

Regaining America's Competitive Advantage: Making our Immigration System Work



LABOR, IMMIGRATION &
EMPLOYEE BENEFITS DIVISION
U.S. CHAMBER OF COMMERCE



American Council on
International Personnel
Advancing Global Mobility

ABOUT THE STUDY

This study was prepared by Stuart Anderson for the Labor, Immigration & Employee Benefits Division of the U.S. Chamber of Commerce and the American Council on International Personnel. The motivation for this report was the need to collect and disseminate objective data on the economic impact of hiring foreign talent to work in the United States as well as shed some light on some of the misinformation that has surrounded the high skill immigration debate.



ABOUT THE U.S. CHAMBER OF COMMERCE

The U.S. Chamber of Commerce is the world's largest business federation representing more than 3 million businesses of every size, sector, and region. The Chamber's Labor, Immigration & Employee Benefits Division formulates and analyzes the Chamber's policy in the areas of labor law, immigration, pension and health care. The Division regularly participates in, and sometimes chair, national coalitions to help define and shape national labor, immigration and employee benefits policy. More information at www.uschamber.com/issues/lieb_policy.



American Council on International Personnel | Advancing Global Mobility

ABOUT THE AMERICAN COUNCIL ON INTERNATIONAL PERSONNEL

Since 1972, it has been the American Council on International Personnel's mission to provide the resources and support necessary to advance the placement, training and mobility of highly educated professionals worldwide. By maintaining the highest standards of practice and compliance, ACIP bridges the private and public sectors to promote a sensible, forward-thinking employment-based immigration policy. More information at www.acip.com.

August 12, 2010

The Labor, Immigration, and Employee Benefits Division of the U.S. Chamber of Commerce (Chamber) and the American Council on International Personnel (ACIP) have taken a leading role in calling for improvements to high skilled immigration programs to bring foreign talent to work and create jobs in the United States.

This report was commissioned due to the need for a clear analysis of current high skilled immigration programs and proposals from the perspective of employers, who are America's true job creators. These professionals help our economy grow and remain competitive in the global marketplace. On average, 50% or more of those graduating from U.S. universities at the master's and Ph.D. levels in STEM (science, technology, engineering, and mathematics) are foreign nationals.

While employers in the United States are doing more to attract American citizens into science, technology, engineering, and mathematics (STEM) fields, professionals from around the world are needed to fill jobs today.

Thus, the Chamber and ACIP support changes that would let business and economic need determine the composition of an employer's workforce, not an arbitrary quota, lottery, or commission. The U.S. economy will not be lifted out of recession by turning away top talent from the U.S. workforce—the key to recovery is creating jobs. These workers help U.S. employers do just that and ultimately keep us competitive.

Sincerely,



A handwritten signature in black ink, appearing to read 'Randel K. Johnson', written in a cursive style.

Randel K. Johnson
Senior Vice President
Labor, Immigration
& Employee Benefits
U.S. Chamber of Commerce



A handwritten signature in black ink, appearing to read 'Lynn Shotwell', written in a cursive style.

Lynn Shotwell
Executive Director
American Council
on International Personnel

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Regaining America's Competitive Advantage: Making Our Immigration System Work

U.S. Chamber of Commerce and the American Council on International Personnel

By Stuart Anderson

Executive Summary

America's greatness rests in its institutions and its historic openness to new people and innovations. Closing the door to highly educated individuals seeking opportunity and who aid the competitiveness of U.S. companies will weaken, not strengthen, our country and will diminish the competitiveness of American employers. In the global economy, investment follows the talent and attempts to restrict the hiring of talented foreign-born professionals in the United States encourages such hiring to take place overseas, where the investment dollars will follow.

The analysis in "Regaining America's Competitive Advantage: Making Our Immigration System Work," released by the U.S. Chamber of Commerce and the American Council on International Personnel (ACIP), takes a balanced approach to employment-based immigration. It recognizes that problems exist that should be addressed through administrative or legislative means. Moreover, it is understood that in any dynamic situation where a market exists not all will succeed and this will result in anger towards traditional targets, particularly the foreign-born. This analysis finds the admission of high skilled foreign nationals provides significant benefits to the U.S. economy and much of the criticism levied at such foreign nationals and their employers is misplaced.



A recent report by the Department of Professional Employees, AFL-CIO – *Gaming the System* – gathers together arguments that have become traditional for those advocating a closed door policy for America. As such, it is worth examining the report, explaining where its portrait of highly educated foreign nationals is incomplete or inaccurate, while also addressing which immigration policies are most likely to create more jobs and innovation in the United States.

If the immigration policies recommended by the AFL-CIO had been in effect since 1990 few if any high skilled foreign nationals would have been allowed to work in the United States. The innovations, complementary jobs, and companies created by such individuals would have been lost – or created in other countries. While the arguments offered by the AFL-CIO are couched in language of concern for foreign-born professionals, there is no evidence in its report or other actions that the AFL-CIO believes highly educated foreign nationals have any legitimate place in the American workplace or even in our society.

In sum, the position of the AFL-CIO is that a) highly educated foreign nationals are underpaid, and b) even if they are paid properly, Congress should prohibit them from working in the United States because high skilled foreign nationals are not needed, and c) if U.S. employers wish to hire high skilled foreign nationals, a government commission should be established to overrule those hiring choices and prevent these professionals from being eligible to work in the United States.

The consequences of such a policy would be negative for U.S. employers, the U.S. economy and Americans in general. It would weaken the competitiveness of important industries



at a time when recent economic conditions have already clouded the financial situation of many U.S. companies and organizations.

It is a common mistake among critics of immigration to assume there is only a fixed number of jobs in the economy. As discussed in this report, an examination of America's most noted technology companies illustrates how this assumption is untrue. Between 2002 and 2009, Qualcomm, Google, Amazon, Apple, Cisco, Oracle and Microsoft all (at least) nearly doubled their overall employment (U.S. and non-U.S. employment combined). Amazon increased its employment total from 7,500 to 24,300, a 224 percent increase from 2002 to 2009, while Apple increased the number of its employees from 10,221 to 36,800, a rise of 260 percent.

To varying degrees, these seven companies have hired high skilled foreign nationals on H-1B visas. In 2009, Amazon's net income (earnings) was \$902 million and Apple's was \$5.7 billion. Can anyone plausibly argue that either Amazon or Apple – two of America's most successful companies over the past decade – would have been more successful or experienced greater employment growth if they had been barred from hiring high skilled foreign nationals?

Those arguing to place more restrictions on hiring foreign nationals have shown little interest in whether particular U.S. employers are successful, never mind that they should have the freedom to hire employees who the companies believe will make them successful. And this is crucial: Who is in a better position to determine which employees are most likely to make Apple, Amazon or other U.S. companies successful? Is it critics of immigration, government bureaucrats, or the companies themselves? Since immigration critics and agency officials have no vested interest in whether particular U.S. companies are profitable the answer is self-evident.



This report also addresses the AFL-CIO's lack of intellectual consistency on immigration. The unfortunate position of the AFL-CIO and some other critics of employment-based immigration is that the entry of high skilled foreign nationals should be opposed under almost any circumstances, though if the same individuals or international students had entered the country illegally they would be welcomed and provided legal status. Legalization has a place in the context of comprehensive immigration reform, but the AFL-CIO's position of favoring those who entered illegally over highly educated foreign nationals who seek to work legally is, at minimum, intellectually inconsistent.

The findings of this report include:

- Leading high tech companies cite the role that highly educated foreign nationals have played in their success. Google and other companies cite individual visa holders who have made substantial contributions to their leading positions in the marketplace.
- The AFL-CIO and other critics argue America already has too much talent and should block the entry of high skilled foreign nationals, including international students, into the labor market. However, the real immigration-related problem is that many talented people have not been able to stay in the United States after graduation because of low quotas for H-1B visas and employment-based green cards.
- A large source of education funding in America is derived from U.S. employers. American businesses pay over \$91 billion a year in state and local taxes directed toward public education, according to the Tax Foundation. H-1B visas are a large source of



scholarship money for U.S. students, with H-1B training and scholarship fees levied on each petition (and renewal) having funded more than 53,000 math and science college scholarships for U.S. students through the National Science Foundation.

- There is little evidence high skilled foreign nationals on H-1B visas are in general paid less than their American counterparts. A 2009 study by University of Maryland researchers Sunil Mithas and Henry C. Lucas, Jr. showed foreign-born professionals in information technology (IT) actually earned more than their native counterparts: “This result implies complementarity among American and foreign IT professionals and supports the view that high-skill immigration can potentially make everyone (i.e., American as well as foreign workers) better off.”
- The Economic Policy Institute, a research group closely aligned with the AFL-CIO, concluded in a recent study, “the estimated effect of immigration from 1994 to 2007 was to raise the wages of U.S.-born workers.”
- Studies by University of California, Berkeley, economist Giovanni Peri reached the same conclusion on the overall impact of immigration, noting that the foreign-born fill jobs, but also create them through consumer spending, complementary skills, entrepreneurship and other means. Peri concluded, “The United States has the enormous international advantage of being able to attract talent in science, technology, and engineering from all over the world to its most prestigious institutions . . . The country is certainly better off by having the whole world as a potential supplier of highly talented individuals rather than only the native-born.”



- Critics who insist H-1B professionals are hired to “save money” fail to note that in addition to the legal requirement to pay H-1B visa holders the higher of the prevailing wage or actual wage paid to comparable U.S. workers, employers must pay significant legal and government fees. The American Council on International Personnel estimates combined H-1B and green card sponsorship costs (government/legal fees) can exceed \$35,000 for one individual.
- Critics also ignore that the labor market is global and if U.S. employers were interested only in lower labor costs they would shift all their work overseas. The average annual salary in San Francisco for a systems engineer (computer networking/IT) with two years of experience is approximately \$62,400, compared to \$6,000 in India and \$5,500 in the Philippines, according to PayScale.
- Some have expressed fears that H-1B professionals hired by Indian technology companies threaten the American workforce. In FY 2009, Indian tech companies used approximately 4,800 new H-1B visas, which equals to 0.003 percent of the U.S. civilian labor force, less than 1/100th of 1 percent. When information technology services companies – whether Indian or non-Indian – perform work in the United States it is only because U.S. companies believe such work makes their businesses more profitable. And if such service providers enable U.S. businesses to concentrate on core functions and run more effectively, then U.S. companies can hire more people in the long run.
- As evidenced by the long backlogs, it is clear many employers sponsor skilled foreign nationals for permanent residence (a green card). However, the recent argument that



using an H-1B visa is only legitimate if the employer later sponsors the individual for a green card ignores the history of H-1 temporary visas, the enormous time and expense to sponsor individuals for permanent residence, and the legitimate need to serve customers on projects of limited duration.

- While concern about fraud is legitimate, the bottom line finding of a 2008 U.S. Citizenship and Immigration Services report is that there is little evidence of widespread abuse among companies with more than \$10 million in annual gross income (revenues). Only seven percent of companies with more than \$10 million in annual revenues (eight cases) audited were found to have suspected fraud or technical violations.
- The responsible U.S. agencies should enforce current law, rather than Congress passing new laws. An employer that commits fraud under the existing statute will not become law-abiding under a new set of complex rules. Current immigration law already contains significant deterrents to underpaying workers, including payment of back wages, civil penalties from \$1,000 to \$35,000 per violation, and debarment of employers from H-1B and other immigration programs.
- As proposed by the AFL-CIO and others, a government commission to set the annual number of temporary visas and green cards (or even eliminate employment categories) would possess more power than the President or Congress in deciding immigration policy matters, since its findings and recommendations would become law unless blocked by a separate Congressional vote. Commission members' decisions would be inherently subjective. The data do not exist to determine fine gradations in particular fields, never



mind to know the demand among all U.S. employers for specific specialties. In short, the labor market is global, not only domestic. A key reason a “labor shortage” may not show up in any government data is that employers find “work arounds” and take creative action, such as offshoring, to address an inability to hire people they need here. A government commission to set the annual level of temporary visas and green cards would become a new set of obstacles employers would need to overcome to hire foreign nationals and could effectively end employment-based immigration to the United States.

The vision of the AFL-CIO and other critics is of a future where American employers have little or no access to highly educated foreign nationals. Such a vision ignores much accumulated evidence about the benefits of foreign-born professionals:

- A study by the National Venture Capital Association found “Over the past 15 years, immigrants have started 25 percent of U.S. public companies that were venture-backed, a high percentage of the most innovative companies in America.”
- In electrical engineering, 68 percent of the fulltime graduate students (master’s and Ph.D.s) on U.S. college campuses were foreign nationals in 2006, according to the National Science Foundation. In engineering overall, the percentage of foreign nationals was 54 percent, and in computer science the proportion was 58 percent.
- An overlooked benefit of admitting skilled foreign nationals is the achievements of their children in America. Nearly half – 18 of 40 – of the finalists at the Intel Science Talent Search in 2004 had parents who entered the country on H-1B visas (known as H-1 prior to 1990).



- Paula Stephan (Georgia State University) and Sharon G. Levin (University of Missouri-St. Louis) performed extensive research on the contributions of the foreign-born in 6 areas of scientific achievement and concluded, “Individuals making exceptional contributions to science and engineering in the U.S. are disproportionately drawn from the foreign-born. We conclude that immigrants have been a source of strength and vitality for U.S. science and, on balance, the U.S. appears to have benefitted from the educational investments made by other countries.”
- Research by William Kerr (Harvard Business School) and William F. Lincoln (University of Michigan) shows a connection between H-1B admissions and increased patent filings both for cities and companies.

