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Why It's Getting Harder to Hire Foreign Workers

Federal agencies in charge of employment visas are making them harder to get, advocacy groups say

By [Nick Leiber](#)

Maureen Torrey, the 11th-generation owner of a vegetable farm in upstate New York, doesn't have much in common with Atul Jain, the New Delhi-born founder of 14-year-old Global Software Solutions, an IT consulting firm outside Washington, D.C. Yet both say they're suffering from an increase in government obstacles to hiring foreigners. "We're in a crisis situation as we see no action by Washington," says Torrey, 58, who recently cut back the land she plants by more than 10 percent, to 6,700 acres.

For years both companies have hired foreigners on temporary visas because they say they can't find Americans with the skills they need. Now they're struggling because it's getting harder to obtain visas for potential employees. Torrey Farms has lost money for the past two years because Torrey says she can't bring in enough workers to tend her crops. Jain says sales will be flat this year and he may have to send work overseas. "We let opportunities go, our workforce shrank, and our profit and revenue have gone down," says Jain, 44, who can't find Americans with tech skills and the desire to spend months at far-flung job sites.

Companies had hoped comprehensive immigration reform would make it easier to hire foreigners. In the absence of action by Congress, though, the federal agencies in charge of approving employment visas are making them harder to get, according to immigration lawyers and advocacy groups. The advocates argue that businesses seeking to legally bring in temporary workers from overseas are being hurt by tighter enforcement of regulations by officials who handle visa applications. Robert Groban, an attorney with law firm EpsteinBeckerGreen in New York, says the agencies are under pressure due to worries that "foreign nationals are taking the place of U.S. workers," and are reacting to the political climate. IT consultant Jain's response: "The economy will not improve just because foreign workers can't come."

Small businesses are particularly hard-hit because they lack the resources large companies have for managing visa applications and because it's harder for them to set up foreign operations to take advantage of cheaper labor abroad. "There's a new attitude [that is] arbitrary and capricious at best, hostile at worst" at all visa levels, says Tamar Jacoby, president of advocacy group

ImmigrationWorks USA. "If you're running an agricultural operation and these 30 workers are your whole season, it's a big obstacle."

The U.S. Citizenship & Immigration Service says no crackdown is afoot. "We haven't changed the way that we do our business over the course of the past few years," says agency spokesman Christopher Bentley. Yet government data show H-2B visas, issued to seasonal workers, were down 52 percent last year. H-2As, for agricultural workers, dropped 9 percent. And a June report by the agency's ombudsman said officers last year roughly doubled requests for additional evidence to support applications for H1-B visas (issued to professionals such as computer programmers), which immigration advocates say typically results in delays or denials. The ombudsman's report also noted an increase in complaints by employers regarding the process. The agency declined to comment on the report.

In the past two years the agency has issued at least a half-dozen directives regarding temporary work visas. In January, for instance, it sent a memo to its officers that effectively prohibits tech staffing firms, which provide programmers to corporations, from bringing in foreigners on H-1B visas. In June two trade groups and several IT staffing outfits filed a lawsuit alleging the new policy would destroy their business. Farmers, meanwhile, say recent rule changes on H-2A visas have made it harder to bring in legal workers. In the past three years regulations governing H-2As have changed three times, notes Craig Regelbrugge, government relations chief at the American Nursery & Landscape Assn. He says fees and other costs could double next year. "The new rules," Regelbrugge says, "are fundamentally anti-employer on almost every level."

***The bottom line:** The federal agencies that approve visas are making it harder for small companies to hire foreigners, immigration lawyers say.*

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