

US's Action on Bench and Switch Scam

Why in news?

The US has taken stringent measures on those who use "bench-and-switch" scheme to manipulate the process of acquiring an H-1B visa.

What is an H-1B visa?

- The H-1B is a visa category that lets US employers recruit skilled foreign nationals in "specialty occupations" where there is a lack of American workers.
- According to the US Code of Federal Regulation, such occupations require theoretical and practical application of a highly specialized body of knowledge.
- It also requires attainment of a bachelor's or higher degree in a specific specialty as a minimum for entry into the occupation.
- Since such jobs are meant to be temporary assignments, getting the H-1B requires going through a lengthy process
- The duration of stay under this visa is 3 years, extendable to 6 years; after which the visa holder may need to reapply.
- Employers must generally withhold Social Security and Medicare taxes from the wages paid to employees in H-1B status.

Why is H-1B visa process lengthy?

- A prospective employer first has to submit a Labor Condition Application (LCA) for Non-immigrant Workers to the Department of Labor.
- Next, if the LCA is approved, the employer proceeds to submit Form I-129 to the Department of Homeland Security.
- Finally, if the United States Citizenship and Immigration Services approves the application at that stage, the H-1B visa is granted.
- This prolonged procedure often takes several months until potential employees can know for sure whether their application has been favorably processed or not.
- Legitimate hiring agencies specializing in H-1B workers help connect employers with prospective employees.
- They typically take a part of the worker's salary for a period of time as

well as charge a service fee.

What is the Bench and Switch scam about?

- The bench-and-switch scheme has been used by staffing companies in order to cut back on waiting time and to score an unfair advantage in getting the H-1B visa.
- Under this, a staffing agency engaging in this practice makes H-1B applications for its foreign worker clients without first securing jobs for them.
- The agency creates fake data about its clients to defraud the various authorities in the visa process.
- At face value, submitted documents (false service contracts, statements of work, and employment-verification letters) lead the authorities to believe that such a “specialty occupation” exists and that the applicant has already secured employment.
- Thus, by manipulating the process, a “bench” of fraudulently authorized foreign workers is created.
- These can be “switched” to actual employers when they are in need, without them actually going through the time-consuming process riddled with formalities.
- The IT sector, which has a greater demand for persons with specialized skills, is especially fraught with this scam.

What was the government response?

- American investigating agencies cracked down two IT staffing companies running “bench-and-switch” scheme, that led to the arrest of four Indian-Americans.
- According to the US Justice Department, the perpetrators face a maximum potential penalty of 5 years in prison and a \$250,000 fine.

Source: Indian Express