The best policy for the United States is one that sides with freedom and innovation, not restriction. It is a policy where the H-1B cap is either eliminated or set high enough that we can let the market decide on the number of new skilled foreign nationals who work in America each year. The best policy would ease the way for employers to sponsor high skilled individuals for green cards by exempting from labor certification and current employment-based immigrant quotas many who now languish in 6 to 20 year queues. Allowing top talent who graduate from U.S. universities to gain a green card directly will help U.S. employers retain the world’s leading future innovators. Keeping the door open for high skilled foreign nationals strengthens America. As is often the case, freedom, not restriction, is the right choice.



Introduction

In a recent novel, Stephen King imagines a town in Maine that becomes enclosed by a dome – nobody can get in and nobody can get out. As with most Stephen King novels things don't work out too well for the residents of that town.¹ A lot of critics of immigration appear to think many of America's economic problems could be solved if we just build a dome large enough to cover the United States and keep out immigrants and temporary visa holders seeking to work here. While presumably less graphic than in Stephen King's imagination, the economic consequences of blocking the entry of H-1B and L-1 visa holders, as well as skilled immigrants who obtain green cards, would not be pretty.

The two biggest mistakes critics make in assessing immigration policy are to assume 1) competition for labor and capital is domestic, rather than global, and 2) residents and new entrants to the labor market in an economy compete for a fixed number of jobs. Such mistaken assumptions can be seen in the recent report *Gaming the System*, produced by the Department of Professional Employees, AFL-CIO.² Those criticizing the hiring of foreign nationals on H-1B visas – temporary visas good generally for six years³ – assume the only alternative to hiring a skilled foreign-born professional is to employ a U.S. worker. But that assumes hiring only takes place in the U.S. labor market. In fact, when an employer needs work performed the options include hiring a worker in the United States, employing an individual in a foreign country, outsourcing the work either domestically or overseas, or refraining from filling the need due to cost or other factors.



More than 27,000 employers in America hired at least one H-1B visa holder in FY 2009.⁴ Increasingly, it is easy for even small organizations to have work done abroad rather than in the United States. Websites devoted to temporary project work have proliferated and there are no geographic boundaries on where the work is performed. Even tutoring U.S. students can be done over the Internet from India or elsewhere, illustrating the shortsightedness of trying to “protect” domestic jobs by placing onerous restrictions on high skilled foreign nationals working in the United States.

Preventing a company from hiring a foreign national identified as the best candidate for a job does not translate into automatic employment for a U.S. worker. For example, due to the H-1B quota being reached before the start (or end) of the past several fiscal years, there often have been 8 to 12 months at a time when it was prohibited for most employers to hire anyone on a new H-1B petition. In other words, critics of H-1B visas got their wish: a virtual moratorium on new H-1B professionals was in effect for nearly a year at a time. Is there any evidence this improved the labor market for domestic workers during such periods?

In some years, U.S. Citizenship and Immigration Services received many more applications than H-1B petitions available under the 65,000 annual limit (plus the 20,000 exemption for those with a master’s degree or higher from a U.S. university). That required the petitions to be distributed by lottery. In other words, obtaining a work visa for a skilled foreign national is often so speculative that employers, of course, would choose to hire a qualified U.S. worker if available rather than gamble on the availability of an H-1B petition.



To illustrate the global nature of business and how labor costs are not the only factor in corporate business decisions on where to locate work, consider the vast difference in salaries for an individual holding the same job title in India and the United States. (See Table 1.) The average annual salary in San Francisco for a systems engineer (computer networking/IT) with two years of experience is approximately \$62,400, according to PayScale.⁵ The average annual salary for the same position and experience in India (Delhi) is about \$6,000, roughly one-tenth the compensation for the same job in America. The average salary for the same position is even lower in the Philippines (\$5,500). Even in Ireland a comparable systems engineer could be hired for an average of \$43,200 in annual salary. The enormous wage difference calls into question the claim that foreign nationals are hired for “cheap labor” in the United States, since they could be hired at a fraction of the cost in other countries if the price of labor was the only issue. Under U.S. immigration law, an employer must pay a foreign national on an H-1B petition in the United States the higher of the actual or prevailing wage paid to similarly employed U.S. workers. In contrast, there is no similar wage requirement if a U.S. or Indian firm hires an Indian professional in India.



Table 1
The Global Demand for Labor: Average Salary of Professional in U.S. and Globally

	Salary of Systems Engineer (Networking/IT) with Two Years Experience
San Francisco	\$62,400
Ireland (Dublin)	\$43,200
Romania	\$19,500
India (Delhi)	\$ 6,000
Philippines	\$ 5,500

Source: PayScale. Salary figures, as of May 2010, converted into U.S. currency and rounded to nearest hundred dollars.

Jobs and High Technology

Another key premise of immigration critics is only a fixed number of jobs exist in the U.S. economy, which would mean the addition of anyone to the labor force would result in the loss of a job for an American worker. The AFL-CIO and other immigration critics adhere to this premise in advocating against the entry of both low and high skilled foreign workers. However, the Economic Policy Institute, a research group the AFL-CIO has relied on to guide its immigration positions, disputes this anti-immigration notion in the first sentence of a recent policy paper, stating: “(A)lthough new immigrant workers add to the labor supply, they also consume goods and services, which creates more jobs.”⁶ (The Economic Policy Institute study is discussed in more detail below in the section on wages.)



In addition to creating jobs by increasing consumption, which adds to the demand for labor, foreign-born workers can create jobs through entrepreneurship. A 2006 study released by the National Venture Capital Association details a number of individuals who came to America as international students, and obtained a temporary visa to work in the United States, and later started a business.⁷ Creating innovations, improving economies of scale, and complementing existing workers or professionals can also lead to a greater demand for labor and more jobs.

In an article entitled “One lump or two,” *The Economist* magazine once explained the “lump of labor” fallacy that affects debates on immigration and other issues: “One often hears that immigrants are stealing jobs . . . Along with these simple ‘explanations’ comes an outpouring of simple ‘cures’: why not cut working hours so that there are more jobs to go round, or keep out cheap imports or foreign workers? There is a common fallacy at the bottom of both explanations and cures. It is that the output of an economy, and hence the amount of work available, is fixed. Both history and common sense show that it is not. Economists call this the lump of labor fallacy.”⁸

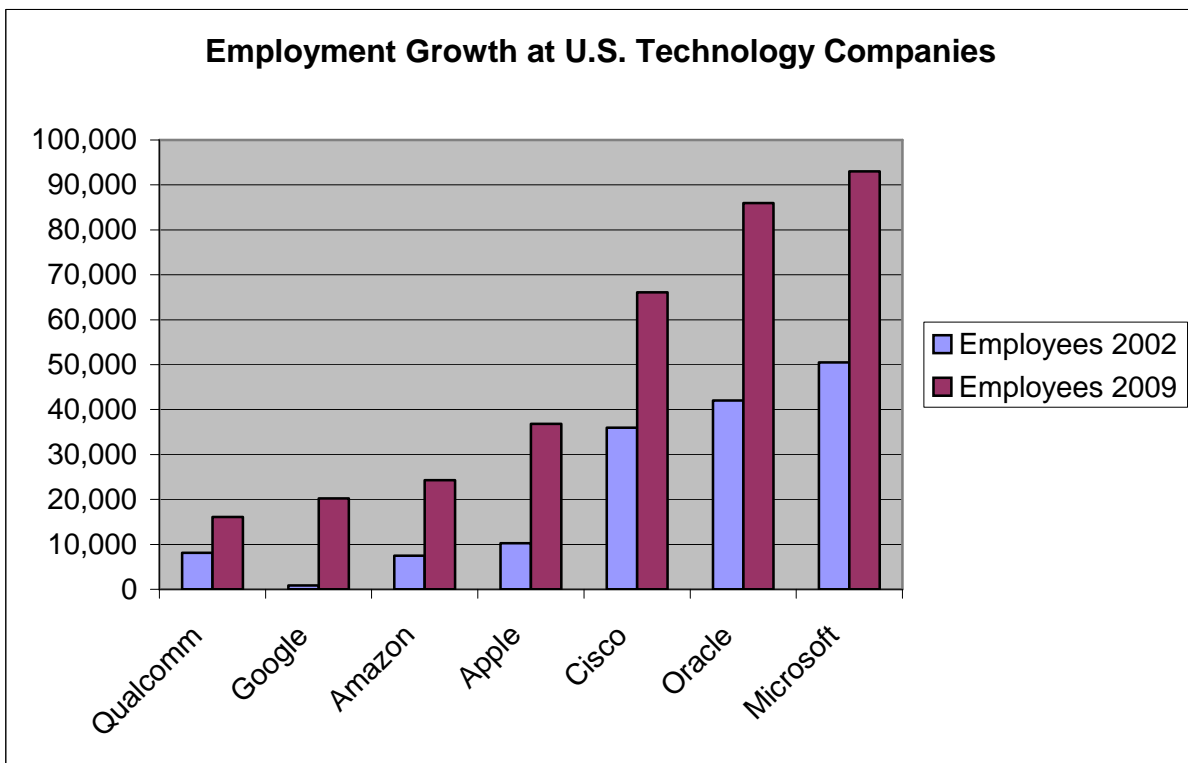
Today, we often hear demands for more “American” jobs in companies or industries that did not exist 25 years ago or employed few people if they did. Marc Andreessen, a founder of Netscape, has said, “When I was involved in creating the first Internet browser in 1993, I can tell how many Internet jobs there were, there were 200. I can tell you how many there are now, there's two million now. We created new jobs in the next 10 years.”⁹

Figures 1 and 2 illustrate the growth in employment at seven of America’s most noted technology companies – Qualcomm, Google, Amazon, Apple, Cisco, Oracle and Microsoft.



These companies either did not exist two decades ago (Google, Amazon) or employed far fewer people at that time (Qualcomm, Apple, Cisco, Oracle and Microsoft). Between 2002 and 2009 all of these companies at least nearly doubled their overall employment (U.S. and non-U.S. employment combined). Amazon increased its employment total from 7,500 to 24,300, a 224 percent increase from 2002 to 2009. Apple increased the number of its employees from 10,221 to 36,800, a rise of 260 percent.¹⁰

Figure 1

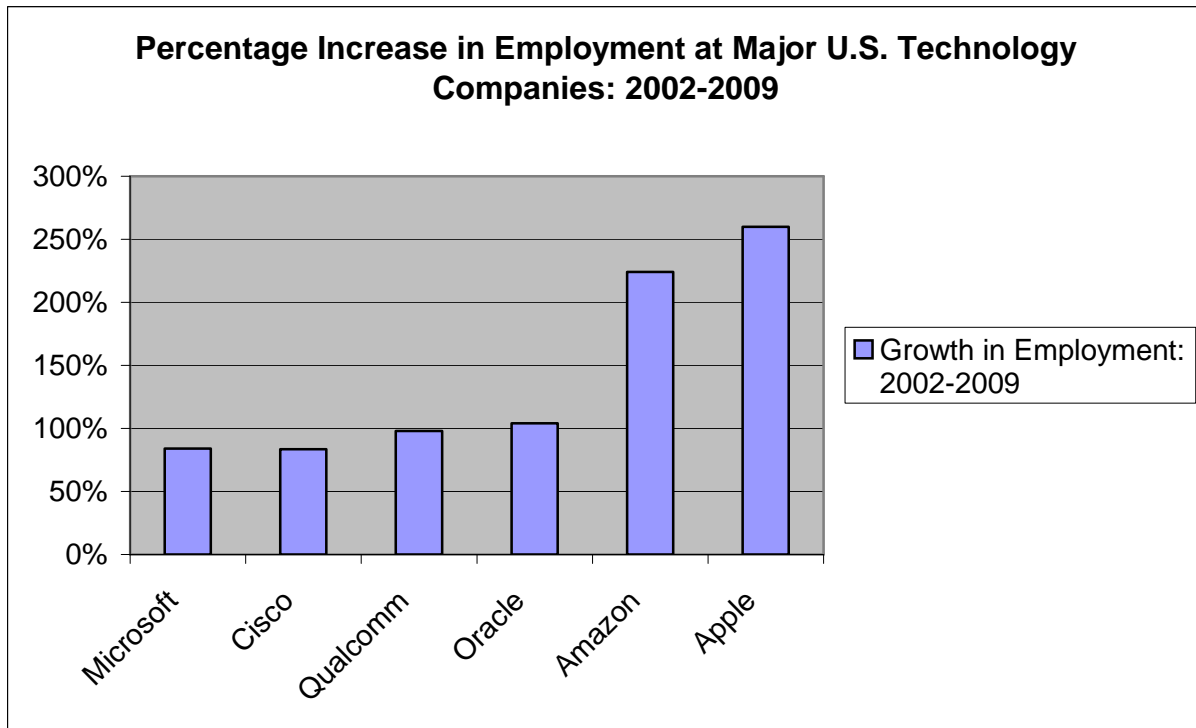


Source: Hoovers, National Foundation for American Policy; employment figures are worldwide. Totals For Google and Cisco are for late 2008.



To varying degrees, these seven companies have hired skilled foreign nationals on H-1B visas. In FY 2009, Amazon hired 192 individuals on new H-1B visas, while Apple hired 168, according to U.S. Citizenship and Immigration Services (USCIS) data. Many of these H-1B visa holders will be sponsored for green cards and become key personnel for many years at these companies. In 2009, Amazon’s net income (earnings) was \$902 million and Apple’s was \$5.7 billion. Can anyone plausibly argue that either Amazon or Apple – two of America’s most successful companies over the past decade – would have been more successful or experienced greater employment growth if they had been barred from hiring high skilled foreign nationals?

