

ISAS Brief

No. 169 – 26 August 2010

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H1B Visa Fee Hike: Will Indo-US Ties be Affected?

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Abstract

The United States (US) Congress has recently passed a legislation hiking visa fees for technology companies hiring highly skilled foreign workers under the H1B visa programme. Firms with more than 50 workers and with more than 50 per cent of those employees from abroad would see the current US\$320 fee per visa application jump to US\$2,000. The issue of H1B visas is vital to Indian information technology (IT) companies who have offices in the US. This paper looks at how and why certain domestic pressures on the Obama Government on issues of immigration and job creation have led to this legislation. It also looks at the reaction of the Indian Government in the matter and examines if the fee hike is a sign of potential future irritants in bilateral relations.

On 12 August 2010, the US Congress passed the Southwest Border Security Bill intended to channel some US\$600 million 'to enhance technology at the border, share information and support with state, local, and tribal law enforcement, and increase DOJ and DHS presence and law enforcement activities at the border, to include increased agents, investigators and prosecutors, as part of a multi-layered effort to target illicit networks trafficking in people, drugs, illegal weapons, and money'.² A large part of this US\$600 million is to be offset by a

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² DOJ is an acronym for Department of Justice and DHS for Department of Homeland Security. For the full text of Obama's statement on this bill, see The White House, Office of the Press Secretary, 12 August 2010, 'President Obama on Passage of Southwest Security Border Bill', available at www.america.gov/st/texttrans-english/2010/August/20100812154139su0.6275446.html?CP.rss=true. Accessed on 19 August 2010.

hefty increase in fees paid primarily by technology companies that hire highly skilled foreign workers under the H1B visa programme. Firms with more than 50 workers and with more than 50 per cent of those employees from abroad would see the current US\$320 fee per visa application jump to US\$2,000. A statement by President Obama justified the move as ‘a temporary increase to the fraud prevention and detection fees for some employers seeking high skilled foreign workers’.³

The issue of H1B visas is vital to Indian information technology (IT) companies who have offices in the US. These visas, usually issued for a three-year period, permit temporary employment of foreign workers in speciality occupations. The US has a quota of about 100,000 H1B visas each year. Indian companies, such as Infosys, Wipro and Tata Consultancy Services (TCS), lead the list of companies receiving the largest number of such work permits.⁴ The large jump in visa fees has already prompted swift action on the part of the Indian Government. In a letter to the US Trade Representative Ron Kirk, India’s Commerce and Industry Minister Anand Sharma, argued that the new legislation ‘will have an (estimated) additional cost implication of over USD200 million annually and an adverse impact on the competitiveness and commercial interests of Indian companies’.⁵

An important aspect of this legislation is the manner in which it links border security and visa fees for non-immigrant workers entering the US, a large number of whom are employed by India-based companies. This link has not been lost on critics of the legislation. For example, Ron Somers, president of the US-India Business Council, saw it as ‘unfortunate that the Congress passed a Bill that not only links India to border security with Mexico, but also does not take into account the terrible economic impact this will have for the United States’.⁶

Defending the link, the US Homeland Security Secretary Janet Napolitano, has described the legislation as one that ‘makes a lot of sense because what it's saying is that we're going to make sure that we pay for immigration in this part of it, but we paid for it out of the visa system’.⁷ More significantly, this legislation reflects the impact that certain US domestic compulsions can possibly have on the US-India bilateral relationship in the near to future term.

³ Ibid.

⁴ James Lamont, ‘India Lashes Out at US Visa Regime’, *Financial Times* (10 August 2010), available at www.ft.com/cms/s/0/5a186610-a487-11df-abf7-00144feabdc0.html.

⁵ ‘US Fee Hike to Cost Indian Cos \$200mn a Year: Sharma’, *Economic Times* (10 August 2010), available at <http://economictimes.indiatimes.com/news/news-by-industry/services/travel/visa-power/US-visa-fee-hike-to-cost-Indian-cos-200-mn-a-year-Sharma/articleshow/6288495.cms>.

⁶ ‘Visa Row: US Officials to Start Talks with Various Parties’, *Deccan Herald* (12 August 2010), available at www.deccanherald.com/content/87994/visa-row-us-officials-start.html.

⁷ See ‘Visa Fee Hike under New Border Security Act Makes Sense’, *Indian Express* (14 August, 2010), available at www.indianexpress.com/news/visa-fee-hike-under-new-border-security-act-makes-sense-us/660317/.

First, this legislation reflects the pressures the Obama administration is currently facing over the issue of immigration reform, especially on how to deal with illegal immigration. With mid-term Congressional elections to be held in November, there seems to be a deep division between the Obama administration and the Republican Party on the specific issue of dealing with illegal immigrants already residing in the US.⁸ Obama's plans include devising a system where illegal immigrants currently residing in the US can obtain citizenship after declaring their status and completing certain obligations, such as paying a fine and back-paying taxes, among others.⁹ The Republicans represent this plan as an amnesty that rewards illegal migration and one that impacts jobless US citizens.¹⁰ This bill is thus an attempt by the Obama administration to demonstrate its commitment towards stemming the movement of illegal migrants from Mexico despite its proposed plans on dealing with illegal migrants already in the country.

