

Trump's visa plan will favor high earners, lawyers say

By Jessica Mach
Daily Journal Staff Writer

Foreign workers in the technology, medical, pharmaceutical, and financial industries will have privileged access to H-1B visas once the Trump administration changes the foreign worker program for specialty occupations, which currently distributes the visa based on a lottery but will soon prioritize workers with the highest wages, attorneys said.

"The administration wants to focus visa availability almost more on a merit-based system, and so they're very much focused on, it seems like salary levels, which may or may not be an indicator of the level of talent that's being hired," said Shannon A. Donnelly, a partner at Morgan, Lewis & Bockius LLP who counsels clients on corporate immigration.

The workers who stand to benefit from the changes will be "the Silicon

Valley people, the finance people," said Dan Stormer, who represents workers as a partner at Hadsell Stormer Renick & Dai LLP. "The ones who already have money and some level of ability to move will be able to come here," Stormer added. "Those people who are in desperate need of the ability to earn money will not."

The White House announced plans to make changes to the H-1B program Monday after President Donald Trump signed an executive order to suspend the issuance of some temporary worker visas through the end of 2020, including the H-1B, H-2B, H-4, L-1 and certain J-1 visas. The order goes into effect Wednesday, and extends an April proclamation that bars some foreigners from permanent residency, also through the end of the year.

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In addition to changing the H-1B visa program, which is available to applicants with at least a bachelor's degree and specialized professional knowledge, the White House also said in a fact sheet the administration plans to "close loopholes that have allowed employers in the United States to replace American workers with low-cost foreign labor."

Representatives from the U.S. Department of Homeland Security and Department of Labor did not respond to requests for more information about the two initiatives before press time.

Industries that recruit recent graduates from bachelor, master, and doctoral programs and small businesses will likely have a hard time getting access to H-1B visas under the new changes, since they typically offer entry-level or lower salaries compared to sectors like technology, Donnelly said. Every year, 85,000 of the visas are available to foreign workers.

But there's a high chance the program changes will be challenged, depending on how they are implemented, said David S. Rugendorf, a partner at Mitchell Silberberg & Knupp LLP who represents employ-

ers. "The president will either have to lobby Congress to change the law, or at the very least have an agency enact regulations to this effect," Rugendorf explained. "Because the election's coming up in November, do they really have enough time?"

Rugendorf said the changes — and Monday's executive order — will likely be challenged through litigation that questions whether the president followed appropriate procedures. Rugendorf noted the U.S. Supreme Court considered the same question in last week's landmark *Deferred Action for Childhood Arrivals* ruling on whether the government

followed proper procedure when it ended the immigration policy.

Under current law, "The president does have ... very broad discretion over entry to the U.S.," Rugendorf said, but exactly how much discretion he has "will be determined by future lawsuits."

Among attorneys, there's already been confusion over the wording of Monday's executive order and who exactly it impacts, Donnelly said.

"The way it's been drafted doesn't necessarily coincide with the broader summary of what everyone is anticipating," she explained. It's unclear whether individuals who previ-

ously held one of the relevant visas, but left the country during the pandemic, would be eligible to reenter the U.S., Donnelly said. It's also unclear where Canadians — who don't need visas to enter the U.S. — stand. "The way that was it was drafted did not make it explicitly clear," she added. "I think everyone's been talking their time and probably waiting for agencies to implement guidance to help decipher" the order.

But the immediate impact of the order will likely be minimal, Rugendorf said, since consulates have been closed due to the pandemic and haven't been issuing visas anyway.

Donnelly agreed. "In the short term there's relatively little impact as long as the consulates are not open for business," she said. "But I think just as the rest of the world is opening, there was anticipation that we would be able to start processing some visas mid to late summer, maybe early fall."

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