Figure 2



Source: Hoovers, National Foundation for American Policy; employment figures are worldwide. Totals for Cisco are for late 2008.



Those arguing to place more restrictions on hiring foreign nationals have shown little interest in whether particular U.S. employers are successful, never mind that they should have the freedom to hire employees who the companies believe will make them successful. And this is crucial: Who is in a better position to determine which employees are most likely to make Apple, Amazon or other U.S. companies successful? Is it critics of immigration, government bureaucrats, or the companies themselves? Since immigration critics and agency officials have no vested interest in whether particular U.S. companies are profitable the answer is self-evident.

Only profitable and successful employers hire people and expand, while unsuccessful companies shed employees and eventually go out of business. Microsoft Chairman Bill Gates, who knows a great deal about creating a successful company, has credited the firm's ability to hire skilled foreign nationals for helping the company grow. "Microsoft has found that for every H-1B hire we make, we add on average four additional employees to support them in various capacities," according to Gates' testimony before the House Committee on Science and Technology.¹¹ Discussing the inability of companies to hire individuals on H-1B visas because of the low annual quota that typically becomes exhausted every fiscal year, Gates said, "As a result, many firms, including Microsoft, have been forced to locate staff in countries that welcome skilled foreign workers to do work that could otherwise have been done in the United States, if it were not for our counterproductive immigration policies."¹² In 2007, in part as a response to frustration with U.S. immigration laws, Microsoft announced the building of a software development center in Canada.



High tech companies cite the role foreign-born professionals have played in their success. The man who led the development team for Word and Excel – two of Microsoft’s most profitable products – is Hungarian-born Charles Simonyi, former chief architect of the company.¹³ Simonyi had left Hungary and eventually became an international student in a graduate program at Stanford University, where he earned a Ph.D. in computer science. He worked first for Xerox’ Palo Alto Research Center. When Microsoft hired Simonyi in 1981 the company had only 40 other employees.¹⁴

U.S. immigration laws are bureaucratic, cumbersome and generally inadequate for global companies. Just ask executives at Google. “[W]e’re not the only ones recruiting talented engineers, scientists, and mathematicians,” said Laszlo Bock, Vice-President for People Operations at Google in testimony before the House’s immigration subcommittee. “The fact is that we are in a fierce worldwide competition for top talent unlike ever before. As companies in India, China, and other countries step up efforts to attract highly skilled employees, the United States must continue to focus on attracting and retaining these great minds . . . As a global company, Google is fortunate to be able to have employees work for us in other countries if they are not allowed to stay in the U.S.”¹⁵

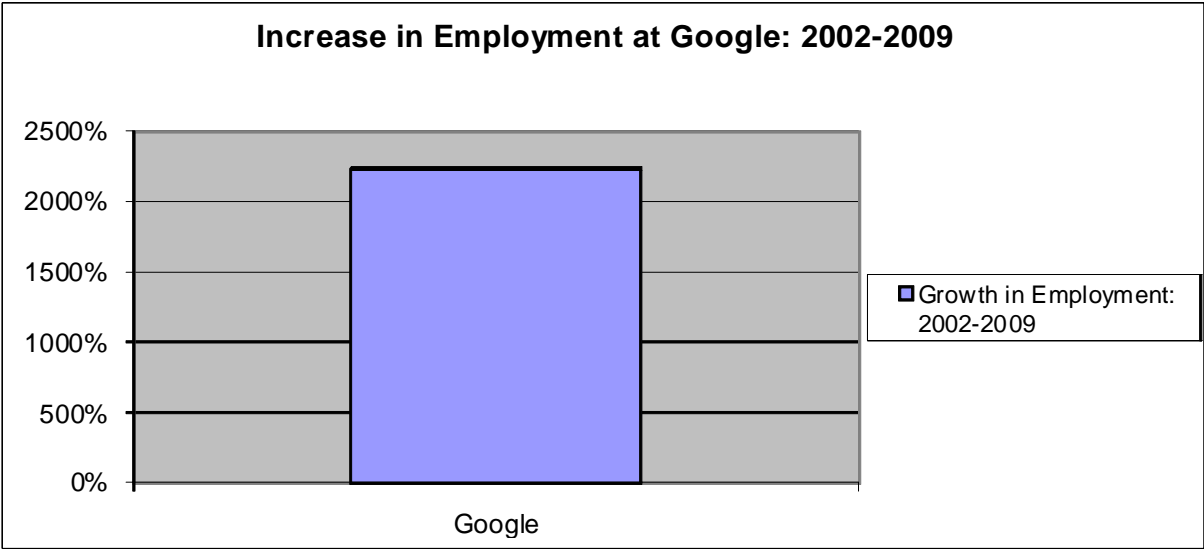
Small businesses and U.S. educational or non-profit entities generally do not possess the resources or logistical capacity of companies the size of Google or Microsoft to establish overseas offices. That means such employers likely would have to go out without an outstanding high skilled foreign national when the H-1B cap is reached or another obstacle prevents hiring.



This could impede the ability of small businesses to grow into larger companies, since talent is a crucial component of successful enterprises.

In the course of the recruitment process it is common for American companies to come across talented individuals, including on college campuses, born in the United States. According to Google, 90 percent of its employees are American citizens or lawful permanent residents. “Google’s hiring process is rigorous, and we make great efforts to uncover the most talented employees we can find. Often times, many of these exceptional employees were born here in the United States and have spent their whole lives here. But in other cases, the most talented software engineer or product manager we can find happens to have been born elsewhere,” said Bock.¹⁶

Figure 3



Source: Hoovers, Company data, National Foundation for American Policy; employment figures are worldwide.



Approximately eight percent of Google’s U.S.-based employees are working on H-1B temporary visas. “So, while nine out of 10 of our employees are citizens or permanent residents, our need to find the specialized skills required to run our business successfully requires us to look at candidates from around the globe – many of whom are already in the U.S. studying at one of our great universities,” said Bock. “It is no stretch to say that without these employees, we might not be able to develop future revolutionary products like the next Gmail or Google Earth.”¹⁷

At the hearing, Bock shared two examples of H-1B visa holders at Google:

Orkut Buyukkokten was born in Konya, Turkey, and later received his Ph.D. in computer science from Stanford University. He joined Google as a software engineer in 2002 through the H-1B visa program. Every engineer at Google is allotted what we call “20 percent time,” giving them the freedom to spend one day a week pursuing whatever projects interest them. In his 20 percent time, Orkut developed and programmed a new social networking service, which Google later launched publicly and dubbed – you guessed it – “orkut.” Today, orkut – the web service – has tens of millions of users worldwide, and is so popular in Brazil that Orkut – the person – was treated as a celebrity on a recent visit there. After spending four years in the U.S. on an H-1B visa, Orkut recently received his green card for permanent residency.

Krishna Bharat joined Google even earlier, in 1999, and also through the H-1B program. A native of India, he received his Ph.D. from Georgia Tech in human computer interaction. His work on web search at DEC Systems Research Center and at Google earned him several patents, and he is a noted authority on search engine technology. Krishna was one of the chief creators of Google News, our service that aggregates more than 4,500 English-language news websites around the world. Today, Krishna serves as Google's Principal Scientist, and he, too, has received his green card for permanent residency.

Without Orkut and Krishna – and many, many other employees – Google would not be able to offer innovative and useful new products to our users. Immigration laws that enable us to attract and retain highly skilled workers, regardless of their country of origin, make that possible.¹⁸



Based on the size of Google’s workforce, it is apparent the company hires foreign nationals *in addition* to Americans, not instead of them. “We believe that it is in the best interests of the United States to welcome into our workforce talented individuals who happen to have been born elsewhere, rather than send them back to their countries of origin,” said Bock. “But this doesn't mean we don't recruit here in the U.S., or that American workers are being left behind. To the contrary, we are creating jobs here in the U.S. every day.”

“However, many of our core products are created and improved here in the U.S., and we believe that worker satisfaction is higher when employees can work in the location they prefer. Being able to have H-1B visa holders remain in the U.S., building our products and expanding our business, also translates into more jobs and greater economic growth here at home,” said Bock. “America's edge in the world economy depends on the ability of U.S. companies to innovate and create the next generation of must-have products and services. And that ability to innovate and create in turn depends on having the best and brightest workers.”¹⁹

Critics argue companies do not hire the best and brightest, that many of the workers on H-1B are younger and have yet to prove themselves. But just like a sports team, companies seek people with both proven experience as well as those who display promise. Who better than the employer is in the best position to judge whether someone will help a firm succeed now and/or in the future? If businesses are overlooking talented native-born individuals, then, in a market economy, eventually other companies will snap up that talent and become successful, in effect, punishing those employers who ignored exceptional workers.



The majority of H-1B visa holders admitted each year have earned a master's degree or higher. In FY 2008, 57 percent of H-1B professionals hired for initial employment in the United States had a master's degree or higher, according to the Department of Homeland Security. Forty-one percent earned a master's degree, 11 percent earned a Ph.D. and 5 percent a professional degree.²⁰

Some argue America should only admit high skilled immigrants or temporary visa holders who have already established a level of proven genius, turning the H-1B visa into an "Einstein Visa." However, even Nobel Prize winners are often only promising students when they first arrive in America. Australian-born Elizabeth Blackburn, who came to the United States as an international student in 1975 is an example. In 2009, more than 30 years after her arrival in the U.S., Blackburn was awarded the Nobel Prize for Medicine, along with fellow immigrant Jack Szostak, born in London, and American-born Carol Greider. Greider and Blackburn "published a paper announcing the discovery of the enzyme telomerase."²¹ Dr. Blackburn and Dr. Szostak established that "repeated DNA sequences make up the tips of each chromosome."²² Research into cancer, cardiovascular disease and other age-related illnesses has been aided by the discovery.²³

America's Biggest Problem: Too Much Talent?

When is the last time you heard a coach or general manager of a sports franchise say: "The problem is we have just too much talent. We really need to take talent off our team and let



those guys go play for other teams”? In the real world, any coach or general manager who ventured such an argument would be looking for a job himself.

As strange as it may sound, critics of high skilled immigration have put forward precisely that proposition, arguing America is producing too much talent and that we need to make sure foreign nationals, no matter how productive or inventive, leave America (or are blocked from entering in the first place) and go work in other countries or for foreign competitors.

In a variation on the “lump of labor” fallacy, it is argued, even if there is not a fixed number of jobs in the U.S. economy, then surely there are only a specific number of jobs in certain fields. But in an economy where two decades ago virtually no one worked in e-commerce or in jobs connected to the Internet – where companies named Google, Amazon and eBay did not even exist – it is unwise to assume anyone knows or can predict how many workers and with which skills U.S. employers require.

It should be a controversial notion that the U.S. government possesses the ability to determine precisely how many workers of a particular type are needed in a market-based economy. (See later discussion on proposal to establish a commission to regulate the supply of foreign-born workers.) The Urban Institute’s 2007 report illustrates how difficult it is to attempt such “bean counting.”

To reach its conclusion that America is producing too much talent, the Urban Institute sought to match science-related jobs with U.S. degree production by using a definition of science and engineering (S&E) jobs that *excluded 8 million employed U.S. professionals* who use their math and science degrees in the place of work.²⁴ The designation “science and engineering



occupation,” which the Urban Institute used, is a poor measure of the math, science and engineering labor market. According to the National Science Foundation, “The S&E labor force does not include just those in S&E [science and engineering] occupations. S&E skills are needed and used in a wide variety of jobs.”²⁵

The Urban Institute study used a 4.8 million figure for science-related jobs (those jobs formally defined as S&E), even though *nearly 13 million workers* say they need a knowledge at a level of a bachelor's degree or higher in science and engineering fields to perform their jobs. As explained in the National Science Foundation's *Science and Engineering Indicators* (2008): “Approximately 12.9 million workers said in 2003 that they needed at least a bachelor's degree level of knowledge in S&E fields in their jobs. However, in that year only 4.9 million were in occupations formally defined as S&E.”²⁶

The National Science Foundation notes:

- “Fifteen million workers in 2006 had an S&E degree as their highest degree and 17 million have at least one degree in an S&E field.
- “Sixty-six percent of S&E degree holders in non-S&E occupations say their job is related to their degree, including many in management and marketing occupations.
- “Fifty-five percent of S&E degree holders who spent at least 10% of their work hours on R&D [research and development] were in non-S&E occupations.”²⁷

In sum, any effort that attempts to identify the precise number of workers needed in a given field is fraught with difficulty and is, in fact, impossible, given the vagaries of consumer demand, competition, future economic conditions and the potential impact of innovations on the marketplace. Moreover, as we have seen, even a good organization such as the Urban Institute



can adopt an inadequate definition of jobs or occupations that can result in missing about 8 million workers, roughly the size of the combined populations of Maine, New Hampshire, Rhode Island, Montana, South Dakota, Alaska, North Dakota, Vermont and Wyoming.

The Actual Problem

An excessive number of talented people is not America’s immigration-related problem. The actual problem is that many of these talented people we would like to see stay in the United States after graduation need a temporary work visa, usually an H-1B visa, and may be unable to get one.

