment in FY 2015 (and only 5% as recently as FY 2017). Between FY 2009 and FY 2017 the denial rate on H-1B petitions for continuing employment never exceeded 6%. Yet in FY 2018 and FY 2019, due to new USCIS policies, the denial rate increased to 12%.

In October 2017, the new USCIS director issued a [memo](#) on “Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status.” The memo has likely been responsible for many of the denials in continuing employment cases. “The previous policy instructed officers to give deference to the findings of a previously approved petition, as long as the key elements were unchanged and there was no evidence of a material error or fraud related to the prior determination,” noted a USCIS statement. “The updated policy guidance rescinds the previous policy.”¹⁰

¹⁰ <https://www.uscis.gov/news/news-releases/uscis-updates-policy-ensure-petitioners-meet-burden-proof-nonimmigrant-worker-extension-petitions>.

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Table 5
Denial Rate of H-1B Petitions for Continuing Employment: FY 2015 vs. FY 2019

Employer	FY 2015 Denial Rate (Continuing Employment)	FY 2019 Denial Rate (Continuing Employment)	Change in Denial Rate in Percentage Points from FY 2015 to FY 2019
Amazon	1%	3%	+2
Microsoft	2%	2%	<i>no change</i>
Intel	1%	3%	+2
Google	0% (0.4%)	1%	+1
Ernst & Young	2%	17%	+15
Apple	1%	1%	<i>no change</i>
Facebook	0% (0.2%)	2%	+2
Deloitte	5%	32%	+27
Tech Mahindra Americas	2%	16%	+14
TCS	3%	22%	+19
Cognizant	3%	24%	+21
Larsen & Toubro	3%	10%	+7
Accenture	1%	14%	+13
Wal-Mart	1%	5%	+4
IBM	1%	22%	+21
Cisco	1%	2%	+1
JPMorgan Chase	1%	2%	+1
Cummins	1%	3%	+2
Wipro	4%	19%	+15
Capgemini	3%	21%	+18
HCL America	2%	22%	+20
Mphasis	2%	10%	+8
Mindtree	2%	9%	+7
PricewaterhouseCoopers	1%	24%	+23
Infosys	1%	29%	+28
Syntel	3%	24%	+21
Randstad Technologies	3%	4%	+1

Source: USCIS, National Foundation for American Policy. *FY 2019 data through the first three quarters of FY 2019. Data extracted and analyzed from USCIS H-1B Employer Data Hub. Percentages are rounded off. Note: IBM and IBM Private India were combined, as were Amazon and Amazon Corporate, and Larsen & Toubro and L&T Technology Services. Employers listed in order of number of initial H-1B petitions approved in FY 2018.

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Table 6
Denial Rate FY 2019: H-1B Petitions for Continuing Employment

FISCAL YEAR	APPROVALS	DENIALS	DENIAL RATE
1st Quarter (FY 2019)	43,268	9,706	18%
2nd Quarter (FY 2019)	65,127	7,545	10%
3rd Quarter (FY 2019)	76,764	7,474	9%
OVERALL FY 2019	185,159	24,725	12%

Source: USCIS, National Foundation for American Policy. *FY 2019 data through the third quarter of FY 2019. Percentages are rounded off. Data extracted and analyzed from USCIS H-1B Employer Data Hub.

Table 6 shows the denial rate for H-1B petitions for continuing employment remained relatively stable at 10% in the second quarter of FY 2019 and 9% in the third quarter. That represented a decline from 18% in the first quarter of FY 2019. The 12% H-1B denial for continuing employment in FY 2019 is much higher than the 3% denial rate that prevailed between FY 2011 and FY 2015.

Nearly all 27 companies in Table 5 experienced an increase in denials for H-1B petitions for continuing employment between FY 2015 and the first three quarters of FY 2019. The denial rates for several companies for continuing employment cases were only 2% or 3% in FY 2015 and rose to over 20% in FY 2019. These are cases for H-1B professionals previously approved by USCIS adjudicators.

Attorney William Stock has seen many cases of denials when a current H-1B visa holders tries to change employers. The result is H-1B professionals are more reluctant to change jobs, limiting labor mobility and making them more vulnerable to abuse or less likely to leave an employer for a better opportunity.

The large increase in denials for continuing employment has extracted a human cost. "I have worked with several member companies from ITSERVE Alliance and seen how employees who have mortgages, car payments, kids in school, and deeply established roots in this country are heartlessly shown the door," said attorney Jonathan Wasden"¹¹

¹¹ Interview with Jonathan Wasden.

*H-1B Denial Rates***CONCLUSION**

Given the time and expense involved with filing H-1B petitions, employers generally only file cases for individuals they believe qualify for H-1B status and high denial rates should not be expected. A key goal of the Trump administration – achieved through memos and policy changes – has been to make it more difficult for well-educated foreign nationals to work in America in science and engineering fields

Research by Britta Glennon, an assistant professor at the Wharton School of Business at the University of Pennsylvania, found, “Restrictive H-1B policies could not only be exporting more jobs and businesses to countries like Canada, but they also could be making the U.S.’s innovative capacity fall behind.”¹² In response to being unable to hire high-skilled foreign nationals, U.S. companies increase their hiring overseas, which causes more innovation by foreign nationals to take place in other countries, benefiting those nations. H-1B visa restrictions, such as those now being implemented by the administration, push jobs outside the United States and lead to less innovation in America.

¹² Britta Glennon, *How Do Restrictions on High-Skilled Immigration Affect Offshoring? Evidence from the H-1B Program*, Carnegie Mellon University, May 2019.

ABOUT THE NATIONAL FOUNDATION FOR AMERICAN POLICY

Established in 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. Advisory Board members include Columbia University economist Jagdish Bhagwati, Cornell Law School professor Stephen W. Yale-Loehr, Ohio University economist Richard Vedder and former INS Commissioner James Ziglar. 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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