

**THE POINT SYSTEM'S IMPACT ON FOREIGN NURSES
AND OTHER POTENTIAL IMMIGRANTS**

BY STUART ANDERSON

EXECUTIVE SUMMARY

Foreign nurses, vital to addressing America's nursing shortage in the midst of an aging U.S. population, would be unlikely to gain entry to the United States under the immigration point system contained in S. 1348, the Senate immigration bill. Other categories of professionals and skilled individuals are also unlikely to become immigrants under the new – and perhaps inappropriately named – “merit” visas. Internationally renowned actors, athletes, physicians in rural areas, factory managers, certain executives and possibly even Nobel Prize winners may all be left out due to fundamental flaws in the legislation.

The most serious flaws are insufficient annual limits and mandating an immigration system skewed toward “paper” qualifications. The bill's language contains ambiguity with regards to such basic questions as to whether points will be awarded for the intended occupation in the United States and what happens when applicants apply in excess of the annual limits. Under one interpretation of the bill a Nobel Prize winner would be better off with a job offer from McDonald's than MIT. How the per country limits in the bill operate in practice will determine whether even individuals who score among the highest will be able to gain permanent residence. If 100,000 people from India score 80 or higher under the system but 1,000 individuals from Luxembourg score 40 or less, would the 1,000 people from Luxembourg gain a visa while most of the potential Indian immigrants are denied?

Family members of U.S. citizens, including the adult children and siblings the bill would no longer permit to be sponsored, are exceedingly unlikely to gain admission, despite the assurances of the bill's supporters. In fact, it would be misleading for anyone to claim the point system, as structured in the Senate bill, would allow the entry of adult children of U.S. citizens. The number of people applying under the point system will be far in excess of those annually permitted, leaving foreign nurses and other potential immigrants on the outside of America looking in. Based just on the individuals expected to work on temporary visas and those already waiting for green cards, the oversubscription to the point system should easily reach 1 million people within 5 years of the bill's passage.

If the point system in S. 1348 became law, then no employer in America can be assured that a valued employee or prospective new hire would become a legal immigrant and be able to stay permanently in the United States. Employers need certainty, as one immigration specialist notes, and this bill does not provide it. Upturning the entire legal immigration system on the basis of a backroom deal designed to pass a controversial bill is an enormous gamble for the nation. It is not a risk worth taking.

The Point System's Impact on Foreign Nurses and Other Potential Immigrants

Table 1
Points for Potential Immigrants Under S. 1348

Characteristics of Potential Immigrants	Points Awarded Under S. 1348
30 year-old M.A. in electrical engineering, employed 5 years on H-1B visa for U.S. company will to sponsor. Fluent English. No family ties.	90 pts*
29 year-old PhD in molecular biology employed for U.S. research institute on H-1B visa for 4 years. Fluent English. No family ties.	88 pts
33 year-old computer systems analyst employed by U.S. consulting firm for 2 years on H-1B visa. Bachelor's degree (B.A.). Native English speaker.	86 pts
25 year-old dental assistant. Applied for asylum but claim recently denied. Worked for U.S. employer for 5 years (on EAD card) while asylum claim was pending. Mother is legal resident. High school diploma. Fluent English. Employer willing to sponsor.	70 pts
55 year-old Nobel Prize winner in Chemistry. Not fluent in English. No U.S. work experience but a willing sponsor.	46 to 54 pts**
27 year-old nurse, B.A. degree. Job offer. TOEFEL score of 75.	40 to 64 pts***
22 year-old daughter of U.S. citizen. B.A. in business. Not fluent in English. Job offer from U.S. employer.	22 pts

*Source: National Foundation for American Policy and American Council on International Personnel analysis of text of S. 1348. *Depending on interpretations, per country limits that restrict awarding merit visas to 10 percent or less of nationals of one country could prevent the immigration of individuals from India, China and other higher volume countries regardless of point total. **The Nobel Prize winner would see his or her point total lowered by 8 points depending on the interpretation of "U.S. employment in STEM" (STEM means Science Technology Engineering Math). ***A nurse's score could drop an additional 24 points, down to 40 points, depending on how agencies interpret the phrases "U.S. employment in High Demand Occupation" (16 points) and "U.S. employment in STEM or health occupation current for at least 1 year" (8 points). The issue in both cases is whether agencies interpret the bill to mean intended U.S. employment or only past U.S. employment.*