The importance of foreign nationals to the U.S. economy in key fields can be seen in recent statistics. In electrical engineering, 68 percent of the fulltime graduate students (master’s and Ph.D.s) on U.S. college campuses were foreign nationals in 2006. In engineering overall, the percentage of foreign nationals was 54 percent, 47,484 out of 87,818 students.²⁸

**Table 2
Percentage of Foreign Nationals in U.S. Engineering Programs (2006)**

Field	Percent Fulltime Graduate Students with Foreign Student Visas	Fulltime Graduate Students with Foreign Student Visas
Electrical Engineering	68.2%	18,683
Engineering (Total)	54.1%	47,484

Source: National Science Foundation/Division of Science Resources Statistics, *Survey of Graduate Students and Postdoctorates in Science and Engineering*. Tables 18 and 21 of Graduate Students and Postdoctorates in Science and Engineering: Fall 2006.



In computer science 58 percent of the fulltime graduate students (masters and Ph.D.s) are foreign nationals, while 61 percent of the students in statistics, 60 percent in economics and 46 percent in physics are also foreign nationals.²⁹

Table 3
Foreign Nationals in U.S. Graduate School Programs in Selected Fields (2006)

Field	Percent of Fulltime Graduate Students with Foreign Student Visas	Total Fulltime Graduate Students with Foreign Student Visas
Statistics	60.8%	1,960
Economics (except agricultural)	59.6%	5,966
Computer Sciences	58.4%	16,801
Physics	45.9%	5,707
Chemistry	40.7%	7,712
Mathematics/Applied Mathematics	39.4%	4,862

Source: National Science Foundation/Division of Science Resources Statistics, *Survey of Graduate Students and Postdoctorates in Science and Engineering*. Tables 18 and 21 of Graduate Students and Postdoctorates in Science and Engineering: Fall 2006.

The issue is not only access to talent for U.S. employers, although this is important. A broader economic problem for the United States is if international students cannot work in America after graduation many will decide not to come in the first place to study. Working in the U.S. after graduation helps defray the cost of an American education and can be important for an individual's career.



While U.S. immigration policy often seems determined to prevent international students from staying to work in the United States, other countries view America's loss as their gain. Canadian consulates in the United States actively recruit skilled foreign nationals to work in Canada. "Each year, a wave of foreign-born employees in the U.S. exhausts the sixth and final year of work visas known as H-1Bs – documents created for companies who can't find homegrown talent to fill certain jobs," reports the Canadian magazine *Macleans*. "But politicians in Congress have for years fought for a cap on the number of new H-1Bs (it now stands at 85,000), which has left thousands of educated, skilled workers out in the cold. It is these workers Ottawa has been targeting, and its efforts appear to be paying off. During the period from 1998 to 2008, the number of skilled workers coming into the country from the United States more than doubled, from 1,969 to 4,085."³⁰

Highly educated foreign nationals are acutely aware of the ebbs and flows of immigration policy. According to a 2009 survey of 1,200 international students, "The vast majority of foreign students, and 85 percent of Indians and Chinese and 72 percent of Europeans are concerned about obtaining work visas" in the United States.³¹ This relates largely to obtaining H-1B temporary visas, since the supply has often been exhausted before or during a fiscal year. The Duke University and University of California, Berkeley survey also found 55 percent of Chinese, 53 percent of Europeans and 38 percent of Indian students said they were concerned about obtaining permanent residence.³² These are high percentages given that green card sponsorship is usually much further away on the timeline for most international students.



If many outstanding foreign nationals continue to see brighter futures in their home countries, then it leaves the U.S. economy vulnerable to losing a pool of talent that has helped spur jobs, growth and innovation inside the United States. Moreover, without those international students many graduate programs on U.S. campuses would not be available for American students.

In its recent report, the AFL-CIO comments on the rise in computer science Ph.D.s from American universities since 2002. However, the number of individuals completing Ph.D.s in computer science from 2002 to 2007 actually would have declined if foreign nationals were not included in the totals. While doctorates in computer science more than doubled from 2002 to 2007, if foreign nationals decided not to study in America during those years – for example, if new laws had made it impossible to work in America after graduation – Ph.D. production in computer science from U.S. universities would have fallen by more than 9 percent during those years.³³

But shouldn't U.S. employers do more to educate Americans for technology-related jobs? The difficulty with a standard of "more" is it implies a level that would never satisfy critics. In the United States, education policy is the domain of local, state and (increasingly) federal officials. U.S. businesses do not possess the authority to change education or school policies, though the vast majority of company employees are U.S. citizens so American businesses already possess plenty of incentive to see better education results.

A large source of education funding in America is derived from U.S. employers. American businesses pay over \$91 billion a year in state and local taxes directed toward public



education, according to the Tax Foundation.³⁴ Major and local businesses also fund charitable activities related to education, including sponsoring math and science competitions. Oracle, Intel and Microsoft and other corporations have made considerable charitable contributions aimed at improving U.S. education. Microsoft stock has funded the Gates Foundation's contributions of more than \$3 billion to U.S. public education.³⁵

H-1B visas have become a large source of funding for scholarship money for U.S. students. Under U.S. law, the initial petition and renewal of an H-1B professional mandates a \$1,500 tax/fee that comes directly from U.S. employers to fund scholarships for U.S. students and job training for American workers. Since Congress initiated the scholarship/training fee in FY 1999 – and raised the level twice – employers have paid more than \$2 billion in such fees.³⁶ These fees for H-1Bs have funded more than 53,000 math and science college scholarships for U.S. students through the National Science Foundation. The fees have also been used to pay for hands-on science programs for 190,000 middle and high school students and 6,800 teachers. Training has been provided to more than 55,000 U.S. workers with the company-paid H-1B fees.³⁷

Innovation Matters, Especially When the Economy Slows

Some argue that if U.S. employers lay off workers they should not be allowed to hire high skilled foreign nationals. But such an argument implies all people and all job functions are identical. Often even successful companies that grow their workforce year after year will find the need to stop growing and retrench due to market or economic conditions out of their control. In



these situations the worst policy would be to prevent such companies from hiring skilled personnel in key positions.

Research by William Kerr (Harvard Business School) and William F. Lincoln (University of Michigan) show a connection between H-1B admissions and increased patent filings. They found this connection both for cities and companies. In 2006, the Indian and Chinese inventors' share of U.S. domestic patents filed by Intel and Applied Materials exceeded 30 percent, according to Kerr and Lincoln. In Intel's case the Indian and Chinese share increased from around 20 percent in 1995 to nearly 40 percent a decade later. For both IBM and Microsoft the Indian and Chinese inventor's share of U.S. domestic patents increased to over 20 percent by 2006, nearly doubling since 1995.³⁸

Sometimes layoffs occur because a product or service has outlived its place in the market. In order to grow, companies generally need to develop new or improved products and services, and need to shift resources with that in mind. Hiring high skilled foreign nationals alongside U.S. professionals can help a company retain its competitive edge in the marketplace.

H-1Bs and the U.S. Labor Force

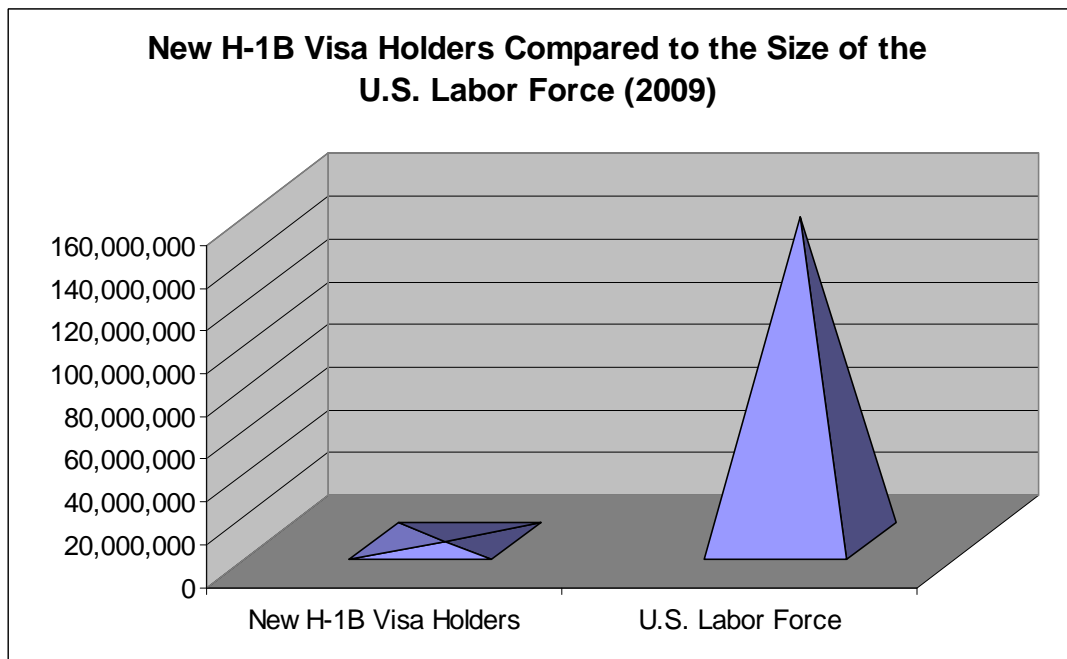
As one can see in Figure 4, new H-1B visa holders represent a small number of workers when compared to the size of the U.S. labor force. In 2009, new H-1B visa holders accounted for 0.06 percent of the U.S. labor force.³⁹

Table 4 shows that in FY 2009, 27,288 employers hired at least one individual on a new H-1B petition, according to USCIS. A total of 18,747 employers, or 69 percent, hired only one



foreign national on a new H-1B petition. Overall, 96 percent of the employers (26,304 of 27,288) hired 10 or fewer individuals on a new H-1B petition. U.S. employers who hired only one to 10 new H-1B visa holders utilized 52 percent of the new H-1B petitions in FY 2009.⁴⁰

Figure 4



Source: U.S. Citizenship and Immigration Services, U.S. Department of Labor, National Foundation for American Policy



**Table 4
Employers Using H-1B Visas in FY 2009**

Employers Hiring 1 or more new H-1B visa holders	27,288
Employers Hiring 1 to 10 new H-1B visa holders	26,304
Employers Hiring 1 new H-1B visa holder	18,747

Source: U.S. Citizenship and Immigration Services

H-1B Visas and Wages

Since Americans cherish a merit-based selection process for hiring in the workplace, opponents of H-1B visa holders must argue skilled foreign nationals are paid less than their native counterparts. Such an argument makes sense for political reasons: If opponents were to concede foreign nationals are working for comparable wages, then critics would be asking for political support to deny opportunity to other people based only on the desire to block competition. The “cheap labor” argument is tinged with nationalism. It asks Americans and their elected representatives to believe individuals born outside the United States have little of value to offer prospective employers except a willingness to work for less.

Research indicates the foreign-born in general do not lower the wages of natives and that H-1B visa holders in specific are not harming the earnings of Americans. The policy think tank most closely aligned with the labor movement, the Economic Policy Institute (EPI), recently issued a paper that found immigration is likely to raise – not lower – the wages of natives. This result is similar to other research on the topic in recent years and contradicts the argument by labor unions and opponents of immigration more generally that the foreign-born harm the



employment prospects of natives. “A key result from this work is that the estimated effect of immigration from 1994 to 2007 was to raise the wages of U.S.-born workers . . . ” according to the study author EPI economist Heidi Shierholz.⁴¹ This finding is similar to other research, including that of economist Giovanni Peri, who also concluded immigration raises the wages of natives.

In a paper for the Washington, D.C.-based Immigration Policy Center, University of California, Berkeley economist Giovanni Peri addressed the benefits of high skill foreign nationals being allowed to work in America. “The United States has the enormous international advantage of being able to attract talent in science, technology, and engineering from all over the world to its most prestigious institutions . . . The country is certainly better off by having the whole world as a potential supplier of highly talented individuals rather than only the native-born,” he wrote.⁴²

Peri explained the reason his research shows a gain from immigration to native-born Americans with a college degree:

The relatively large positive effect of immigrants on the wages of native-born workers with a college degree or more is driven by the fact that creative, innovative, and complex professions benefit particularly from the complementarities brought by foreign-born scientists, engineers, and other highly skilled workers. A team of engineers may have greater productivity than an engineer working in isolation, implying that a foreign-born engineer may increase the productivity of native-born team members. Moreover, the analysis in this paper probably does not capture the largest share of the positive effects brought by foreign-born professionals. Technological and scientific innovation is the acknowledged engine of U.S. economic growth and human talent is the main input in generating this growth.⁴³



The Economic Policy Institute study examined the impact of “foreign-born” workers, which, the author notes include “naturalized U.S. citizens, permanent residents, temporary visa-holders, refugees, or undocumented workers.”⁴⁴ Shierholz states it was not possible to identify all subgroups within the data used: “We cannot, for example, answer the question of whether the H-1B temporary visa program is suppressing the wages of high tech workers, or whether undocumented farm workers are suppressing wages in agriculture. What we estimate is the effect of increase in the foreign-born labor supply on the relative wages of native-born workers overall and by education level, gender, and age. In this analysis we find little evidence of large negative impacts, though we acknowledge that this may be masking very different outcomes in certain localities, industries and occupations.”⁴⁵ This caveat may reflect a desire not to quarrel with the view held by some in the labor movement that individuals on temporary visas *must* harm native workers (whether or not the facts support that proposition).

