Moving Beyond the Immigration Sticking Point in the India-U.S. Relationship

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Indian immigrants are the third-largest immigrant group in the United States. In 2012, they made up the largest proportion (64 percent) of temporary immigrants entering the U.S. on an H-1B visa for highly specialized workers. Indians also represent the second largest share (15 percent) of all foreign students studying in the U.S. on an F-1 visa. The large majority of Indian H-1B and F-1 visa holders either work in a science, technology, engineering, and mathematics (STEM) occupation or are pursuing a degree in the STEM fields (75 percent of all Indian students in U.S. higher education).

Over the last couple of years, U.S. immigration policy towards India has been both controversial and uncertain, motivated on two fronts.

First, protectionists in the U.S. claim that there is no shortage of STEM workers in U.S. labor markets, accusing Indian-headquartered information technology (IT) and outsourcing companies of using the H-1B and the L-1 intercompany transfer visa to import cheap labor into the United States. This led to the U.S. Senate passing a comprehensive immigration bill in 2013 that would essentially ban companies that employ between 50 to 75 percent of their U.S. workforce on H-1B or L-1 visas—which would include all Indian IT companies. Companies that are popular for providing services to U.S. firms, such as Infosys, Tata Consultancy Services, and Wipro, also have a large business of "insourcing" jobs into the United States. Their U.S. business model relies on hiring workers (who are mostly on H-1B or L-1 visas) to provide technology-related services to American companies. India's tech industry argues that their IT companies contribute enormously to the U.S. economy and have a hard time filling these jobs from the American talent pool.

American-based IT companies like Accenture, Deloitte, and IBM that are in the same business of providing professional services with a much smaller proportion of their U.S. workforce on an H-1B or L-1 visa stand to benefit from the Senate restrictions. An unintended consequence of the Senate bill could be stifled competition for these IT-staffing services. American-based IT companies could charge higher fees for these client services and Indian IT companies with visa restrictions would be less competitive. But with no movement by the U.S. House of Representatives to pass a similar immigration reform bill as the Senate, these potential restrictions no longer exist, at least in the short-term.

Second, with the 85,000 H-1B visa cap being reached within the first week that the U.S. government accepts applications, finding a visa for Indian workers in the U.S. has become problematic. Several high-profile legal cases exposed violations made by Indian IT companies for using non-employment visas for employment purposes. For example, there was a $34 million settlement last year between Infosys and the U.S. government over allegations that Infosys misused business visitor (B-1) visas, for workers that require an H-1B visa—allegations that the company denies.

Key Recommendations

- The United States should develop a dialogue between U.S. immigration regulators/policy-makers and Indian IT companies to understand how the current immigration system can accommodate the business practices of the global IT industry. Client-based IT consulting work requires global mobility and regulators need to understand how immigration policy can accommodate this standard practice.
- The Obama administration should affirm its support for changing the immigration system to allow foreign students studying in the United States on an F-1 visa to work in the U.S. after they graduate. This would free up the number of available H-1B visas and allow U.S. companies to hire foreigners with U.S. degrees directly.