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U.S.

Large Companies Game H-1B Visa Program, and Jobs Leave the U.S.

By **JULIA PRESTON** NOV. 10, 2015

Théo Négri, a young software engineer from France, had come up with so many novel ideas at his job at an Internet start-up in San Francisco that the American entrepreneur who hired him wanted to keep him on.

So he helped Mr. Négri apply for a three-year work visa for foreign professionals with college degrees and specialized skills, mainly in technology and science. With his master's degree from a French university and advanced computer abilities, Mr. Négri seemed to fit the bill.

But his application for the H-1B visa was denied, and he had to leave the United States. Back in France, Mr. Négri used his data skills to figure out why.

The answer was simple: Many of the visas are given out through a lottery, and a small number of giant global outsourcing companies had flooded the system with applications, significantly increasing their chances of success. While he had one application in last year's lottery and lost, one of the outsourcing companies applied for at least 14,000. The companies were squeezing out American employers like his boss.

"I had this great American dream that got broken," Mr. Négri said, speaking by telephone from Lyon, France.

Congress set up the H-1B program to help American companies hire foreigners with exceptional skills, to fill open jobs and to help their businesses grow. But the program has been failing many American employers who cannot get visas for foreigners with the special skills they need.

Instead, the outsourcing firms are increasingly dominating the program, federal records show. In recent years, they have obtained many thousands of the visas — which are limited to 85,000 a year — by learning to game the H-1B system without breaking the rules, researchers and lawyers said.

In some years, an American employer could snag one of these coveted visas at almost any time of the year. But recently, with the economy picking up, the outsourcing companies have sent in tens of thousands of visa requests right after the application window opens on April 1. Employers who apply after a week are out of luck.

"The H-1B program is critical as a way for employers to fill skill gaps and for really talented people to come to the United States," said Ronil Hira, a professor at Howard University who studies visa programs. "But the outsourcing companies are squeezing out legitimate users of the program," he said. "The H-1Bs are actually pushing jobs offshore."

Those firms have used the visas to bring their employees, mostly from India, for large contracts to take over work at American businesses. And as the share of H-1B visas obtained by outsourcing firms has grown, more Americans say they are being put out of work, or are seeing their jobs moved overseas.

Of the 20 companies that received the most H-1B visas in 2014, 13 were global outsourcing operations, according to an analysis of federal records by Professor Hira. The top 20 companies took nearly 40 percent of the visas available — about 32,000 — while more than 10,000 other employers received

far fewer visas each. And about half of the applications in 2014 were rejected entirely because the quota had been met.

Two of those applications came from Mark Merkelbach and his small engineering firm in Seattle. For water projects in China, he needed engineers and landscapers who speak Mandarin, a combination of skills he could not find in the local market. With his H-1B visas denied, Mr. Merkelbach had to move the jobs to Taiwan. Another denial went to Atulya Pandey, an entrepreneur from Nepal who founded an Internet company in the United States and now can no longer work legally in this country for his own business.

The top companies receiving H-1B visas in recent years, Professor Hira found, include Tata Consultancy Services, known as TCS, Infosys and Wipro, all outsourcing giants based in India; Cognizant, with headquarters in New Jersey; and Accenture, a global operation incorporated in Ireland.

“They have spent a lot of time and money creating a business model that fits within the rules so they can use the visas to offer cheaper labor,” said Bruce Morrison, a lawyer representing an association of American engineers.

For example, federal law requires global companies employing large numbers of H-1B workers to sign a declaration saying they will not displace Americans. But there is a loophole: An exemption in the fine print cancels that requirement if employers pay H-1B workers at least $60,000 a year — significantly less than an experienced technology worker’s salary in many parts of the United States.

Many of the outsourcing firms’ temporary workers earn $60,000 or just a little more, according to federal data compiled by Professor Hira.

Among the immigration visas offered by the United States, the H-1B program stands out for its peculiar rules. The annual quota includes 65,000 visas for foreign workers applying for the first time, while the remaining 20,000 are for foreign students graduating with advanced degrees from

American universities. Each year the period for applications opens on April 1, and they are accepted first come first served.