The Economic Policy Institute study and other research indicates there is little evidence H-1B temporary visa holders harm natives. Shierholz points out the economic literature distinguishes between workers who are “substitutes for” or “complements to” other workers. “If natives and immigrants fulfill different roles in the production process, then they may play complementary roles, and it is less likely that the supply shock in one group will hurt the other groups, and it may in fact help them,” notes Shierholz.⁴⁶

Madeline Zavodny, a research economist at the Federal Reserve Bank of Atlanta, questions the view that widespread underpayment of H-1B professionals exists. She examined data on U.S. workers and labor condition applications for H-1Bs. Zavodny found, “H-1B



workers [also] do not appear to depress contemporaneous earnings growth.” As to unemployment, the study concluded that the entry of H-1B computer programmers “do not appear to have an adverse impact on contemporaneous unemployment rates.” The study also noted that some results “do suggest a positive relationship between the number of LCA [Labor Condition] applications and the unemployment rate a year later.” Zavodny concluded: “None of the results suggest that an influx of H-1Bs as proxied by Labor Condition Applications filed relative to total IT employment, lower contemporaneous average earnings. Indeed, many of the results indicate a positive, statistically significant relationship.” This could indicate H-1B professionals are complementary to native professionals.⁴⁷

While much of the research attempting to find the impact of H-1B visa holders on natives has focused on computer programmers, less than half (52,984 or 48 percent) of the H-1B petitions issued for initial employment in FY 2008 were for “occupations in systems analysis and programming,” according to the Department of Homeland Security.⁴⁸ H-1B visa holders are spread across many other fields, including accounting, engineering, medicine and education. Much of the competition for U.S. programming work has become global, as a good deal of the work can be done in other countries. Still, it is programmers who tend to be the most active in their opposition to the entry of H-1B visa holders.

A 2009 study by University of Maryland researchers Sunil Mithas and Henry C. Lucas, Jr. found foreign-born professionals in information technology (IT) earned more than their native counterparts. “Contrary to the popular belief that foreign workers are a cheap source of labor for U.S. firms, we find that after controlling for their human capital attributes, foreign IT



professionals (those without U.S. citizenship and those with H-1B or other work visas) earn a salary premium when compared with IT professionals with U.S. citizenship,” wrote Mithas and Lucas. “Firms pay a premium not for the education of non-US citizens, but for their IT skills as reflected in their IT experience.”⁴⁹ The study examined the skills and compensation of over 50,000 IT professionals in the United States between 2000 and 2005. Similar to Zavodny, Mithas and Lucas conclude, “This result implies complementarity among American and foreign IT professionals and supports the view that high-skill immigration can potentially make everyone (i.e., American as well as foreign workers) better off.”⁵⁰

The Economic Policy Institute paper looked at the impact of immigration on college-educated workers overall and did not find a negative effect. The EPI paper found the impact of immigration between 1994 and 2007 was to raise by 0.7 percent the wages of the U.S.-born college-educated (the Americans who are most likely to compete with skilled foreign nationals).⁵¹

High Fees Paid By U.S. Employers: An Overlooked Part of the H-1B Wage Issue

The law requires employers to pay an H-1B visa holder the prevailing wage or the actual wage paid to other comparable U.S. workers. In addition, the complexity of U.S. immigration law and regulations requires employers to pay immigration attorneys, as well as an assortment of mandated government fees when hiring foreign nationals.

The American Council on International Personnel estimates the government and legal fees for petitioning for an H-1B professional and renewing that petition after three years would



be \$8,540 to \$15,083. Without the renewal or dependents, the cost would range from \$4,120 to \$6,751.⁵² This includes legal costs, government-mandated training/scholarship fees, an anti-fraud fee, and application and visa fees. (See Table 5.)

Critics fail to mention these large fees, which certainly undermine the argument that H-1B professionals are hired to save money. The time and uncertainty involved in the H-1B process also is an expense, a type of tax on hiring foreign nationals. Moreover, the legal and government fees do not include the hours spent by an employer's human resources department and the need to hire HR people knowledgeable in the complexity of immigration law and procedures.



**Table 5
Legal and Government Fees to Petition for an H-1B Visa Holder**

VISA	LEGAL FEES (est.)	GOV'T FEES	TOTAL
H-1B Visa Fees	\$1,800 – 2,500 (employer pays attorney fees related to filing the LCA and the H-1B petition, and typically pays other attorney fees)	\$1,500 education/training fee (employers pay, unless exempt) \$500 anti-fraud fee (employer pays) \$1,000 (optional) premium processing (employer or employee may pay, but employer typically pays; employee may pay to facilitate personal travel) \$320 application fee (employer pays) Additional fees if consular processed: \$131 (Visa application processing) \$0 – 800 (Visa issuance/reciprocity)	\$4,120 to \$6,751
H-1B Visa Extension Fees	\$1,800 – 2,500 (employer pays attorney fees related to filing the LCA and the H-1B petition, and typically pays other attorney fees)	\$1,500 education/training fee (employers pay, unless exempt) \$500 anti-fraud fee (not required if extension under the same employer) \$1,000 (optional) premium processing (employer or employee may pay, but employer typically pays) \$320 application fee (employer pays) Additional fees if consular processed: \$131 (Visa application processing) \$0 – 800 (Visa issuance/reciprocity)	\$3,620 to \$6,751
H-4 Dependent Fees	\$500 – 750 (employer often pays, but not required)	\$300 application fee (employer usually pays but not required) Additional fees if consular processed: \$131 (Visa application processing) \$0 – 400 (Visa issuance/reciprocity)	\$800 to \$1,581
TOTAL H-1B COSTS			\$8,540 to \$15,083

Source: American Council on International Personnel, found at www.acip.com



The cost to sponsor an individual for a green card (permanent residence) is much higher and involves an even greater degree of uncertainty and time commitment for the employee and the employer. The American Council on International Personnel estimates the costs for sponsoring an employment-based immigrant for a green card to be between \$12,135 and \$23,270. (These are fees beyond the H-1B petition costs. See Table 6.) The complexity of a case can affect the costs and the type of paid advertising necessary to fulfill the requirements of “labor certification,” which the U.S. government requires to show there is no available and equally qualified U.S. worker for the job. Combined H-1B and green card sponsorship costs could exceed \$35,000 for one individual.

Table 6
Legal and Government Fees for Sponsoring an Employment-Based Immigrant for Permanent Residence (Green Card)

LEGAL/OTHER FEES (est.)	GOVERNMENT FEES	TOTAL
<p>\$10,000 –12,000 (this includes legal fees for preparing labor certification, adjustment and consular processing.)</p> <p>\$500-\$8,000 estimated costs for advertising/recruitment will vary depending on location, dates and length of advertising (employer must pay for labor certification costs, cannot ask employee to reimburse)</p> <p>\$500 per family member</p> <p>\$500 per EAD extension</p> <p>\$500 per advance parole extension</p> <p>(Employer must pay attorneys’ fees for green card if the same attorney represents both employer and employee)</p>	<p>\$150 – 300+ estimated costs for medical exam and any necessary vaccinations (employee may pay)</p> <p>\$1,000 (optional) premium processing for Form I-140 (available for certain EB-1, EB-2 and EB-3 applicants)</p> <p>\$1,485 this includes:</p> <ul style="list-style-type: none"> -\$0 Labor Certification -\$475 (Form I-140) -\$1010 (\$930 for Form I-485 + \$80 for the biometric fee) <p>*employer is not required to pay but the I-140 is filed by and typically paid for by the employer</p> <p>Additional fees if consular processed:</p> <p>\$485 (\$355 Immigrant visa application fee per person + \$45 Immigrant Visa Security Surcharge + \$85 fingerprint fee) – fees are the same for each separate family member</p>	<p>\$12,135 – \$23,270</p> <p>(does not include family members, or any legal fees for EAD or advance parole extension costs that might be required due to processing delays)</p>

Source: American Council on International Personnel, found at www.acip.com



The Indentured Servant Myth

One of the phrases critics attach to H-1B visa holders is “indentured servants.” Any serious examination shows that unless an employer is violating the law – and a worker countenances such a violation – the comparison between H-1B professionals and indentured servants is a gross misrepresentation of reality.

The law does not require an H-1B professional to stay with a specific employer or for an employer to make such an employee pay back costs incurred in the hiring process. Under the law, H-1B visa holders can change employers if another employer files a petition on their behalf. In fact, Congress made it easier for those in H-1B status to change jobs by allowing movement to another employer before all paperwork is completed. “When the economy is good, someone on an H-1B can usually get a new job in a few weeks,” said Warren Leiden, partner, Berry Appleman & Leiden LLP.⁵³

Data from the Department of Homeland Security show that in FY 2008 more H-1B applications were approved for “continuing” employment than for initial employment. Continuing employment also includes H-1B professionals “extensions” to stay at the same employer for an additional three years. However, anecdotal evidence indicates many if not most “continuing” employment petitions involve an H-1B visa holder moving to a new employer.⁵⁴

To the extent H-1B visa holders are reluctant to change jobs after beginning an application for a green card, the solution is to provide more employment-based immigrant visas and eliminate the current green card backlog. Raising the quotas for employment-based green cards can address this problem.



Hyperbole About Indian Company Use of H-1B Visas

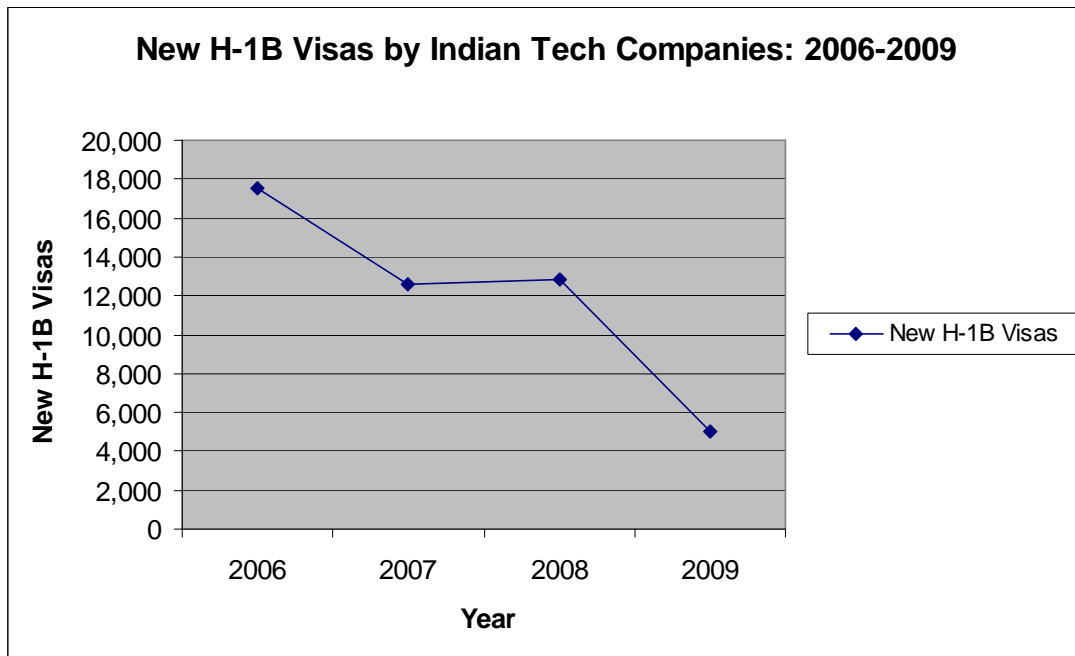
While some have expressed fears that H-1B professionals hired by Indian companies threaten the U.S. workforce – or have expressed concern that Indian companies do not sponsor many of their employees for green cards – the actual numbers are such as to make any concerns overwrought, even if using a simplistic, zero-sum view of the labor market.

In FY 2009, Indian tech companies used 4,809 new H-1B visas, which equals to 0.003 percent of the U.S. civilian labor force, less than 1/100th of 1 percent.⁵⁵ The new H-1Bs used by Indian companies represented only about 6 percent of the total initial beneficiaries (new employment), according to USCIS. Moreover, H-1B use by Indian companies has declined by 70 percent between 2006 and 2009.⁵⁶ To put these numbers in perspective: the 4,809 new H-1B professionals employed by Indian companies in 2009 could all attend a high school football game together in Texas and there would still be room left over in the stands.⁵⁷

When information technology services companies – whether Indian or non-Indian – perform work in the United States it is only because U.S. companies believe such work makes their businesses more profitable. And if such service providers enable U.S. businesses to concentrate on core functions and run more effectively, then U.S. companies can hire more people in the long run.



Figure 5



Source: USCIS, National Foundation for American Policy

Employment-Based Green Cards: Expensive, Time-Consuming and Not For Everyone

It is clear that many employers sponsor H-1B visa holders for green cards, otherwise the backlogs would not be so significant. However, sponsoring an individual for an employment-based green card is expensive and involves a great commitment of time by both the employer and the employee. As noted, the American Council on International Personnel estimates the cost for green card sponsorship could exceed \$35,000 for one individual. Moreover, the current wait times for new applications can be many years and depends on the employee's country of origin. To argue an employer does not value employees because only a certain percentage of H-1B or L-



1 visa holders are sponsored for permanent residents requires policymakers to read the hearts and minds of human resources personnel at U.S. companies and organizations. It ignores that not all employees intend to stay in America their entire lives when coming to work here and that traditionally individuals have worked on temporary visas for a time and then returned home.

Prior to 1990, temporary visa holders entering on an H-1, the precursor to the H-1B designation, could be denied admission to the United States if they intended to stay permanently (i.e., intend to have an employer sponsor them for a green card). Legally, those who entered on an H-1 were only to work either on projects or for periods of a limited duration and then return home. When Congress changed U.S. immigration law in 1990 it included a provision to allow “dual intent” in its redesigned H-1B category. This change in the law meant an individual could intend to immigrate to the United States and did not have to prove to a consular officer that he or she would return to his or her home country after working in the United States.

