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Newsmaker: [http://www.cnet.com/2005-1082_3-0.html] **In the eye of the H-1B visa storm**

By Rachel Konrad [<mailto:letters@news.com?subject=FEEDBACK: In the eye of the H-1B visa storm>]

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Navneet S. Chugh is the self-appointed defender of the downtrodden in the nation's growing argument over foreign workers holding H-1B visas.

But the 40-year-old attorney and accountant, who spent his first 20 years in India and the next 20 in Southern California, does not help individual technology professionals

battling corporate America: The most oppressed parties, Chugh insists, are the widely maligned and misunderstood recruitment agencies responsible for finding the workers from obscure universities and companies abroad. Such firms are derisively dubbed "body shops" because many believe they simply find bodies to plug holes in the U.S. skilled-labor market.

In a high-profile case in San Mateo County, Calif., Superior Court on April 18, a judge **ruled** [<http://www.cnet.com/news/0-1007-200-5726645.html>] against Chugh and his recruitment firm client, Compubahn. His client must pay \$215,050.61 in legal fees and other expenses to an Indian computer programmer who signed a restrictive work contract that forbade him from joining the agency's clients.

The case steams Chugh, who received undergraduate business degrees from India's Nagpur University and West Coast University in Los Angeles and a law degree on full-ride scholarship from Western State University in Fullerton, Calif. He says the case is yet another example of a frivolous lawsuit clogging the U.S legal system.

Although the founder of **The Chugh Firm** [<http://www.chugh.com/>] makes his living mainly as an attorney, he says that most of these lawsuits--indeed, most lawsuits in general--are **ridiculous** [<http://www.chugh.com/tpc/lawsuits.htm>].

Chugh [<http://www.chugh.com/dir/ChughNavneet.htm>] enjoys **lawyer jokes** [<http://www.chugh.com/tpc/jokes.htm>] and likes to poke fun at his detractors. In an interview with CNET News.com's Rachel Konrad, he scoffed at those who take pity on the growing ranks of foreign professionals who work in the United States with H-1B visas.

Q: Before we talk about the case specifically, tell me a little about these so-called body shops. They have a reputation for misleading foreigners into thinking that the agencies are technology companies per se, not middlemen that place them at tech companies. Is that accurate?

A: No. Aren't these people looking at the Web sites? The Web sites say what they do...All of them have friends in the network and the grapevine; they all know the strengths of each company and which ones are reputable.

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they choose to join a borderline company, then they choose to. Maybe there's something wrong with their resume or degree because they go to a place that treats them like that.

I have yet to meet one that has done anything illegal...All of them are doing a service to themselves, to India, to Indians and to America because they're filling a gap that no one else can fill. I have a client with 40 people sitting on the bench (not working in the field), and he's paying their salaries of \$5,000 a month. The Oracles and the Ciscos of the world would lay them off, but these agencies are carrying them on the hope of a better day tomorrow when they can place them.

But they're charging these people \$25,000 or more in "finders fees" and forcing them to remain employed for 18 months or more--or else pay back all expenses and fines. Is that unethical?

What's illegal and unethical is the practice of charging them \$25,000 to smuggle them into the United States. We've all heard horror stories about Mexico. Compared to that, these agencies have spent the money, done the work. All they ask is that you stay 12 or 18 months and pay some dues. Then you can go.

Do agencies take advantage of people who don't speak English or

understand U.S. laws and workers rights, as many H-1B visa holders suggest?

Before you get an H-1B visa, you are required to have a bachelor's degree. These are not idiots who are coming here. Some choose to become them for some reason, but most are not.

If you buy a car and take a loan and the dealership approves your loan right then and there and you walk into the finance room and he puts the contract in front of you, are you forced to sign it? No. Do you sign it? Yes.

All of them speak English, read English and are literate. This guy (Dipen Joshi, the plaintiff in the San Mateo County case) is quoted as saying he sat down with the state statutes and learned the law. I should hire him as a paralegal because some of my paralegals won't even pick up the state statutes because they're very complicated. I have to read it for them. All this hoopla is just a marketing machine for (Joshi lawyer Michael) Papuc. I hate saying bad things about another attorney, but...well...

