U.S. worried that high H-1B demand may tempt some to 'game' visa lottery

The U.S. is concerned that some companies, desperate to get an H-1B visa, may try to "game" the random visa lottery selection process to improve their odds. To prevent that sort of interference, the U.S. Citizenship and Immigration Service is considering regulations that would penalize any company that attempts to seek an unfair advantage for its visa petitions in the selection lottery.

The U.S. will begin accepting H-1B visas on April 1 for the next fiscal year, which begins Oct. 1. Last year, the U.S. received 123,480 visa petitions in two days, more than double the 65,000 cap. Companies receiving visas were randomly picked by USCIS via a computerized lottery.

A similar rush for visa petitions is expected this year. Indeed, there are predictions that last year's record may be broken, reducing the predicted odds of getting a visa to less than one in three.

The high demand has the USCIS interested in preempting any effort by companies that may tempted to send in two or more applications for the same person, said Robert Loughran, an immigration attorney at Tindall & Foster in Austin, Texas. Loughran also works with the American Immigration Lawyers Association as a liaison to the USCIS Vermont Service Center in St. Albans, Vermont, where the H-1B applications are sent for processing. Loughran is expecting some type of regulation from USCIS before the April 1 filing date.

USCIS spokesman Chris Bentley confirmed this concern. "We are looking at that issue and we are looking at possible remedies to make sure that no one manipulates the system, or no one is able to game the system," he said. Bentley could not discuss what may be in the works.

One possible penalty from the USCIS, Loughran believes, will be the rejection of all visa petitions from a company if multiple petitions are filed for the same individual. Companies may also be penalized if they try to get their applicants a visa under the H-1B cap of 20,000 visas (in addition to the 65,000 previously mentioned) that are set aside for advanced-degree holders. Demand will be high, said Loughran.

"We've got a year's worth of pent-up demand," said Loughran, he said there are employers keeping employees offshore because they can't get the visas, as well as college graduates who may be continuing their education because they couldn't get a visa.

One person who hopes to do better this year in the visa lottery is Steve Goodman, the CEO of PacketTrap Networks Inc., a San Francisco-based network management software firm.

Goodman had three visa applications in last year's lottery and did not get any of them approved. He intends to send in three applications again.

He added that he has turned to H-1B workers to supplement his work force because of the difficulty in finding the right skills.

Hiring an H-1B worker isn't cheaper labor, said Goodman. If cost were the sole consideration, "it's cheaper to outsource it to India." It can cost between $5,000 and $10,000 to sponsor an H-1B worker, he said.

"Believe me, I would rather offer a job to an American," said Goodman. "But if that person is not here then I have to go to the H-1B route to get that software developed."

Goodman said while he uses an India-based outsourcing firm for some ancillary development work, he wants to keep his core development work in the U.S., saying the "quality stateside is higher" because the development process is better.

The visa issue is politically explosive, in part, because large numbers of visa applications arriving April 1 will likely be from Indian offshore firms. U.S. Sen. Chuck Grassley (R-Iowa) has charged that H-1B visas are being used to displace U.S. workers.

Microsoft Chairman Bill Gates is expected to testify Wednesday before a U.S. House committee on innovation issues and will likely raise the visa issue. He has traditionally defended the need for H-1B visas.