

Misuse of US visas may be widespread

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Time was when anti-outsourcing rhetoric targeting India's \$60 billion (Rs.2.7 trillion) software services export business was largely restricted to concerns that low-cost workers from India were displacing Americans. Then Jack Palmer happened.

In February, Palmer, a US-based consultant for Infosys Ltd, filed a lawsuit in an Alabama court alleging that the firm was sending Indian employees to the US to work on projects on short-term non-employment visas (B-1). Palmer alleged that Infosys was doing this to circumvent increased restrictions around work visas, especially the H-1B category. In May, the company was served a federal grand jury subpoena requesting that it submit all documents and correspondence related to its use of B-1 visas. Infosys is cooperating with the investigation. Since then, at least one other Infosys employee has submitted documents to Infosys' internal whistleblower email ID regarding other instances of Indian employees "working" on B1 visas, according to internal emails obtained by Mint. Infosys declined to comment on the Palmer case and the whistleblower mails.

The Palmer case, and a subsequent department of justice investigation, have highlighted the use of questionable strategies by IT firms to circumvent an increasingly conservative visa regime that restricts work visas in the US. In both instances, Nasscom, India's software lobby group, said the issue was "being blown out of proportion".

A Mint investigation conducted over the past two months indicates otherwise: that visa misuse may be more widespread and, more importantly, that it is not just Indian firms, but American ones too that are involved.

It's no secret that the Indian IT industry's business model hinges on favourable immigration policies in the US, which accounts for two-thirds of the industry's total export revenue of \$60 billion.

A report published on Monday by CLSA Asia-Pacific Markets showed that a firm's ability to send workers to the US on visas directly affects its profitability. The report estimates that if a firm sends an Indian employee, its profit margin

is 39.1%, while if it hires a local, it is 25.3% (considering that the utilization level is at 75%).

In the “risks” section of their filings with the US Securities and Exchange Commission, Infosys writes: “The vast majority of our employees are Indian nationals. Most of our projects require a portion of the work to be completed at the client’s location. The ability of our technology professionals to work in the US, Europe and in other countries depends on the ability to obtain the necessary visas and work permits.”

“Restrictions on immigration may affect our ability to compete for and provide services to clients in the US, which could hamper our growth and cause our revenue to decline,” it adds.

Indian IT firms have long dominated the applicant pool for H-1B and L-1 visas, the two primary categories that legally permit foreign nationals to work within the US. In 1997, they accounted for 4% of all L visas issued. By 2009, 43% of L visas went to Indians, and most to Indian IT firms, according to a 2010 Economic Policy Institute paper highlighting abuses of the L visa programme by immigration policy analyst Daniel Costa.

However, recent fee hikes (increasing the sponsorship costs of certain H-1B visa types by \$2,000, and \$2,250 for certain L-1 visas) and the long processing time associated with getting H-1B and L-1 visas approved that have hurt the ability of Indian firms to address urgent demands from clients may have forced them to seek alternatives. Both visa types often take months to process, and firms further complain that the rejection rates for H-1B and L-1 visas has risen considerably in recent years. In a recent interview to Mint, James Herman, minister counsellor for consular affairs at the US embassy in New Delhi, confirmed that the rejection rate for blanket L visas had increased from 3% to 20% over the past two years.

Further, the US immigration framework lacks a visa category to allow firms to send workers to do “gainful” work on urgent, short-term assignments, according to Poorvi Chothani, founder of Mumbai-based corporate immigration law firm LawQuest.

“When visa caps have been met and companies need to send someone urgently, the inability to immediately engage them in the US is a huge impediment,” she said. According to her, in such cases “some companies may have made an ill-advised choice to send workers on business visas”.

Herman added that one of the top consular office's concerns was a rise in the misuse of business visas, and "making sure we communicate adequately with businesses to make sure they know what they are allowed to do". He claims the reason most cited by employees of IT firms travelling to the US is "knowledge transfer" (which is permitted under the B1/B2 visas). "We refuse more of those types of cases these days because most of the time they cannot explain to us what that means," he said. "So, that's a very common issue—of going for knowledge transfer, when really what they're doing is going to work on a project."