Federal officials allow only one application for each foreign worker. But there is no limit on the number of visas a single company can seek. A company with thousands of employees can submit many applications. By law, if applications quickly exceed the quota, officials turn to a computer-run lottery to select the visa recipients.

Recently, demand for the visas has soared; each year since 2013 the selection went to the lottery. This year, 233,000 applications were received in just seven days, and about two-thirds were denied because the quota was already met.

Immigration officials do not acknowledge the outsourcing companies' advantage. "The selection process is completely random," said Shinichi Inouye, a spokesman for United States Citizenship and Immigration Services, the federal agency in charge of the visa program. "We cannot speculate as to why one company has more petitions selected in the cap."

But Mr. Négri, who is now 27, wanted to understand it. He had been hired by David Petersen through an open job search after he posted his professional profile online. Mr. Petersen was looking for engineers to expand his start-up, BuildZoom, which helps people find construction contractors.

"I was just looking for great people," said Mr. Petersen, in San Francisco. "And Théo had been building cool stuff since he was a 13-year-old." Mr. Petersen said he hired several other local tech workers at the same time, and Mr. Négri, rather than displacing Americans, later brought in more.

Then his visa was denied. So Mr. Négri combed through public documents that employers file with the Department of Labor as a first step in an H-1B application. For the limited quota of visas, Mr. Négri discovered, the outsourcing companies had submitted far more applications than a small

company like BuildZoom could manage or afford — each application costs up to $4,000.

Together the top five outsourcing companies had prepared as many as 55,000 H-1B applications. TCS, the company that had prepared applications for at least 14,000 visas, won 5,650 of them.

Mr. Négri is now working on a tech start-up of his own — in France.

American titans like IBM, Microsoft, Facebook and Google also use H-1B visas and have pressed Congress to increase the annual quota.

A representative of The New York Times Company said it had about 70 employees on visas, most of them skilled technology workers. This year, the company obtained an H-1B visa for Mark Thompson, the president and chief executive, who is British.

Lawmakers have largely overlooked the outsourcing companies' role in the visa process. On Sept. 30, Congress allowed an extra fee of $2,000, which it imposed five years ago on H-1B applications from the biggest outsourcing companies, to lapse.

Most of the global firms focus on technology, offering services to American companies to upgrade their systems and help them compete amid rapid change in the international marketplace.

The global companies say they are following all of the rules when they apply for the visas. Benjamin Trounson, a spokesman for TCS, one of the largest consultants, with 325,000 employees worldwide, said the company serves its customers "using our U.S. and global talent pool that most effectively meets their needs."

Several consulting companies said H-1B workers were only a small part of their work force in the United States. Cognizant said in a statement that it regularly recruits experienced American workers and qualified students, and

uses H-1B visas only "to supplement our U.S. hiring in order to fill talent gaps in the market."

Still, Cognizant was the second-largest recipient of H-1B visas in 2014, getting more than 4,200.

The outsourcing companies say they are hiring more Americans and contributing to the economy. In August, TCS announced a $35 million donation to Carnegie Mellon University for a new research center on its campus in Pittsburgh.

But Mr. Pandey, after losing out in the H-1B lottery, had to set up shop back in Nepal to try to manage a growing company based in New York.

As an undergraduate at the University of Pennsylvania, Mr. Pandey befriended an American classmate from Arizona, Vincent Sanchez-Gomez. By their junior year, they were running a start-up. In 2013, after graduating, they turned full time to their venture, Pagevamp, which helps small businesses create and run their own websites.

The H-1B denial was a blow. "It was quite stressful, for me and for the entire company, because it's what we were counting on," Mr. Pandey, 25, said during a brief stop in New York last month; now he can come to the United States only on a visitor's visa.

Mr. Sanchez-Gomez, 24, has to handle investors, a staff of 10 and the company's plans for expansion through video calls with a business partner halfway around the globe.

"I would expect most people would feel Atulya was making a positive contribution to the U.S. economy," he said. "There is no American who could do his job. Without Atulya, there would be no company."

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