May 8, 2023

The Honorable Jim Jordan
Chairman
House Judiciary Committee
2138 Rayburn HOB
Washington, DC, 20515

The Honorable Jerrod Nadler
Ranking Member
House Judiciary Committee
2138 Rayburn HOB
Washington, DC 20515

The Honorable Dick Durbin
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Lindsey Graham
Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Jordan, Chairman Durbin, Ranking Member Nadler and Ranking Member Graham:

Since the early 1980s the demand for highly skilled IT workers has progressively increased and is much greater than the number of US citizens getting degrees in the field. The need for foreign IT professionals to augment the industry was recognized when the H-1B visa was created by the Immigration Act of 1990. Prior to 2018, the demand for these workers exceeded the 85,000 new H-1B visas each year by nearly three times, based on the number of H-1B applications filed (for 2016, 2017, and 2018 the numbers of petitions filed in the cap were, respectively: 233,000; 236,000; and 199,000). At that time the lottery was run after petitions were filed and employers had spent money on attorneys' fees and recruiting. This inefficient lottery system was overly burdensome and required significant amounts of wasted money by both USCIS and the industry. However, the prior system did create barriers to entry, making the idea of multiple petition filings too expensive.

The current lottery is conducted prior to employers filing petitions, and the cost to file in this new lottery is low, decreasing barriers to entry. As members of the small and medium business community, we appreciate USCIS's efforts to streamline the lottery system and decrease our unnecessary expenses.

While we understand the demand and competition for this talent is high, we cannot condone the small number of employers who attempt to get an unfair advantage under the new system, by filing multiple applications for the same beneficiary to increase their chances in the lottery. ITServe condemns such practices. USCIS has invested heavily in IT systems, which allow them to analyze several factors to root out those employers who haven't played by the rules. While we appreciate its efforts to police the H-1B lottery process, it was apparent from the start that the way the current lottery has been structured was fraught with foreseeable pitfalls. The large number of duplicate filings is just one of those problems.

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We now ask USCIS to go through notice and comment rulemaking to fix the current system, and to consider the industry and immigration bar's perspective on these issues. Together USCIS and the industry can craft a system that is fair for all the players and decreases incentives for those unscrupulous few. As the biggest non-profit group representing the IT services companies in the US, our leadership has specific ideas on how this can be fixed with some simple measures and our leadership is ready to invest time and make suggestions to help congress fix this issue.

Until the 85,000 visa cap is raised by Congress the demand and competition for talent will remain fierce, causing those on the margins of ethical practices to game the system. We ask that the Congress review this issue accordingly. We look forward to working with the Congress and USCIS on how this program can be improved and secured so that the program will work as the Congress originally intended.

Sincerely,

Vinay Mahajan
National President

Vinod Babu Uppu
Governing Board Chair

Siva Moopanar
Policy Advocacy Committee Chair

Monte Ward
Government Relations Officer

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