Critics of the H-1B category have turned this history on its head by arguing, in effect, it is illegitimate for an employer to petition for an H-1B professional *unless* the employer intends to sponsor the individual for permanent residence (a green card).⁵⁸ The AFL-CIO argued in its recent report: “Many firms that request H-1B visas for workers in STEM (science, technology, engineering and math) fields do not or rarely sponsor guest workers for green cards, which illustrates a lack of commitment to and investment in their guest worker workforce.”⁵⁹ Others have made similar arguments.⁶⁰

There are several problems with such arguments, including the aforementioned misreading of the history of temporary employment visas. First, some companies use H-1B visas



primarily to serve clients on projects in the United States rather than service the clients overseas. For the U.S. economy, it is generally preferable for the servicing to take place in the United States. However, employees on H-1Bs in such circumstances are by definition expecting to work in the U.S. only for a limited period of time. This would make green card sponsorship unlikely. It does not make the workers ill treated if they return to India or elsewhere with experience working in the United States, but without a green card.

It seems strange to argue, as some critics do, that companies are not investing in their H-1B professionals if they don't sponsor them for green cards, while also claiming H-1B visa holders gain such valuable training in the United States that when they return to India or elsewhere the former H-1B visa holders threaten the jobs of U.S. workers.

A rational look at the numbers does not indicate any risk. As discussed earlier, Indian tech employers used approximately 4,800 new H-1B visas in FY 2009, compared to a U.S. labor force of over 150 million people. Even quadrupling this Indian total would not represent any significant number of people in relative terms, particularly given that company investment, consumer spending and possible complementary work functions are likely to lead the work of the H-1B professionals to create jobs while working in the United States.

Second, the AFL-CIO and other critics want to eliminate or restrict H-1B and L-1 visas in a way that would actually prevent employers from having the opportunity to sponsor foreign professionals for green cards. In most cases, it is necessary for an individual to gain work status in the United States on an H-1B before an employer files for a green card (permanent residence). That is because the wait time for most professionals seeking permanent residence is six years or



even much longer. For this reason it is currently not possible for most employers to hire foreign nationals directly on green cards.

A November 2009 analysis found the wait time for new potential green card holders from India (in the third employment preference) may be as long as 20 years.⁶¹ The wait is longer for nationals from India because the per country limits generally prevent more than approximately 10,000 employer-sponsored immigrants from receiving a green card each year. Indians have often accounted for half of H-1B visa holders annually. Given the current wait times for green cards it is probably a good thing not all employers seek to sponsor their employees on H-1B visas or the green card backlogs would be even larger.

Third, it is instructive that the AFL-CIO and most other critics of H-1B visas do not advocate for more green cards for skilled foreign-born professionals. (The IEEE, which has called for more green cards for foreign graduates of U.S. universities, is a notable exception.) The AFL-CIO's endorsement of a commission designed to limit employment-based immigration and the work of former Carter Administration Labor Secretary Ray Marshall indicates the union opposes the entry of skilled foreign nationals entering the United States through legal visa categories in general, whether temporary or permanent.

A recent tactic in the immigration debate has been to single out specific companies for criticism. For example, research based on information in the Department of Labor's public database for PERM has implied that the Intel Corporation no longer seeks to sponsor H-1B visa holders for permanent residence.⁶² However, interviews with Intel's human resources department and the company's outside immigration counsel make it clear that is a mistaken assumption.



“Intel sponsors virtually all of its H-1B visa holders for green cards,” said Patrick Duffy, human resources attorney, Intel Corporation.⁶³ In early 2009 Intel filed over 600 PERM applications (for labor certification) for H-1B employees as part of the process of obtaining permanent residence for them. DOL started adjudicating those applications in December 2009 and the vast majority have been approved as of April 1, 2010, according to Intel’s outside counsel Rod Malpert, partner, Fragomen, Del Rey, Bernsen and Loewy.⁶⁴

The available evidence indicates the timing of the applications has led to the misperception that Intel is not sponsoring individuals for green cards. The root issue is the cost, complexity and time involved in preparing and filing PERM applications, which leads Intel to leverage economies of scale.

Intel files PERM applications in large batches, sometimes years apart, due to the cost and the intensive process, which normally requires placing advertisements and taking other actions to demonstrate to the Department of Labor “there are no qualified U.S. workers able, willing, qualified and available to accept the job at the prevailing wage . . .”⁶⁵ The cases filed in 2009 and recently approved would not have shown up in the Department of Labor’s public PERM database in FY 2008 or FY 2009. However, work on these cases started internally at Intel and with outside counsel back in 2008 because the preparation for filing a batch of PERM applications (such as advertising and evaluating any applicants for a position) takes at least six months, according to Rod Malpert.⁶⁶ Even after an application is submitted it can often take eight to 10 months for approval from the Department of Labor.



The AFL-CIO's Intellectual Inconsistency: Legalize Illegal Immigrants But Make It Illegal to Hire High Skilled Foreign Nationals

The AFL-CIO and some of its supporters have a problem with intellectual consistency when it comes to immigration. The union has adopted a position that welcomes workers who entered the United States illegally, while proposing stringent rules to prevent legal foreign-born professionals from being hired in the United States. In short, the policy is to legalize illegal immigrants but, in effect, to make it illegal to hire high skilled foreign nationals.

To see how the current AFL-CIO position works in practice let's take the (hypothetical) example of two men from Mexico – Juan and Alejandro. Juan has some background as a computer programmer but has trouble finding work in Mexico City. As a result, in 2008, Juan pays a smuggler and crosses illegally into the United States. After obtaining false documents, Juan works a series of odd jobs until he finds work as a computer programmer.

In contrast, Alejandro, also from Mexico City, decides the best career choice is to study for a graduate degree in a technical field. In 2008, Alejandro obtains a legal F-1 visa to enter a computer science program at Iowa State. In 2010, he receives a master's degree in computer science and would like to work in the United States.

What would implementation of the AFL-CIO's immigration policies mean for Juan (the illegal immigrant) and Alejandro (a lawfully admitted international student)? In an April 2009 press release, the AFL-CIO announced it supported legalizing those in the country illegally but also favored placing strict limits on any future business immigration, including by establishing a commission that could prevent employment-based immigrants from being allowed to work in the



United States.⁶⁷ Under the AFL-CIO’s current position on immigration, Juan would have made a much better choice to enter the country illegally. Why? A commission and other restrictive measures favored by the AFL-CIO would likely prevent “Alejandro” and other international students from obtaining H-1B status to work legally in the United States. However, legalization of status for those who have entered the United States illegally would help “Juan,” who crossed the border illegally.

Pointing out the gap in logic of the AFL-CIO position is not meant to disparage the role legalization can play as part of a comprehensive immigration reform effort. The U.S. Chamber of Commerce, ACIP and other business groups have endorsed legalization in conjunction with bills that also allow employers to hire individuals for low and high-skill jobs. But America should enact laws that treat skilled foreign nationals at least as favorably as we would treat those who enter the United States without legal status. To even consider shunning an international student who entered legally while embracing a worker who came here illegally undermines much of what the AFL-CIO professes to stand for on immigration matters.

Fraud Allegations

An issue that has gained greater attention in the H-1B policy debate is allegations of fraud. In September 2008, U.S. Citizenship and Immigration Services (USCIS) released an *H-1B Benefit Fraud & Compliance Assessment*.⁶⁸ The USCIS’s assessment program extracted a sample of 246 cases from 96,827 “approved, denied or pending petitions.”⁶⁹ To verify



compliance, USCIS sent Fraud Detection and National Security (FDNS) Immigration Officers to conduct interviews with the 246 petitioning employers and, when possible, the beneficiary.

The USCIS report divided employers into two basic categories – companies with less than \$10 million in annual revenue and businesses with more than \$10 million. (A division was also made based on employee size.) Even this modest separation of companies above and below \$10 million in annual revenues illuminates the issue.⁷⁰

The bottom line finding of the USCIS report is that there is little evidence of widespread abuse among companies with more than \$10 million in annual gross income (revenues). Only seven percent of companies with more than \$10 million in annual revenues (eight cases) were found to involve fraud or technical violations. USCIS did not provide a breakdown of those eight cases (how many were fraud vs. technical violations). However, if it maintained the same 2:1 ratio of fraud to technical violation cited overall in the report, then that would be about five cases of suspected fraud out of 113 cases or only about four percent.

Critics of H-1Bs have focused most of their ire at well-known, larger U.S. technology companies and Indian-based consulting firms. Both categories would have much more than \$10 million in annual revenue and more than 25 employees. In the USCIS report, companies with less than \$10 million in annual revenue had a 41 percent violation rate, compared to a seven percent rate for companies with greater than \$10 million in revenue. The USCIS analysis reported that 54 percent of companies with 25 or fewer employees had fraud or technical violations in their sample, compared to 11 percent for businesses with 26 or more employees.⁷¹



An aspect of the USCIS report that officials concede raised thorny issues is determining whether to categorize a finding at a particular employer “fraud” or a “technical violation.” While USCIS deserves credit for making these distinctions, were this the “real world” and not a baseline analysis designed primarily for internal purposes, a federal agency could not simply declare a company committed fraud and that would be the end of the matter.

A case in which fraud may be present would first be referred for prosecution, at which time an employer would have the ability to defend itself against any allegations. Therefore, it is possible at least some of the cases USCIS categorized as fraud for the purposes of the report would not withstand a defense put on by an employer in an impartial setting. The complexity of current U.S. immigration rules cannot be ignored as a reason for some employers being labeled out of compliance.

U.S. Citizenship and Immigration Services has responded to its report and Congressional criticism by authorizing a large number of random on-site audits of employers of H-1B visa holders. It has taken unprecedented steps by undertaking site visits to cover potentially a majority of the employers that hire skilled foreign nationals. The site visits are selected at random and provide deterrence given the large proportion of companies that could receive such audits, note agency officials.⁷² According to a November 2009 announcement, the immigration agency has planned to conduct up to 25,000 on-site inspections. To put that number in perspective in FY 2009, 27,288 different employers hired at least one individual on a new H-1B petition, with over 18,000 of these employers hiring only one person on a new H-1B petition.⁷³



Many companies report as many as 10 onsite visits to their firms to date, according to reports from members of the American Council on International Personnel.⁷⁴

Few if any government oversight efforts in any policy area have involved onsite visits of this magnitude or proportion. Despite this, it is likely critics in Congress will continue with various proposals to restrict the use of H-1B visas. In a letter to H-1B critic Sen. Charles Grassley, Alejandro Mayorkas, the director of U.S. Citizenship and Immigration Services, wrote, “[The inspection program determines] whether the location of employment actually exists and if a beneficiary is employed at the location specified, performing the duties as described, and paid the salary as identified in the petition.” The agency has also hired Dun & Bradstreet to verify information it receives from companies.⁷⁵

The responsible U.S. agencies should enforce current law, rather than Congress passing new laws. An employer that commits fraud under the existing statute will not become law-abiding under a new set of complex rules. New and burdensome requirements are likely to harm employers that do their best to obey current law and the dizzying array of regulations associated with hiring high skilled foreign nationals.

Current immigration law already contains significant deterrents to underpaying workers. “The consequences for violations in connection with the H-1B program are potentially severe,” note Kyle D. Sherman and Mark S. Johnson of Berry Appleman & Leiden LLP. “The Department of Labor, which oversees the LCA [labor condition application] portion of the H-1B program, may propose penalties including payment of back wages, civil money penalties from \$1,000 to \$35,000 per violation, and debarment of employers from participating in the H-1B and



other immigration programs.” Sherman and Johnson go on to note, “Beyond potential legal penalties, audited employers face other costs, including the loss of productivity by human resources professionals, managers and others who must expend valuable work time to prepare for and respond to government investigations.”⁷⁶

In addition to increasing cooperation between the two agencies, USCIS and the Department of Labor can limit fraud and help protect both H-1B professionals and, potentially, American professionals by empowering H-1B visa holders to blow the whistle on bad employers. Whistleblower protections exist under current law. However, these provisions are not widely known, carry a degree of ambiguity, and are virtually unpublicized by the Department of Labor and U.S. Citizenship and Immigration Services.⁷⁷

U.S. employers are paying for many of the anti-fraud efforts. Since 2005, U.S. employers have paid more than \$500 million in fees to fund government anti-fraud efforts on H-1B and L-1 visas, according to estimates of Department of Homeland Security data performed by the National Foundation for American Policy.⁷⁸

Merit-Based Hiring vs. Government-Imposed Commission

Hiring by Members of Congress has parallels to what high tech companies and other employers go through in the recruitment process. Just as most U.S. companies would be happy to hire U.S. workers to fill all their positions if only U.S. workers were the best candidates for the job, Members of Congress would hire only people from their own districts or, in the case of Senators, their own states, if only those people were the best qualified for the job. The more



specialized a position in a Congressional office, such as a chief counsel or defense/foreign policy aide, the more likely Members are to fill that position with someone from outside their state or district. That does not mean Members of Congress have no allegiance to their constituents anymore than U.S. employers lack allegiance to the United States because they choose to hire from the same global pool of talent as their domestic and foreign competitors.

