

National Foundation for American Policy

February 26, 2020

Contact: Stuart Anderson, 703-351-5042, press@nfap.com

New Research: H-1B Denials for High-Skilled Foreign Nationals Have Increased Under Trump Administration Policies

Denial Rates Much Higher For Employers That Provide Information Technology and Other Business Services

Arlington, Va. – More restrictive Trump administration policies have increased denials for H-1B petitions significantly, with denial rates rising from 6% in FY 2015 to 21% in FY 2019 for new H-1B petitions for initial employment, according to a [new analysis](#) by the National Foundation for American Policy (NFAP), an Arlington, Va.-based policy research group.

The analysis of U.S. Citizenship and Immigration Services (USCIS) data showed that in FY 2019, USCIS adjudicators denied 21% of H-1B petitions for “initial” employment and 12% of H-1B petitions for “continuing” employment. The 12% denial rate for continuing employment was the same in both FY 2018 and FY 2019, indicating there has been little change in USCIS policies over the past year. The 12% denial rate for continuing employment remains historically high – 4 times higher than the denial rate of only 3% for H-1B petitions for continuing employment as recently as FY 2015. The 21% denial rate in FY 2019 for initial employment was slightly lower than the 24% denial rate for such cases in FY 2018, but still far higher than the 6% denial rate for initial employment in FY 2015.

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.

The report, “H-1B Approved Petitions and Denial Rates for FY 2019,” can be found at <https://nfap.com/>.

“After three years, the evidence indicates a key goal of the Trump administration is to make it more difficult for well-educated foreign nationals to work in America in science and engineering fields,” said NFAP Executive Director Stuart Anderson, who served as executive associate commissioner for policy and planning and counselor to the Commissioner of the INS in the George W. Bush administration. “It is a major reason companies are moving more people and resources to other countries.”

This is the first time data for all four quarters of FY 2019 have become available and can be separated into initial and continuing employment. Separating out the data provides a much clearer picture of adjudications than the usual way USCIS reports data combining the two types of cases, which understates the denial rate for initial employment. There are approximately twice as many cases for continuing employment as initial employment, and continuing cases (primarily for existing employees) have lower denial rates. This analysis of H-1B data is the fourth in a series and follows an April 2019 NFAP [report](#), an August 2019 [study](#) and an October 2019 NFAP [report](#). The analysis is based on data from the USCIS [H-1B Employer Data Hub](#).

Among the findings in this analysis:

- H-1B denial rates have risen for nearly all major companies. However, the data show USCIS has established a different standard for adjudicating cases involving companies that provide information technology and other services to businesses. The denial rate for H-1B petitions (initial employment) for at least 9 major companies that provide IT services or other consulting services reached over 30% in FY 2019. In comparison, technology product companies, such as Apple, had far lower denial rates for initial employment, ranging between 2% and 7%, although these rates were generally higher than in FY 2015.
- USCIS has changed the standards for adjudications without a change in the law or new USCIS regulations. In particular, USCIS is treating H-1B petitions differently based on whether an employee will perform work at a customer's site. The denial rate for initial employment increased by 20 percentage points or more for at least 10 major companies between FY 2015 and FY 2019.
- Historical data indicate the Trump administration has changed the standards for adjudications. The denial rate for H-1B petitions for initial employment was 6% in FY 2015 and as low 5% in FY 2012, compared to 24% in FY 2018 and 21% in FY 2019. Similarly, the denial rate for H-1B petitions for continuing employment was 3% between FY 2011 and FY 2015, and rose to 12% in FY 2018 and FY 2019. A USCIS memo instructing adjudicators to no longer give deference to prior determinations put many long-time employees at risk of being forced to leave the United States after an H-1B petition is denied.
- Tech talent has contributed to the success of leading U.S. technology companies, which have experienced rapid growth and require greater numbers of technology professionals to continue growing and innovating. Amazon, Google and Apple were among the top employers for new H-1B petitions in FY 2019.
- New H-1B petitions (for initial employment) for the top 7 Indian-based companies declined by 64% between FY 2015 and FY 2019. The 7 companies had only 5,428 H-1B petitions for initial employment approved in FY 2019, accounting for 6% of the 85,000 H-1B petitions for companies (or 0.003% of the U.S. labor force). Denials may have contributed to this decline but the primary reason for the drop in H-1B visas is a choice by companies to build up their domestic workforce in the United States and rely less on visas. Moreover, these and similar companies are part of an industry trend when servicing clients to use more digital services, such as cloud computing, "bots" and artificial intelligence, which require fewer workers.
- Since FY 2004, the annual limit of 65,000 H-1B petitions and the 20,000 exemption from that limit for individuals with an advanced degree from a U.S. university has been exhausted every fiscal year. The 85,000 new H-1B petitions allowed each year come to only 0.05% of the U.S. labor force of approximately 164 million.
- In addition to higher denial rates under the Trump administration, USCIS data show the percentage of completed cases with Requests for Evidence (RFEs) increased from 22.3% in FY 2015 to 40.2% in FY 2019. Employers say Requests for Evidence are costly and time-consuming.

In 2020, the Trump administration is expected to introduce a new H-1B regulation that will make it more difficult for employers to hire high-skilled foreign nationals in the United States.

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. The Advisory Board members include Columbia University economist Jagdish Bhagwati, Ohio University economist Richard Vedder, Cornell Law School professor Stephen W. Yale-Loehr and former INS Commissioner James W. 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. Twitter: [@NFAPResearch](https://twitter.com/NFAPResearch)

2111 Wilson Blvd., Suite 700, Arlington, VA 22201
phone: (703) 351-5042 fax: (703) 351-9292 www.nfap.com