NURSES AND THE NURSING SHORTAGE

Almost by definition any immigration reform falls short if it fails to account for the need for foreign nurses and other immigrants who fill important jobs in the U.S. economy. "The United States is in the midst of a nursing shortage that is expected to intensify as baby boomers age and the need for health care grows," according to the American Association of Colleges of Nursing (AACN).¹ The Bureau of Labor Statistics projects that more than 1.2 million new and replacement nurses will be needed by 2014, with the 703,000 new Registered Nurse positions representing approximately 40 percent of all new jobs in the health care.² The Health Resources and Services Administration (HRSA), a part of the U.S. Department of Health and Human Services, projects the nursing shortage to grow to over one million nurses by 2020, hitting all 50 states.³

Today, the vast majority of nurses cannot enter the United States and work on temporary visas. Foreign nurses are ineligible for H-1B temporary visas, the most popular category of work visa for foreign professionals. Nurses

The Point System's Impact on Foreign Nurses and Other Potential Immigrants

from Canada and Mexico may enter on temporary TN visas (under NAFTA), while an H-1C visa allows some nurses to work on a temporary basis (limited to 500 annually and restricted to about 14 hospitals under the statute). Congress recognized the labor supply problems with nurses when in 2005 it allocated 50,000 extra green cards (for permanent residence) with a priority for foreign nurses and others who qualified under Schedule A (DOL designation of shortage occupations) to be sponsored by employers in the United States. That extra green card allocation has been exhausted.

Due to economies of scale and other factors, staffing and recruiting companies, in addition to individual hospitals, screen and recruit nurses from abroad and arrange for their U.S. employment. These firms and hospitals go beyond paper credentials, such as by interviewing individuals and giving tests to measure “critical thinking” skills. “We’re not going to hire a nurse just because the government says she has enough points,” said a human resources specialist at one nurse staffing company.⁴ It is likely impossible to evaluate on paper whether a nurse serves patients well and possesses a good bedside manner. Under current law, nurses must receive sufficient grades on credentialing and English language exams to gain admission to work as a nurse in the United States. Those provisions of the law would be repealed in the proposed legislation.

UNDERSTANDING THE POINT SYSTEM

Today, companies typically hire foreign-born scientists, engineers, accountants, financial analysts and others on H-1B temporary visas, essentially good for six years, and then often sponsor those they wish to stay permanently through the employment-based immigration system. As noted, some, such as nurses, are hired directly on green cards. Others enter America on a variety of temporary visas, such as L-1 (intracompany transferees), J, O, and P. While insufficient quotas have plagued the employment-based immigration in recent years, the current green card system has allowed U.S. employers to identify and retain valued employees.

However, employers have become entangled in what can only be described as a misguided backroom deal that will take away their ability to sponsor specific individuals. In sum, media accounts have made it clear that Senator Jon Kyl (R-AZ) and the Bush Administration agreed to accept the legalization of approximately 10 million illegal immigrants at least in part in exchange for eliminating the ability of U.S. citizens to sponsor their adult children and siblings (and even many parents).⁵ In order to cloak this apparent antagonism toward family immigrants in the garb of improving the skill level of immigrants – even though the median education level of legal immigrants is higher than natives, according to the Pew Hispanic Center – the Senate bill creates a point system that, over time, abolishes the family and employment-based preference categories and transfers those numbers into a new “merit” visa point system.⁶

The Point System's Impact on Foreign Nurses and Other Potential Immigrants

Table 2
Criteria and Weights of Point System (reprinted from S. 1348)