This brings to mind efforts to impose a government commission to regulate the supply of labor in the U.S. economy. As described in a short book in 2009 by former Carter Labor Secretary Ray Marshall – and endorsed by the AFL-CIO and Change to Win in a press release – the commission would include nine members, appointed by the president and members of Congress for 9-year terms, and would possess the authority to set the conditions and annual limits for both high and low-skilled temporary visas and green cards, including the power to eliminate entire visa categories. And, perhaps most importantly, its findings and recommendations would become law unless blocked by Congress.⁷⁹

In an analysis of the commission proposal, the American Council on International Personnel, notes, “To date, no one has made the case that a commission would not become a new set of obstacles employers must overcome to hire foreign nationals. Even worse, a commission could be an irreversible policy change that threatens to end American companies’ access to highly educated professionals.”⁸⁰

In addition to all current requirements, the commission model endorsed by the AFL-CIO and Change to Win would set a new and formidable threshold for admitting foreign workers – a finding of a “certified labor shortage” in an occupation. A key problem with a “certified labor



shortage” standard is that the commission concept’s chief architect, Ray Marshall, has stated such a shortage has not existed in America at any time in recent memory.⁸¹ Therefore, one could conclude if the commission had been functioning over the past two decades, then few if any skilled immigrants who have come to America in the past 25 years would have been allowed into the country.

The labor market is global, not only domestic, a fact ignored in any commission proposal. A key reason a “labor shortage” may not show up in any government data is that employers find “work arounds” and take creative action, such as offshoring, to address an inability to hire people they need. In the technology field, if companies cannot find the individuals they need in the United States they can send the work to be done elsewhere, such as China, or hire people in other countries and expand their labor force abroad. In agriculture, one reason it is difficult to document a labor shortage in agricultural workers is that analyses do not distinguish between legal and illegal workers. Most farm workers are here illegally, according to the Department of Labor. Therefore, a commission would ratify and encourage what many see as undesirable outcomes.

Under the notion that foreign nationals would not be admitted for employment purposes unless “certified labor shortages” are identified by a commission, there appears no room for an employer to hire someone because that individual would make an important and measurable impact on the company. The commission would prevent talented people from being hired *in the United States*.⁸²



The data do not exist to determine fine gradations in particular fields, never mind to know the demand among all U.S. employers for specific specialties. For example, while we could determine how many people graduated with a degree in biology in a given year, we would not know how many are a good fit to work for individual companies to research gene manipulation for agriculture or treatments for genetic diseases. Of course, even those areas have subspecialties where even more specific background is required for the job.

As we have seen, even something as seemingly straightforward as determining how many people in America are working in science and engineering can yield widely differing results depending on the definition. In its report *Gaming the System*, the AFL-CIO cited an Urban Institute study that used the narrow definition “science and engineering occupation” in an effort to argue America is producing too many people in these technical fields when compared to the number of jobs available. However, as discussed earlier, using that definition excludes about 8 million people who, according to the National Science Foundation, said “they needed at a least a bachelor’s degree level knowledge of science and engineering in their jobs.”⁸³ (Any government commission’s attempt to determine the “correct” number of lower skilled workers for the U.S. economy likely would be even more problematic.)

These data problems make it even more worrisome that some elected officials have contemplated establishing a commission that would possess the ability to declare an “emergency” and thereby stop (or, in theory, raise) all U.S. employment-based temporary visas and green cards.⁸⁴ For years, critics of current employment-based immigration policies have decried the entry of skilled foreign nationals. If such critics held sway at a commission they



could declare an “emergency” and, unless blocked by Congress, halt employer-sponsored temporary visas and green cards.

One argument offered for a commission is it would keep politics out of immigration policy. A non-political commission in Washington, D.C. is unlikely. Elected officeholders would choose all of the members. Lobbying from all sides of the issue would move to these commission members. Employers would need to ask if the commission could certify certain types of employees, while the AFL-CIO and others would lobby the commission to oppose the entry of any workers. A commission would not end lobbying, but simply shift its focus to this new, unelected body of bureaucratic officials.

In truth, no supporter of a commission can be confident how it would work in practice. The mandates given to the commission by all advocates of the idea are general enough that commission members would be able to recommend anything they wish based upon personal preference, citing whatever data they desire to conform to their opinions. At best, everything would rest upon who is appointed, a dangerous “roll of the dice” for employers, immigrants and their families. It is even possible critics of family immigration will seek to include family-sponsored immigrants within the authority of the commission.

An earlier commission on immigration, chaired by Congresswoman Barbara Jordan, produced a series of proposals – later rejected by Congress – that many family, business, and religious groups viewed as ill conceived and highly political. The commission proposed more recently is far more powerful and represents a far greater threat, since its powers are contemplated to be both operational and permanent. “If Congress establishes a commission with



essentially legislative powers, then Members of Congress would have created a new power center in Washington, D.C. whose authority, in many respects, will rival their own on immigration policy,” concludes the American Council on International Personnel.⁸⁵

A Market-Based Cap

There is ample evidence a market-based cap – rather than the current fixed caps – would work well for H-1B visas. By maintaining low annual ceilings, Congress has succeeded only in encouraging U.S. employers to either delay growth plans in the United States or push more hiring, as well as capital, outside the United States. The current fixed cap of 65,000 H-1B petitions, plus an additional 20,000 petitions for foreign nationals with a master’s degree or higher from a U.S. university, has not reflected the market demand for skilled labor.

The labor market and economic conditions have determined the use of visas for high skilled foreign nationals. In the few years where Congress enacted a higher ceiling for H-1Bs, employers did not hire additional skilled foreign nationals simply because the annual cap was higher. As Table 7 illustrates, in FY 2002 and FY 2003, legislation set the H-1B annual cap at 195,000. However, approximately 230,000 visas in those two years went unused because economic conditions and employer needs lagged. Similarly, in FY 2010, the quota for H-1Bs remained unfilled at the start of the fiscal year (and for months into the fiscal year), even though in FY 2009 the demand was so high that the application process stopped months before the fiscal year started. In that year the immigration agency distributed the oversubscribed visas via a lottery system.



Congress can adopt a number of approaches to allow for the hiring of skilled foreign nationals to reflect labor market reality. One approach would be to eliminate the H-1B cap and allow the market to determine hiring decisions, rather than arbitrary caps. A second alternative is to raise the cap much higher to prevent it from interfering with the normal flow of hiring during the fiscal year. A third approach would be to eliminate the 20,000 limit on the exemption for those who receive a master's degree or higher from a U.S. university and to expand that to recipients of advanced degrees from accredited foreign universities. Any of these approaches, either alone or in combination, would place U.S. employers in a more competitive situation in global markets than the current system, which can result either in no hiring of a needed skilled professional in the U.S. or delays of 6 to 12 months.



**Table 7
H-1B VISAS ISSUED AGAINST THE CAP BY YEAR**

<u>Year</u>	<u>CAP*</u>	<u>#Issued</u>	<u>#Unused</u>
1992	65,000	48,600	16,400
1993	65,000	61,600	3,400
1994	65,000	60,300	4,700
1995	65,000	54,200	10,800
1996	65,000	55,100	9,900
1997	65,000	65,000	0
1998	65,000	65,000	0
1999	115,000	115,000	0
2000	115,000	115,000	0
2001	195,000	163,600	31,400
2002	195,000	79,100	115,900
2003	195,000	78,000	117,000
2004	65,000	65,000	0
2005	65,000	65,000	0
2006	65,000	65,000	0
2007	65,000	65,000	0
2008	65,000	65,000	0
2009	65,000	65,000	0
2010	65,000	65,000	0

Source: Department of Homeland Security; National Foundation for American Policy. *Does not include exemptions from the cap. Exemptions from the annual cap include those hired by universities and non-profit research institutes and 20,000 individuals who received a master's degree or higher from a U.S. university. The 20,000 exemption also has been exhausted each fiscal year since FY 2005.



Benefits of High Skilled Immigration

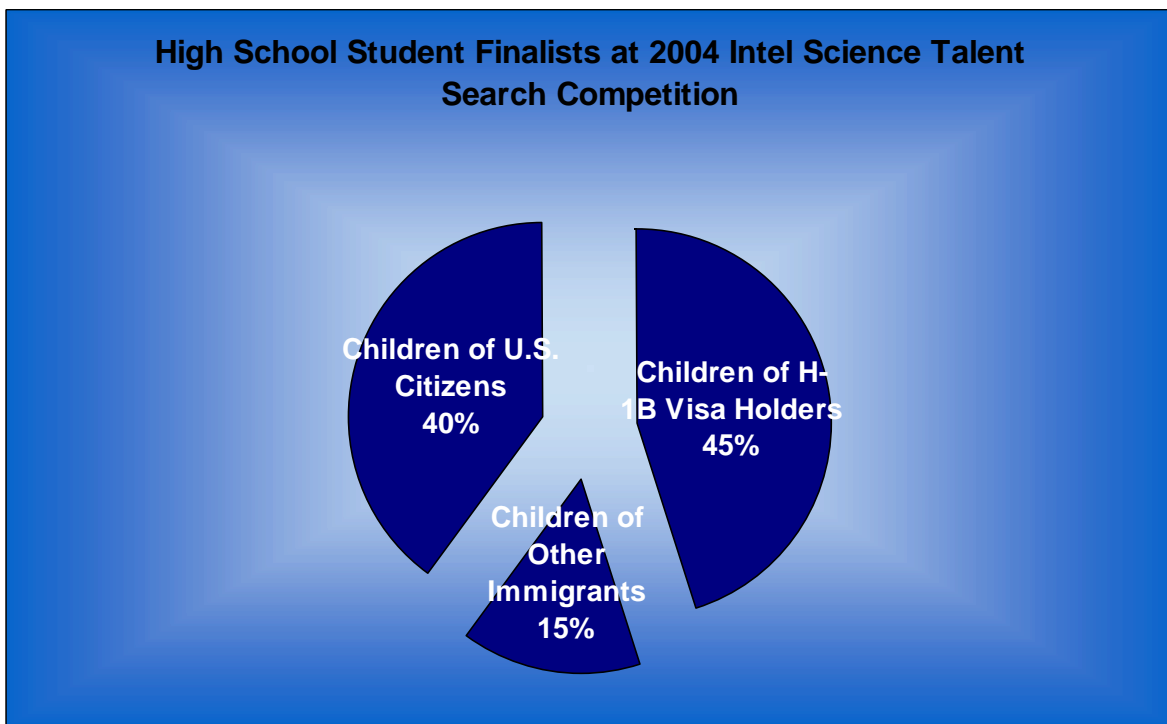
The vision of the AFL-CIO and other critics is of a future where American employers have little or no access to highly educated foreign nationals. Such a vision ignores much accumulated evidence about the benefits of foreign-born professionals:

- A study by the National Venture Capital Association found “Over the past 15 years, immigrants have started 25 percent of U.S. public companies that were venture-backed, a high percentage of the most innovative companies in America.”⁸⁶
- Duke University research concluded 25 percent of U.S. technology and engineering companies have at least one immigrant founder. These companies produced an estimated \$52 billion in sales and employed 450,000 workers in 2005.⁸⁷
- In electrical engineering, 68 percent of the fulltime graduate students (master’s and Ph.D.s) on U.S. college campuses were foreign nationals in 2006. In engineering overall, the percentage of foreign nationals was 54 percent, and in computer science the proportion was 58 percent.⁸⁸
- An overlooked benefit of admitting skilled foreign nationals is the achievements of their children in America (see Figure 6). Nearly half – 18 of 40 – of the finalists at the Intel Science Talent Search in 2004 had parents who entered the country on H-1B visas (known as H-1 prior to 1990). That compared to 16 of the 40 finalists who had parents born in the United States. (The other six students had parents who immigrated in the family, refugee or diversity category.) To place this in perspective, note that



approximately 85 percent of the U.S. population is native-born, while (well) less than 1 percent of the population consists of current or former H-1B visa holders.

Figure 6



Source: Intel Science Talent Search Competition, National Foundation for American Policy

- Paula Stephan (Georgia State University) and Sharon G. Levin (University of Missouri-St. Louis) performed extensive research on the contributions of the foreign-born in six areas of scientific achievement and concluded, “Individuals making exceptional contributions to science and engineering in the U.S. are disproportionately drawn from the foreign-born. We conclude that immigrants have been a source of strength and vitality



for U.S. science and, on balance, the U.S. appears to have benefitted from the educational investments made by other countries.”⁸⁹

Conclusion

Nothing is inherently wrong with self-interest. It is the basis of what economists call “game theory” and a key component of a market-based economy. When Adam Smith explained people do not need to be friends with the butcher or baker to purchase goods from these sellers he meant that self-interest, not benevolence, would lead to the butcher or baker to treat consumers well. “It is not from the benevolence of the butcher, the brewer, or the baker, that we can expect our dinner, but from their regard to their own interest,” wrote Smith.⁹⁰

In the area of immigration policy, one often hears the argument companies are acting in their self-interest by seeking greater access to highly educated foreign-born professionals. Critics say it is to save money, even though there is little evidence to support the notion of widespread underpayment of H-1B visa holders. For a large company to systematically underpay a group of workers, in this case foreign nationals, would involve, at minimum, the extremely unlikely cooperation of company recruiters, human resources specialists, the director of human resources, the general counsel and outside immigration attorneys joining together in an effort that would jeopardize their own careers and potentially risk criminal prosecution. Even then, H-1B visa holders could simply leave and work for other employers that offered higher wages.

Even for smaller companies it is difficult to argue that hypothetically saving money on the wages of an H-1B employee would be important to profitability. Certainly such hypothetical



savings could have made little difference for the approximately 18,700 U.S. employers who hired one H-1B professional in FY 2009, or the 3,700 businesses that hired two H-1Bs that year. And U.S. employers hiring only one or two H-1B professionals accounted for nearly a third of all new H-1B petitions issued in FY 2009, according to USCIS. On the other hand, finding the right employees to fill a key position sometimes can be crucial to a company's success.

To the extent U.S. employers are acting in their self-interest in encouraging greater access to H-1B visas and employment-based green cards, it is not for "cheap labor" but more plausibly because they consider highly educated foreign nationals valuable additions to their workforce. Employers also argue adding this talent benefits America.

