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Adverse Impact of Immigration Bills on Outsourcing

When the U.S. Senate passed the Border Security Economic Opportunity and Immigration Modernization Act (S. 744), commonly referred to as the “Immigration Reform Bill” about a year ago in June 2013, many people and companies applauded the Bill’s plan for citizenship for millions of illegal immigrants now living in the United States. In addition, on the surface there appear to be some provisions that would help U.S. companies and offshore service providers by increasing the annual cap on H-1B visas from 65,000 to 180,000. That said, regardless of what the U.S. House of Representatives version of the Bill proposes—if it ever moves beyond committee review in the Republican controlled U.S. House of Representatives—there are a number of provisions in the Senate Bill which would adversely affect the large outsourcing companies that rely heavily on H-1B and L-1 visas and severely disrupt the U.S. companies that rely on them for various services. This alert will provide some insight into these provisions so that U.S. companies can consider adjusting their service provider relationships or working towards more favorable legislation before any final bill is enacted into law.

Potential Effects of New Restrictions on H-1B and L-1 Visa Holders:

Companies that utilize offshore service providers to perform their services are aware that most of the foreign workers are in the U.S. on either a H-1B or L-1 visa. Under S. 744, the following proposed revisions would have a negative effect on their foreign employers and, therefore, likely lead to an adverse impact on the U.S. companies outsourcing the services:

- If a company is “H-1B Dependent” (i.e., 15% or more of its workers in the U.S. hold H-1B visas), that company will be prohibited from sending those employees to their customers’ offices. This restriction will apply to L-1 visa holders as well and appears to be aimed directly at the large Indian outsourcing companies (e.g., Infosys, Tata, Wipro).
- H-1B Dependent companies will be required to pay higher wages to its H-1B visa holders based on a U.S. Department of Labor (“DOL”) survey.
- H-1B Dependent companies will be required to pay much higher fees than other companies for its H-1B and L-1 visa applications. For example, for Fiscal Year 2015-2017, H-1B defendant employers will be required to pay \$10,000 in addition to the regular filing fees if more than 50% and less than 75% of its employers are in the U.S. on H-1B or L-1 visas.
- H-1B Dependent companies will be required to (i) actively recruit U.S. workers prior to hiring an H-1B visa holder; (ii) post any open positions for employment to a designated DOL web site as part of the recruitment efforts; and (iii) provide its own employees with a DOL hotline to report any non-compliance problems.

If an immigration reform bill with the above or similar restrictions is enacted into law, it is unclear at present the long-term impact of these restrictions. Disruption in the short term will most certainly result with U.S. companies that would have to rebalance their workforce or look elsewhere to get their outsourced services provided. Locating an alternative labor pool with the right skill sets and capacity to handle additional work on an expedited basis should not be taken for granted.

For more information about the Immigration Reform Bill and the likely impact of its proposed restrictions, please contact either Milton Whitfield whose practice focuses on outsourcing or Efe Poturoglu whose practice focuses on immigration, both of whom are Shareholders in Butzel Long's Washington, D.C. office.

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