Category	Description	Max Points
Employment		47
<i>Occupation</i>	U.S. employment in Specialty Occupation (DOL definition) – 20 pts U.S. employment in High Demand Occupation (BLS largest 10-yr job growth, top 30) – 16 pts	
<i>National interest/critical infrastructure</i>	U.S. employment in STEM or health occupation, current for at least 1 year – 8 pts (extraordinary or ordinary)	
<i>Employer Endorsement</i>	A U.S. employer willing to pay 50% of LPR application fee either 1) offers a job, or 2) attests for a current employee – 6 pts	
<i>Experience</i>	Years of work for U.S. firm – 2 pts/year (max 10 pts)	
<i>Age of worker</i>	Worker's age: 25-39 – 3 pts	
Education <i>(terminal degree)</i>	M.D., M.B.A., Graduate degree, etc. – 20 pts Bachelor's degree – 16 pts Associate's degree – 10 pts High School diploma or GED – 6 pts Completed certified Perkins Vocational Education program – 5 pts Completed DOL Registered Apprenticeship – 8 pts STEM, assoc & above – 8 pts	28
English & civics	Native speaker of English or TOEFL score of 75 or higher – 15 pts TOEFL score of 60-74 – 10 pts Pass USCIS Citizenship Tests in English & Civics – 6 pts	15
Extended family (Applied if threshold of 55 in above categories.)	Adult (21 or older) son of daughter of US Citizen – 8 pts Adult (21 or older) son or daughter of Lawful Permanent Resident (LPR) – 6 pts Sibling of US Citizen or LPR – 4 pts If had applied for a family visa in any of the above categories after May 1, 2005 – 2 pts	10
		100

Source: Section 502 of S. 1348. In the bill it states above the chart that the "merit-based evaluation system shall initially consist of the following criteria and weights." It also states that "no modifications to the selection criteria and relative weights accorded such criteria that are established by" the bill "shall take effect earlier than the sixth fiscal year in which aliens described in section 101(a)(15)(Z) of this Act are eligible for an immigrant visa." That period of time is estimated to be 14 years.

The Point System's Impact on Foreign Nurses and Other Potential Immigrants

After the date of enactment, this new category would be capped at 247,000 in years 1-5, 140,000 in years 6-8, and 380,000 annually starting in year 9. However, in first five years a net of 140,000 would be available for new applicants to the point system, with the rest being used for backlog reduction (90,000), “exceptional Y visa workers” (10,000), Special immigrants (4,200) and Investors (2,800). The net available for new applicants to the point system may drop to 30,000 in years 6-8 before rising to 380,000 (although 17,000 of that total would be set aside for “Exceptional Y workers,” Special immigrants and Investors).⁷

As Table 2 illustrates the point system is supposed to work by awarding points for level of education attained, English language ability, field of expertise, and other characteristics in a broad way. Then, at least in theory, those who receive the most points would gain a green card and those who scored the lowest would not be allowed to immigrate (receive permanent residence). A key problem with focusing on criteria “on paper” is the proposed point system does not take into account the most basic criteria employers consider – Are these people I would want to work for me?

WHO “QUALIFIES” UNDER THE NEW SYSTEM?

Who qualifies under the bill’s point system? The answer is “Nobody knows.” There are basically two ways a government bureaucracy could take to manage the point system as established in S. 1348. One approach would be to pick a minimum “score” and allow everyone who achieves that score to gain entry on first come, first serve basis, giving each approved would-be immigrant a priority date. The difficulty with such an approach is that long “queues” could develop if many more people qualify than the annual “merit” visa allocation. Would a person who scored 90 wait for years while people with 60 points received visas because they applied earlier? It’s unclear.

Rather than establishing a single score and priority dates, the U.S. government could take only the highest-scoring immigrants and then admit nobody after accepting a sufficient number to meet that year’s annual quota. Employers could find they would be left out in the cold gaining a green card for a valued employee who didn’t meet the criteria of the point system because too many other people simply scored higher. Those who applied but weren’t among the top scorers in a given year could have their applications reconsidered over the next two years. During that time other people may apply who would achieve higher point totals. The system would be fraught with uncertainty whichever approach is ultimately taken to manage the applications.

One of the only clues for how the system will operate is contained in Section 502 of S. 1348, where it states: “Any petition filed pursuant to this paragraph that has not been found by the Secretary to have qualified in the merit-based evaluation system shall be deemed denied on the first day of the third fiscal year following the date of such application.”⁸ But this does not answer the question who has “qualified” only that an individual is denied if they

The Point System's Impact on Foreign Nurses and Other Potential Immigrants

have not qualified. Even this circuitous language raises another issue: Unlike other administrative decisions of the immigration service that be appealed, according to the bill: "The application of the selection criteria to any particular visa petition or application pursuant to the merit-based evaluation system shall be within the Secretary's sole and unreviewable discretion."⁹ In other words, once a clerk rules an applicant for immigration did not "qualify" that may very well be the last word.

"Employers need certainty and this legislation doesn't provide it," said Lynn Shotwell, Executive Director, American Council on International Personnel.¹⁰ She points out that while today there is some uncertainty as to when a green card application will be approved for a valued employee, at least companies know the individual qualifies. Under the proposed point system nobody actually knows what "qualifies" means.