Nasscom, which has spent \$620,000 since 2006 (according to OpenSecrets.org) lobbying for immigration reforms in the US, has maintained that if fraud exists, it is restricted to small, "fly- by-night" operators.

"It's a one-off case and should not be blown out of proportion," said former Nasscom chair Pramod Bhasin referring to the Palmer versus Infosys case. "One or two suits is a part of life. It doesn't mean that the whole system is decayed."

Even Infosys' rivals defend the company. "Big companies have strict corporate government policies. They would just not do it," said a former top official of a leading IT firm. "There is too much at stake. Companies are very vigilant."

Kenny Mendelsohn, Jack Palmer's attorney in the Infosys suit, claims otherwise and said that he received "dozens of emails and calls" after Palmer's case went public. "It has been overwhelming," he said. "Based on the information I've received from other folks, it appears that other companies are doing it to."

Veeresh Malik, managing director (MD) of Infonox Software Pvt. Ltd, a technology firm working in the area of financial services, now a subsidiary of the New York Stock Exchange-listed Total System Services Inc. (TSYS), said that he lost his job as MD when he refused to comply with the demands of the parent firm to send workers from India to the US on B1/B2 visas to work.

Malik claimed that the company wanted him to write letters inviting workers to the US for four-five months, but pay them Indian wages. Though he did send "a few" workers to the US to work on B1/B2 visas before Infonox was acquired, Malik said he wanted to stop after the merger with TSYS in 2008.

“When I was a small little company, there were a different set of risk-taking abilities. Now suddenly I was the managing director of the subsidiary of a listed company in the US; it changed everything,” he added.

In an open letter to US senator Chuck Grassley to draw attention to malpractices by the US firm, Malik noted that TSYS “tried to get me to align with this and force me into continuing, and on my refusing, terminated my services in June 2009”.

One of the former directors of TSYS, Raj Kumar Dubey, who was also terminated by the company, has filed a case in the Delhi high court alleging that his termination was unwarranted. Malik, who is a respondent in the case, said that one of the reasons behind both his and Dubey’s termination was their refusal to send workers on B1/B2 visas.

In an email, TSYS said that it “does not comment on matters of pending litigation”.

Malik approached Mint with his story and shared some information with the paper. Over recent weeks, he has turned uncommunicative, and didn’t confirm his quotes when they were played back to him. Mint has a copy of his letter to Grassley.

Apart from TSYS and Infosys, Mint spoke to several employees (located in India as well as the US) from some of the top Indian and US IT companies. The employees, who did not want to be named, claim their firms do send people to “do work” on business visas in the US in a systematic and wide-scale manner.

One former American employee of a major Indian IT firm claimed that the company she worked for was rotating approximately 250 Indian B-1 visaholders to work full-time on their client’s site—and that the client, a major healthcare provider, was complicit. “I’d go outside for cigarette breaks with them and after a while they started talking,” she said. “I was told that they would be coached on what to say when they went to the American consulate for their interview—that they were coming over here for training; they were coming here to visit relatives; but not to say that they were coming to work.”

Herman admits that there are several cases where the misuse of visas is due to the “confusing” nature of the US immigration law “just like any other immigration law”. However, there are certain cases “where companies don’t

like the limitations that they are placed under. Whether it's an individual or a company, they will try to get around the visa policies. In those cases, fraud is not a victim-less crime, it affects how we look at everybody's application", he said.

Herman added that in many cases, chief executives officers (CEOs) and senior executives are often unaware that visa misuse is happening within their own companies; the violations are often due to gaps that exist within companies' internal regulatory systems, or are based on decisions independently made by mid-level managers without direct approval from above. "There's a difference between the CEOs saying 'let's do this to violate the law', as opposed to a mid-level manager who's trying to get work done and saying here's the best way to get it done without knowing that it's not appropriate to do that. But, clearly when managers do that, we hold the companies accountable because it's the company's system that's to blame," he said.

According to Malik, such practices are common. "Is it only large Indian companies? No. Is everyone doing it? Yes. Were small American companies doing it? Small Indian companies doing it? Most certainly and they continue to," said Malik. "The senators in the US are of the opinion that it is only foreign companies (behind the fraud), it isn't only foreign companies—everyone is doing it."