Some people say these recruitment firms--even the ethical ones--merely add bureaucratic complexity to the job market. Why do they exist?

This industry's important for several reasons. I look at my business of tax and law, and I think, "Why is it that I want to hire permanent employees?" I don't hire any temps. But in tech, temps work.

The reason it works is primarily because it's project-oriented, so maybe you need 300 people to design software, then they need to be let go. To find and hire 300 people in a jiffy and have them do work and then fire them would have huge repercussions--it would be a big news story with all those layoffs. But if you call up the agency and say, "Take back 300 consultants," it's not a big story. It's how things work.

It's like movie stuff. I have an entertainment client and he hires people for 180 days. You do 20 shows and then you go home. So, because of the elasticity and the number of

people required...you end up with a scenario where you need placement agencies. It's like rescue workers: Wherever there's an earthquake, you go there.

Some say that asking these workers to sign contracts after they come to the United States is unfair. The attorney in the San Mateo County case called it "indentured servitude." Is this true?

If that's become slavery, I want to ask you something: Of all the industries you know-- teachers, plumbers, firemen, etc.--who **switches jobs**

[<http://www.cnet.com/news/0-1007-200-2077961.html>] more than tech workers?

That's right: nobody. If you say that these people

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don't have enough freedom of movement, give me a break. All we say is don't join the company we place you at. Dipen Joshi could have said, "Oracle is my dream employer and someday I want to work there, so don't place me there."

So these people are just a bunch of greedy crybabies who see American co-workers jumping jobs and getting big raises--and they want a piece of the action too?

That's right. There is no satisfaction. It's a meat market out there. They see that the grass is always greener on the other side.

Let's talk about the judge's tentative order in San Mateo County last week,

which went against your client. The other lawyer told me that he was trying to teach agencies that they could not bully workers into restrictive work contracts--and if they did, they would be financially liable. Why is Papuc pursuing this case?

To go around and scare employers that you can't do this is wrong; it's taking a bad judgment and passing it around. The only reason he's doing it is because that's the only reason he gets attorneys fees from a big class of people who benefited. He's trying to make it into a big class suit by getting people to cover it.

It will only become a precedent if Mr. Papuc or I take it to appeals court, and I plan to. There is no way appeals court is going to approve this because it goes against a big segment of the U.S. economy--the temporary work agencies.

What's your legal argument?

California has code-section 16-600. One line of that says any contract that has any clause that restrains a person from doing any business trade or profession will be held void. That's all the section actually reads. There have been a number of cases decided since then, and all the cases put together make up the law. Most of them have ruled that if there is a clause in your employment contract to that extent, that clause is invalid.

However, there is a big distinction, and that's what's missing in the media: None of the 16-600 cases ever decided have involved an employment agency. Employment agencies don't sell anything except this. All of the employment agencies in the country live on this clause. But for whatever reason the judge didn't see this.

If we have to go to the Appeals Court and Supreme Court, we'll do it; it's simply not right to apply this to employment agencies. Imagine this: I go to India, put up advertisements, screen resumes, screen people, hire a person, do the H-1B visa, and pay fees to the INS and my attorney. Then the person comes here and I pay for their airfare, rent an apartment for them, feed them for a few days, find a job for them. Then four days later they join Oracle--and that's legal? I'd be stupid to join this

business...Why doesn't Oracle go to India and advertise? They won't. But for Oracle to take advantage of the agencies is unfair.

Are you worried more workers will sue the 150 agencies you have as clients?

No. I would hope that other courts don't interpret 16-600 like this one did and they'll see the light of day and realize the distinction between a company not in the business of placing people and a company that is.

Let's imagine the worst-case scenario for you: The judge's decision is upheld and recruitment firms feel they can no longer ask workers to sign restrictive contracts. What will happen?

There are other ways of accomplishing the same thing. If I were to have drafted the Compubahn contract, for instance, I would have done it differently. I'd ask the workers to pay the \$5,000 up front and then I'll reimburse them after 12 months. There are always other, better ways to do things. ■

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