HOW WOULD THE PER COUNTRY LIMIT OPERATE?

Contrary to assertions that the Senate legislation would allow in the people best suited for the U.S. economy, the bill appears to limit even those with the highest point totals if they are from countries with greater demand for immigration. Depending on key issues of interpretation, the per country limit in the bill could restrict awarding merit visas to 10 percent or less of nationals from one country. That could prevent the immigration of individuals from India, China and other higher volume country regardless of point total.

For example, if 100,000 people from India have scores of 80 or higher under the point system but 1,000 individuals from Luxembourg have scores of 40 or less, would the 1,000 people from Luxembourg gain a visa while all but 38,000 of potential Indian immigrants would be denied a visa for permanent residence? That would not be a "merit" system.¹¹ In fact, it could operate similarly to the current Diversity Visa lottery by primarily assisting the entry of individuals from countries with lower immigration totals.

Today, when an Indian engineer is impacted by the per country limit he or she will often wait years for a green card while working on an H-1B visa. While this entails hardship, at least the engineer knows eventually permanent residence will be granted. That may no longer be the case if the Senate bill becomes law. Under S. 1348, after three years, an applicant can apply again for admission, trying again for a green card that may never be granted.

Since foreign nurses often come from high immigration nations like India and the Philippines, nurses, too, could find this is an additional way they would be denied admission under the point system. That would be the case even if nurses fare better in their point totals, in relevant terms, than is now anticipated.¹² The foreign nurse would compete not only with everyone else in the world applying for a "merit" visa but likely with engineers, scientists and others from their own country.

The Point System's Impact on Foreign Nurses and Other Potential Immigrants

Table 3
Occupations with Largest 10-year Job Growth (BLS: 2004-2014)

Job Title	Most significant source of postsecondary education or training
Retail salespersons	Short-term on-the-job training
Registered nurses	Associate degree
Postsecondary teachers	Doctoral degree
Customer service representatives	Moderate-term on-the-job training
Janitors and cleaners, except maids and housekeeping cleaners	Short-term on-the-job training
Waiters and waitresses	Short-term on-the-job training
Combined food preparation and serving workers, including fast food	Short-term on-the-job training
Home health aides	Short-term on-the-job training
Nursing aides, orderlies, and attendants	Postsecondary vocational award
General and operations managers	Bachelor's or higher degree, plus work experience
Personal and home care aides	Short-term on-the-job training
Elementary school teachers, except special education	Bachelor's degree
Accountants and auditors	Bachelor's degree
Office clerks, general	Short-term on-the-job training
Laborers and freight, stock, and material movers, hand	Short-term on-the-job training
Receptionists and information clerks	Short-term on-the-job training
Landscaping and groundskeeping workers	Short-term on-the-job training
Truck drivers, heavy and tractor-trailer	Moderate-term on-the-job training
Computer software engineers, applications	Bachelor's degree
Maintenance and repair workers, general	Moderate-term on-the-job training
Medical assistants	Moderate-term on-the-job training
Executive secretaries and administrative assistants	Moderate-term on-the-job training
Sales representatives, wholesale and manufacturing, except technical and scientific products	Moderate-term on-the-job training
Carpenters	Long-term on-the-job training
Teacher assistants	Short-term on-the-job training
Child care workers	Short-term on-the-job training
Food preparation workers	Short-term on-the-job training
Maids and housekeeping cleaners	Short-term on-the-job training
Truck drivers, light or delivery services	Short-term on-the-job training
Computer systems analysts	Bachelor's degree

Source: Bureau of Labor Statistics, Monthly Labor Review, November 2005, Table 3: Occupations with largest job growth, 2004-14.

WILL THIS BE A GLORIFIED DIVERSITY VISA?

The Senate bill eliminates the Diversity visa, which allows individuals from countries with less recent immigration to the United States to apply for a green card without family or employment sponsorship. Diversity visas are distributed by lottery. To give an estimate of the demand, 5.5 million applied and qualified for the 2007 Diversity lottery, according to the U.S. Department of State.¹³ Under the Senate-proposed point system, without the filter of family or employer sponsorship, almost everyone in the world with a good education and English language ability could seek to and potentially qualify. Depending on how the federal government applies the per country limits in the bill the system could favor individuals from countries with low immigration flows to the United States, very similar to the current (and often maligned) Diversity visa lottery.