Self-interest is a two-way street. The AFL-CIO and other advocates of restricting the ability of skilled foreign nationals to enter the U.S. labor force sometimes present their arguments as if they are only concerned with the good of the nation. And many critics no doubt sincerely believe their views coincide with the national interest. But let's be clear – American-born professionals and the organizations in which they are members also possess a self-interest. This is not a criticism but simply a repetition of what the critics themselves argue – they believe more jobs and higher wages would accrue to American-born programmers and engineers if competition from H-1Bs and other high skilled foreign nationals could be eliminated by the power of the federal government. They believe it is in their self-interest to limit competition. Self-interest is a fact of life.

The best policy for the United States is one that sides with freedom and innovation, not restriction. It is a policy where the H-1B cap and other skilled-based quotas are either eliminated



or set high enough that we can let the market decide on the number of new skilled foreign nationals who work in America each year. The best policy would ease the way for employers to sponsor high skilled individuals for green cards by exempting from labor certification and current employment-based immigrant quotas many who now languish in 6 to 20 year queues. Allowing top talent who graduate from U.S. universities to gain a green card directly will help U.S. employers retain the world's leading future innovators. Keeping the door open for high skilled foreign nationals strengthens America. As is often the case, freedom, not restriction, is the right choice.



ENDNOTES

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³ H-1B petitions are normally renewable after three years. It is also possible to stay longer than 6 years with an extension if the H-1B professional has a pending application for permanent residence.

⁴ USCIS data on FY 2009 H-1B initial beneficiaries.

⁵ PayScale at www.payscale.com. The same experiment can be performed on other job titles and would yield similar results.

⁶ Heidi Shierholz, *Immigration and Wages: Methodological advancements confirm modest gains for native workers*, EPI Briefing Paper, #255, Economic Policy Institute, February 4, 2010, p.1

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²⁷ Ibid.

²⁸ National Science Foundation/Division of Science Resources Statistics, *Survey of Graduate Students and Postdoctorates in Science and Engineering*. Tables 18 and 21 of Graduate Students and Postdoctorates in Science and Engineering: Fall 2006.

²⁹ Ibid.

³⁰ Charlie Gillis, "Stealing Talent From Uncle Sam," *Macleans*, November 10, 2009.

³¹ Vivek Wadhwa, AnnaLee Saxenian, Richard Freeman, and Alex Salkever, *Losing the World's Best and Brightest: America's New Immigrant Entrepreneurs, Part V*, Duke University, U.C.-Berkeley, and Ewing Marion Kauffman Foundation, March 2009, p. 3. The research is available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1362012.

³² Ibid.:

³³ National Science Foundation. While the number of U.S. citizens or permanent residents who received doctorates in computer science increased by 270 between 2002 and 2007, the number of foreign nationals receiving such degrees increased by 577.



³⁴ *U.S. Businesses Contribute Over \$91 Billion A Year In Taxes To Fund Public Education; Company-Paid H-1B Scholarship And Training Fees Approach \$2 Billion Since 1999*, (Arlington, VA: National Foundation for American Policy, May 2007). The research staff of the National Taxpayers Union pointed out these two studies and the relevant figures on taxes:

<http://www.taxfoundation.org/files/bp52.pdf>) and

<http://www.taxfoundation.org/publications/show/2056.html>.

³⁵ Gates Foundation and company records.

³⁶ The fee figures are derived from data from the Department of Homeland Security, *U.S. Businesses Contribute Over \$91 Billion A Year In Taxes To Fund Public Education; Company-Paid H-1B Scholarship And Training Fees Approach \$2 Billion Since 1999*, (Arlington, VA: National Foundation for American Policy, May 2007):

³⁷ See *U.S. Businesses Pay Over \$91 Billion a Year in Taxes to Support Education*, National Foundation for American Policy; FY 2011 National Science Foundation Budget Request to Congress, EHR – 16.

³⁸ William R. Kerr and William F. Lincoln, *The Supply Side of Innovation: H-1B Visa Reforms and U.S. Ethnic Invention*, Harvard Business School, Working Paper 09-005, 2008, p. 39.

³⁹ Including those petitions exempt from counting against the H-1B quota, a total of 85,133 new H-1B petitions were approved by USCIS in FY 2009. That compares to the U.S. civilian labor force of approximately 154 million in 2009. Bureau of Labor Statistics, U.S. Department of Labor. Note: USCIS data list H-1B petitions in the fiscal year approved. That means H-1B



petitions that count against the FY 2010 quota would be included in the FY 2009 totals if those cases were approved prior to October 1, 2010. Similarly, cases that count against the FY 2011 cap would be included in the USCIS data for FY 2010 if those cases are approved prior to October 1, 2011.

⁴⁰ U.S. Citizenship and Immigration Services list of FY 2009 employers and H-1B initial beneficiaries.

⁴¹ Shierholz, p. 1.

⁴² Giovanni Peri, *Immigrants, Skills, and Wages: Measuring the Economic Gains from Immigration*, (Washington, DC: Immigration Policy Center, March 2006), 7.

⁴³ *Ibid.*, p. 6.

⁴⁴ Shierholz., p. 3.

⁴⁵ *Ibid.*, p. 3.

⁴⁶ *Ibid.*, p. 3.

⁴⁷ Madeline Zavodny, "The H-1B Program and Its Effects on Information Technology Workers," Federal Reserve Bank of Atlanta, *Economic Review*, Third Quarter 2003.

⁴⁸ *Characteristics of Specialty Occupation Workers (H-1B), Fiscal Year 2008*, Department of Homeland Security, May 1, 2009, p. 13.

⁴⁹ S. Mithas and H.C. Lucas, "Are Foreign IT workers Cheaper? United States' Visa Policies and Compensation of Information Technology Professionals," Working Paper, Smith School of Business, University of Maryland, College Park, 2009, p. 1.



⁵⁰ Ibid., p. 29.

⁵¹ Ibid., p. 13. The EPI research finds if there is a group likely to be harmed by the entry of skilled foreign nationals it is not the natives who complain about competition, but rather earlier waves of skilled foreign nationals. The Indian or Chinese-born systems analyst on an H-1B visa may be a close *substitute* for an Indian or Chinese-born green card holder who came to America years earlier to work as a systems analyst. In fact, while the Economic Policy Institute paper found immigration between 1994 and 2007 resulted in a slight increase for U.S.-born college-educated males, it indicated a decline of 7.1 percent for foreign-born men with a college degree.

⁵² Data provided by American Council on International Personnel.

⁵³ Interview with Warren Leiden.

⁵⁴ *Characteristics of Specialty Occupational Workers (H-1B): Fiscal Year 2008*. In FY 2008, 166,917 petitions were approved for “continuing” employment and 109,335 for “initial” employment.

⁵⁵ National Foundation for American Policy analysis of USCIS FY 2009 H-1B employer numbers.

⁵⁶ Note the data here are for India-based companies. As discussed in *H-1B Visas By the Number: 2010 and Beyond*, National Foundation for American Policy, March 2010, in the past, some publications have cited Cognizant as an “Indian” company. However, it is a U.S. company and, therefore is not included in the FY 2009 count or in the calculations on percentage decline of Indian tech companies. The inclusion of Cognizant would not affect the underlying analysis. One



might argue for including other companies on the list. However, even adding an additional 1,000 H-1B visa holders would only change the percentages cited by at most a few percentage points.

⁵⁷ There are nearly 200 high school football stadiums in Texas that hold more than 5,000 people; over 70 have seating capacities over 10,000.

http://www.texasbob.com/stadium/tbt_stadium_fcts.html

⁵⁸ It also may make little sense to calculate what proportion of L-1 visa holders are sponsored for green cards as a way to evaluate employers. L-1 visas are used to transfer into the United States existing employees who are managers, executives or professionals with specialized knowledge. It is unclear why one would expect a large percentage of employees transferred from one location to another office would necessarily become permanent fixtures at the new location. The data used to make such calculations comes from the Department of Labor's PERM database, which includes applications for labor certification as part of the employment-based green card process. The PERM database generally would not include managers or executives on L-1 visas or individuals sponsored for permanent residents in the employment-based first preference category.

⁵⁹ AFL-CIO, p. 12.

⁶⁰ See for example Ron Hira, *Bridge to Immigration or Cheap Temporary Labor?*, EPI Briefing Paper, Economic Policy Institute, February 17, 2010.

⁶¹ *Employment-Based Green Card Projections Point to Decade-Long Wait*, National Foundation for American Policy, November 2009.



⁶² AFL-CIO, Hira.

⁶³ Interview with Patrick Duffy.

⁶⁴ Interview with Rod Malpert.

⁶⁵ According to the website of the U.S. Department of Labor, Employment and Training and Administration, “A permanent labor certification issued by the Department of Labor (DOL) allows an employer to hire a foreign worker to work permanently in the United States. In most instances, before the U.S. employer can submit an immigration petition to the Department of Homeland Security’s U.S. Citizenship and Immigration Services (USCIS), the employer must obtain an approved labor certification request from the DOL’s Employment and Training Administration (ETA). The DOL must certify to the USCIS that there are no qualified U.S. workers able, willing, qualified and available to accept the job at the prevailing wage for that occupation in the area of intended employment and that employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers.”

⁶⁶ Interview with Rod Malpert.

⁶⁷ “Change to Win And AFL-CIO Unveil Unified Immigration Reform Framework,” Press Release, Change to Win, April 14, 2009.

⁶⁸ *H-1B Benefit Fraud & Compliance Assessment*, U.S. Citizenship and Immigration Services, September 2008. Hereafter referred to as the report. The report was drafted by the Office of Fraud Detection and National Security (FDNS), which is a division of the National Security and Records Directorate.



⁶⁹ Ibid., p. 4.

⁷⁰ USCIS would not provide additional data that might give more information on violations at different levels of annual revenue and employees. USCIS said it would not provide such information out of concern that statistically the sample became less reliable with fewer employers at a particular revenue level.

⁷¹ *H-1B Benefit Fraud & Compliance Assessment*, p. 14.

⁷² Discussions with USCIS personnel.

⁷³ U.S. Citizenship and Immigration Services list of FY 2009 employers and H-1B initial beneficiaries.

⁷⁴ Information obtained from the American Council on International Personnel.

⁷⁵ Patrick Thibodeau, “Feds Plan 25,000 On-site H-1B Inspections,” *ComputerWorld*, November 17, 2009.

⁷⁶ Kyle D. Sherman and Mark S. Johnson, “What All H-1B Employers Should Know,” *Law360*, March 3, 2010.

⁷⁷ Section 212(t)[first](3)(C)(v) of the INA. The law states: “The Secretary of Labor and Secretary of Homeland Security shall devise a process under which a nonimmigrant under section 101(a)(15)(H)(i)(B1) or 101(a)(15)(E)(iii) who files a complaint regarding a violation of clause (iv) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.”



⁷⁸ Data obtained from the Department of Homeland Security in April 2007 indicated anti-fraud fees collected by the U.S. government from employers exceeded \$300 million. Approximately \$130 million in such fees are collected in a year, according the Department of Homeland Security.

⁷⁹ Ray Marshall, *Immigration for Shared Prosperity*, Economic Policy Institute, Washington, D.C., 2009, 22-23, 25; “Change to Win And AFL-CIO Unveil Unified Immigration Reform Framework,” Press Release, Change to Win and AFL-CIO, April 14, 2009.

⁸⁰ *Examining Proposals to Create a New Commission on Employment-Based Immigration* (Washington, DC: American Council on International Personnel, June 2009), p. 2. The Migration Policy Institute (MPI), a Washington, D.C. think tank, has presented a slightly different vision of a commission that suffers from a number of the same problems, although comes from a less restrictive perspective.

⁸¹ Marshall, p. 25. “Numerous predictions of ‘severe shortages’ of these [high skill] workers have proved wrong, even those made during the 1980s by the highly respected National Science Foundation,” Marshall writes. “However, neither earnings nor unemployment patterns indicated a science and engineering shortage.”

⁸² Even if an individual cleared a hurdle established by the commission, he or she would still have to contend with existing requirements in current law (and potentially new and more restrictive ones) before being admitted to the country.

⁸³ *Science and Engineering Indicators 2008*, The National Science Foundation, 2008, Chapter 3.



⁸⁴ See Real Enforcement with Practical Answers for Immigration Reform (REPAIR) Proposal, associated with Senators Harry Reid, Charles Schumer and Robert Menendez, May 2010.

⁸⁵ *Examining Proposals to Create a New Commission on Employment-Based Immigration*, p. 2.

⁸⁶ Stuart Anderson and Michaela Platzer, *American Made: The Impact of Immigrant Entrepreneurs and Professionals on U.S. Competitiveness*, National Venture Capital Association, November 2006, p. 6.

⁸⁷ Vivek Wadhwa, AnnaLee Saxenian, Ben Rissing, and Gary Gereffi, “Skilled Immigration and Economic Growth,” *Applied Research in Economic Development*, vol. 5, issue 1, May 2008, p. 7.

⁸⁸ National Science Foundation/Division of Science Resources Statistics, *Survey of Graduate Students and Postdoctorates in Science and Engineering*. Tables 18 and 21 of Graduate Students and Postdoctorates in Science and Engineering: Fall 2006.

⁸⁹ Paula E. Stephan and Sharon G. Levin, “Exceptional contributions to U.S. Science by the foreign-born and foreign-educated,” *Population Research and Policy Review*, 2001, 20: 59.

⁹⁰ <http://www.econlib.org/library/Enc/bios/Smith.html>.

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