Second, and linked to the first point, is the issue of jobs in the present dismal economic context in the US. As discussed earlier, the issue of illegal migration and jobs for US citizens may become a key issue for the forthcoming mid-term elections. Politically, its impact may persist even beyond these forthcoming elections. In this context, the Obama administration is targeting the presumed link between outsourcing and American jobs. More specifically, Obama recently argued that his administration had managed to increase the country's economic competitiveness to the effect that jobs were no longer migrating to countries like India, China and Germany.¹¹ There has been some concerted criticism, from within the US, of the economic rationale of this link, specifically in the case of the hike in visa fees for H1B visas.¹² Such voices contend that a rise in H1B visa fees will in fact, eventually retard job growth in the US for US citizens and that this particular legislation is driven by political posturing rather than sound public policy.

Third, there is the issue of how and to what extent this specific development will impact India-US relations in the near to middle future. Besides official protests to the Obama administration over the implications of this bill for India-based companies, the Indian Government now seems to be contemplating referring the matter to the World Trade Organization (WTO). In a statement on 17 August 2010, India's Commerce Secretary Rahul Khullar, was quoted as saying that the visa fee hike 'is WTO incompatible' and that 'if the

⁸ For a more detailed examination of all the potential issues that could impact these midterm elections, see 'US Elections 2010: The Basics', *BBC News* (14 July 2010), available at www.bbc.co.uk/news/10263956.

⁹ See Peter baker, 'Obama Urges 'Fix' to Broken Immigration System', *New York Times* (1 July 2010), available at www.nytimes.com/2010/07/02/us/politics/02obama.html.

¹⁰ See 'GOP Lawmakers Warn of Administration Plan to Grant Amnesty to Illegal Immigrants', *Fox News* (23 June 2010), available at www.foxnews.com/politics/2010/06/23/lawmakers-warn-administration-plan-unilaterally-grant-blanket-amnesty/.

¹¹ See 'Obama Steps up Outsourcing Rhetoric', *The Asian Age* (10 August 2010), available at www.asianage.com/business/obama-steps-outsourcing-rhetoric-177.

¹² For details of this criticism see 'No Bad Idea Left Behind', *The Wall Street Journal* (12 August 2010), available at <http://online.wsj.com/article/SB10001424052748704164904575422293810650232.html>.

US wishes to put up its protectionist barriers to hurt itself let them do it but where a measure is specifically targeting my commercial interest I cannot keep quiet'.¹³ The Obama administration meanwhile seems aware of the depth of India's grievances on the matter and has attempted to address Indian concerns.¹⁴ With the US-India trade policy forum planned in three to four weeks time and Obama's scheduled visit to India in November 2010, there are indications that the US might make certain adjustments in implementing the visa hike in the light of Indian concerns. Reflecting this optimism, Indian officials were recently quoted as saying that they were 'hopeful of a quick solution' before the two sides met for their trade policy forum.¹⁵

On the whole, it is still not clear if any solution satisfactory to both sides can be found on this issue at this stage or how long it would take to arrive at such a solution. Although it is evident that this issue has created some friction in Indo-US ties, it is unlikely to unravel the multi-layered links that both countries have increasingly developed since Obama assumed office. This incident, however, does point to a larger potential irritant for future Indo-US ties. This irritant originates from the various domestic pressures on the Obama administration that could impact US foreign relations with India. More specifically, as the American public increasingly embraces protectionist postures espoused by US politicians, in tandem with the shrill debate over immigration, an anti-immigration protectionist discourse is emerging within the US with foreign knowledge workers an important target.¹⁶ Indian knowledge workers in this regard would be one of the hardest hit. So might the Indo-US relations in the longer term.

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¹³ 'India May Drag US to WTO for Hiking H-1B Visa Fee', *Times of India* (17 August 2010), available at <http://timesofindia.indiatimes.com/business/india-business/India-may-drag-US-to-WTO-for-hiking-H-1B-visa-fee/articleshow/6325497.cms>.

¹⁴ See 'Trying Best to Address India's Concern on Visa Hike Fees: US', *Economic Times* (19 August 2010), available at <http://economictimes.indiatimes.com/news/news-by-industry/services/travel/visa-power/Trying-best-to-address-Indias-concerns-on-visa-fee-hike-US/articleshow/6336249.cms>.

¹⁵ See Nayanima Basu, 'India Sees Early Solution to US Visa Imbroglio', *Business Standard* (20 August 2010), available at www.business-standard.com/india/news/india-sees-early-solution-to-us-visa-imbroglio/405213/.

¹⁶ For a deeper discussion of this 'anti-immigrant protectionism', see Vivek Wadhwa, 'America's Perilous Anti-Immigrant Protectionism', *Business Week* (15 April 2009), available at www.businessweek.com/technology/content/apr2009/tc20090415_771803.htm.