“The new system would largely take the employer out of the picture and potential immigrants would be able to get to the United States without a job offer,” said Greg Siskind, a Memphis, Tennessee-based immigration attorney. “That could open the door to tens of millions of people around the world qualifying under a point system.”¹⁴ We would not know whether the individuals in question actually have good job prospects in the United States. “There is no guarantee that the immigrants coming will be in fields where they are truly needed,” said Siskind. “Ask a Canadian immigration lawyer about the point system in that country and you’re likely to hear about how all the cab drivers in Toronto have advanced university degrees.”¹⁵

WHAT IS MEANT BY “U.S. EMPLOYMENT” IN OCCUPATIONS WITH LARGEST 10-YEAR JOB GROWTH?

It is unclear from the bill what the authors intend when allocating 16 points for “U.S. employment in...BLS largest 10-year job growth, top 30.” (See Table 2) Do they mean the person has already worked in the job in the United States or that the individual intends to work in that occupation after coming here?¹⁶ Nurses would receive 16 points if the bill’s authors mean “intended” occupation after arriving in America. However, that may not be the appropriate interpretation of the bill.

If the government allows future “intended” employment to be the criteria for awarding 16 points under the system, then it may have fraud problems in which many people claim they will work in one of the 30 occupations with largest 10-year job growth, according to the Bureau of Labor Statistics. As Table 3 shows, even without fraud many of the jobs on the list almost anyone in the world could qualify as intending to fill. The list contains 15 jobs the Department of Labor characterizes as requiring only “short-term on-the-job training,” including waiter, receptionist, child care worker, maid, retail salesperson and food preparation worker. This is not meant to devalue the jobs only to note that if future intended employment is the criteria for gaining 16 points, then a Nobel Prize winner would be better off under the point system with a job offer from McDonald’s than MIT.

THE SYSTEM CAN'T WORK WELL FOR EVERYONE: NOT ENOUGH NUMBERS TO ACCOMMODATE DEMAND

Supporters of the Senate bill have told competing constituent groups – family groups, employers of “low-skill” workers and high tech companies – they will do well under the point system. But it’s not conceivable that everyone would do well. The numbers are too low and the criteria too arbitrary.

H-1B and L-1 (intracompany) visa holders alone could come close to filling the point system quotas in the early years, particularly since the numerical limit on the new category will also encompass the dependents of the “highest-scoring” immigrants. That would shut out foreign nurses.

“Assuming at least 75% of H-1B temporary visa holders (nonimmigrants) and about one in four L intracompany transferees will seek green cards, and further assuming that such nonimmigrants have at least one dependent for each principal, the number of green card applicants will far exceed the number of visas made available, leading to a new and growing backlog,” according to an analysis by the American Council on International Personnel (ACIP).¹⁷

ACIP estimates “the *minimum* shortfall will be approximately 161,000 visas per year, which quickly accumulates to a backlog of 765,000 in just five years and representing an approximate five year wait [or accumulation of demand].”¹⁸

However, this estimate is likely low in several aspects, concedes ACIP. The 765,000 backlog number does not include individuals on a temporary visa who do not yet have a pending labor certification for an immigrant petition. Nor does it include those on other visa types, such as the TN, J, O-2 or P-2 or P-3visa, or “who go directly from student to green card status.”¹⁹

There are already not enough green cards allotted to meet the current demand for employment-based immigration, so simply transferring the current allotment of such green cards to be available for recent (or backlogged applicants) will lead to more people unable to gain permanent residence in the initial years after the bill’s passage. As explained in an earlier NFAP Policy Brief on employment-based immigrant visas, current demand, low quotas and, at times, the per country limits have conspired to produce waits of 5 years or more for skilled immigrants. The NFAP analysis concluded: “It is not unreasonable to assume there could be as many as 150,000 to 200,000 Indian nationals in the United States waiting for an employment-based green card.”²⁰

The Point System's Impact on Foreign Nurses and Other Potential Immigrants

Some may argue a large oversubscription will not occur if those working on H-1B visas decide to delay for several years their applications for merit visas under the point system. Yet expecting H-1B or L-1 visa holders to delay filing would be to expect irrational behavior. Under current law it is beneficial to apply for permanent residence as soon as possible and there is no reason to expect individuals not to assume the same is true under any new system. Besides, an individual working on a temporary visa in the United States is not in a wholly secure position, since an economic downturn affecting his or her company could leave the professional out of a job and his or her basis for being in America. A green card gives someone the right to stay permanently in America, whereas an H-1B or L-1 visa grants only temporary permission to work here.

Even based just on the individuals who we can expect to work on temporary visas and those who already have been waiting for green cards, the oversubscription to the point system should easily reach one million people within 5 years of the bill's passage. The next sections discuss how some specific categories of potential immigrants would be affected both by the design of the point system and its inadequate quotas.

HOW DO NURSES FARE IN THE POINT SYSTEM? NOT VERY WELL

Examining the point system's impact on nurses helps illustrate some of the inherent flaws in S. 1348. As can be seen in Table 1 nurses are disadvantaged under a point system. Under a generous interpretation of the bill, nurses would at best receive a middling score – 64 out of a possible 100 – likely insufficient to gain admission to the United States. Nurses would likely receive points for age, a job offer, English language ability and (potentially) employment in a health occupation. However, out of the 90 points possible for an immigrant without a family connection, a foreign nurse would not be able to receive the 20 points for “employment in a Specialty Occupation,” since the Department of Labor does not recognize nurses as eligible for an H-1B visa. Nurses generally would also lose up to 10 possible points for not having worked previously for a U.S. firm and lose another 18 out of a potential 28 points for possessing only a bachelor's degree. Note that a nurse does not need a bachelor's degree to practice in the United States and many foreign nurses have received only the equivalent of an Associate's degree, which would lower the point total an additional 6 points.²¹

However, a nurse's score could drop an additional 24 points, down to 40 points (or 34 points with an Associate's degree), depending on how agencies interpret the phrases “U.S. employment in High Demand Occupation” (16 points) and “U.S. employment in STEM or health occupation current for at least 1 year” (8 points). As discussed earlier, it is unclear whether the bill's authors intend “U.S. employment” to mean the job to be filled *after* entering the United States or to award points only for those who already have worked in America in the relevant field.

As Table 3 shows, nurses are on the list of “High Demand Occupations,” as defined by the bill, meaning they appear on the Bureau of Labor Statistics (BLS) list of top 30 occupations with the largest 10-year job growth.

The Point System's Impact on Foreign Nurses and Other Potential Immigrants

Nurses, of course, also work in a health occupation. But the bill's drafters did not make clear whether only those who have *already* worked in the United States would be awarded these points. As noted, since many of the jobs on the BLS list involve little or no training virtually anyone can gain 16 points under the system if the bill is interpreted to mean intended occupation. However, if the bill language means only past "U.S. employment," then since nurses generally do not work first in the United States on temporary visas their point totals would drop by nearly 40 percent.

Even at 64 points a nurse would be well below the 90 points likely earned by an electrical engineer with an M.A. who has worked in the United States for 5 years on an H-1B visa or the 86 points a systems analysts with a bachelor's degree who has worked for two years for a U.S. employer on an H-1B visa.

That is not the only obstacle a foreign nurse would face. Other flaws in S. 1348 and the point system would also work against the entry of nurses. There is a potential negative impact of the per country limit on nurses from countries like India and the Philippines, since the nurses would be competing with many potential immigrants from the same country.

ADULT CHILDREN OF U.S. CITIZENS

Even with a job offer and a bachelor's degree, a 22-year-old unmarried adult child of a U.S. citizen is likely to score far down on the list with only 22 points. Even if the adult child spoke fluent English it would only raise his or her score to 37. *It is misleading for anyone to claim that the point system, as structured in the Senate bill, would allow the entry of adult children of U.S. citizens.*

While the bill gives up to 10 points for a family relationship to a U.S. citizen or lawful permanent resident (see Table 2), visa applicants only receive these points if they achieve a score of at least 55 points based on employment, education and English language/civics. Even if more points were awarded for kinship, it still would be unlikely to help much. That is because "per country" limits would likely force the adult children and siblings of U.S. citizens (and permanent residents) to compete not only against everyone in the world who could qualify under the point system, but against non-family visa applicants from the same country.

NOBEL PRIZE WINNERS

A 55 year-old Nobel Prize winner in Chemistry, not fluent in English, and with no U.S. work experience but a willing sponsor would likely only achieve between 46 and 54 points, depending on the interpretation of "U.S. employment in STEM" (STEM means Science Technology Engineering Math). One issue is whether agencies interpret the bill to mean intended U.S. employment or only past U.S. employment. If it's only past employment,

The Point System's Impact on Foreign Nurses and Other Potential Immigrants

then the Nobel Prize winner would lose 8 points. Today, such a person would be able to immigrate under a category reserved for people with “extraordinary ability” (the first preference in the employment-based immigration system).

EXECUTIVES AND FACTORY MANAGERS

A 45-year-old executive on an L-1A visa heading a Swiss investment bank’s operations in the United States may have worked 14 years for a company but only one in the United States. With a bachelor’s degree and mid-level English skills he would likely earn only 54 points under S. 1348, according to ACIP.²² A Japanese or European factory manager coming to the United States to help manufacture a new product might earn even fewer points under the bill, since he may lack both a college degree or better English language skills, even though he possesses considerable unique talents in the product line. Both the bank executive and factory manager would gain admission under the current immigration system and make important contributions to their companies and the U.S. economy. However, both would likely be blocked under S. 1348.

ATHLETES

A professional baseball player who did not finish high school and has played for five years in the Major Leagues would receive fewer than 30 points.

CRITERIA LOCKED INTO PLACE FOR 14 YEARS

While supporters argue they have put together a flexible system that will accommodate the ever-changing U.S. labor market, an examination of the bill finds that not to be the case. In Section 502 of S. 1348 it states the following above the chart that details the point system: “The merit-based evaluation system shall initially consist of the following criteria and weights.” It then states that “no modifications to the selection criteria and relative weights accorded such criteria that are established by” the bill “shall take effect earlier than the sixth fiscal year in which aliens described in section 101(a)(15)(Z) of this Act are eligible for an immigrant visa.”

Based on a fair reading of the bill that would likely mean no change in the criteria and weights for 14 years.²³ Of course, if the bill were to pass in its current form it is likely Congress would find need to revisit the bill much sooner. Yet given past controversies over immigration there is no guarantee adjustments to the system will not be blocked or delayed for years even after the inevitable problems come to light, leaving employers and potential immigrants out of luck.

*The Point System's Impact on Foreign Nurses and Other Potential Immigrants***CONCLUSION**

The proposed point system substitutes the judgment of the government for decisions U.S. employers now make successfully. Some have called it an effort to institute government central planning. The bottom line is no rationale exists for upending the current employment-based immigration system. While illegal immigration is a problem, there is no problem, except inadequate quotas, with high-skilled employment-based immigration. Companies thrive on certainty. However, the Senate bill's point system will generate increasing uncertainty for employers. Upturning the entire legal immigration system based on a backroom deal designed to pass a controversial bill represents an enormous gamble for the nation. It is not a risk worth taking.

Washington Post reporters recently posited: "Consider this: If Bill Gates – who dropped out of Harvard – were foreign-born and subject to the new point system, would Microsoft be able to hire him to live and work in the United States?" The answer is that it's unlikely. "My overall impression is that the Senate proposes to deemphasize ability – extraordinary ability – in favor of paper qualification and a narrow range of experience," said immigration lawyer Jonathan Ginsburg, concerned that even world-renowned musicians could no longer immigrate to the United States.²⁴ These criticisms do not even take into account the negative impact of reducing family immigration on entrepreneurship in America (or on the families themselves).²⁵

There is little hope that the point system in S. 1348 can be fixed to rectify the problems inherent in its design. It is apparent in examining the proposed system that its architects did not speak with hospitals, high tech companies, small businesses or other employers in America. If they had, it would have become clear the system put forward in S. 1348 will weaken the nation's competitiveness by taking the country's talent decisions out of the hands of entrepreneurs and human resource specialists and giving the power to government bureaucrats. Companies cannot afford to wait a decade to see if the new point system works, particularly when available evidence indicates the system was hastily designed without input from employers who actually hire foreign nationals. U.S. employers compete for talent and markets on a global scale. Employers have no desire to be part of a giant social science experiment.

Absent a significant change in both the numbers and the overall design of the point system, if S. 1348 becomes law foreign nurses are unlikely to gain admission to the United States in any quantity, if at all. They will score at best in the middle range under the system and would be squeezed out by the admission of others who will amass more points, including those from their own country. At minimum, Congress should maintain the current employment-based immigration preference quotas, adding in exemptions such as in last year's Senate-passed immigration bill, and allow those quotas to operate alongside any new point system. While that is not an ideal solution, at least if properly done such a change would mitigate some of the significant negative effects S. 1348 would have on U.S. employers, as well as foreign nurses and other potential immigrants.

END NOTES

¹ <http://www.aacn.nche.edu/Media/FactSheets/NursingShortage.htm>.

² Ibid.; <http://www.bls.gov/opub/mlr/2005/11/art5full.pdf>.

³ Ibid.; <http://bhpr.hrsa.gov/healthworkforce/reports/behindrnprojections/index.htm>.

⁴ Interview with author.

⁵ One source that alludes to this is Michael Abramowitz, "Immigration Bill's Point System Worries Some Groups," *Washington Post*, May 27, 2007.

⁶ <http://www.nfap.com/pdf/000407Immigration.pdf>.

⁷ Analysis of the numbers provided by ACIP. In Section 501 of S. 1348 it states: "The worldwide level of merit-based, special, and employment-creation immigrants under this subsection ...for the first five fiscal years shall be equal to the number of immigrant visas made available to aliens seeking immigrant visas under section 203(b) of the Act for fiscal year 2005..."

⁸ Section 502 of S. 1348. It also states: "Such denial shall not preclude the petitioner from filing a successive petition pursuant to this paragraph."

⁹ Section 502 of S. 1348.

¹⁰ Interview with author.

¹¹ 38,000 would be 10 percent of the 380,000 cap in year 9.

¹² For a more detailed discussion of the per country limit see <http://www.nfap.com/pdf/0507brief-greencard-backlog.pdf>.

¹³ http://travel.state.gov/visa/immigrants/types/types_1317.html.

¹⁴ Interview with author.

¹⁵ Ibid.

¹⁶ Appreciation to Bruce Morrison for pointing out that bill is open to interpretation as to the definition of "U.S. employment" and in the bill's lack of clarity as to who "qualifies" for merit visas under the bill.

¹⁷ American Council on International Personnel.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ <http://www.nfap.com/pdf/0507brief-greencard-backlog.pdf>.

The Point System's Impact on Foreign Nurses and Other Potential Immigrants

²¹ It may be reasonable to assume the bill will be interpreted as meaning a nursing degree will not qualify for points for being in a STEM (Science Technology Engineering Math) field, since under employment in the point system chart the bill's authors list "U.S. employment in STEM or health occupation," drawing a distinction between the two.

²² ACIP analysis of point system.

²³ Section 502 of S. 1348.

²⁴ Anthony Faiola and Robin Shulman, "Top Talent Could Lose Fast Track to U.S.," *Washington Post*, May 26, 2007.

²⁵ See <http://www.nfap.com/pdf/070508testimony.pdf>.

ABOUT THE AUTHOR

Stuart Anderson is Executive Director of the National Foundation for American Policy, a non-profit, non-partisan public policy research organization in Arlington, Va. Stuart served as Executive Associate Commissioner for Policy and Planning and Counselor to the Commissioner at the Immigration and Naturalization Service from August 2001 to January 2003. He spent four and a half years on Capitol Hill on the Senate Immigration Subcommittee, first for Senator Spencer Abraham and then as Staff Director of the subcommittee for Senator Sam Brownback. Prior to that, Stuart was Director of Trade and Immigration Studies at the Cato Institute in Washington, D.C., where he produced reports on the military contributions of immigrants and the role of immigrants in high technology. He has an M.A. from Georgetown University and a B.A. in Political Science from Drew University. Stuart has published articles in the *Wall Street Journal*, *New York Times*, *Los Angeles Times*, and other publications.

ABOUT THE NATIONAL FOUNDATION FOR AMERICAN POLICY

Established in the Fall 2003, the National Foundation for American Policy (NFAP) is a 501(c)(3) non-profit, non-partisan public policy research organization based in Arlington, Virginia focusing on trade, immigration and related issues. The Advisory Board members include Columbia University economist Jagdish Bhagwati, Ohio University economist Richard Vedder and other prominent individuals. Over the past 24 months, NFAP's research has been written about in the *Wall Street Journal*, the *New York Times*, the *Washington Post*, and other major media outlets. The organization's reports can be found at www.nfap.com.