

# National Foundation for American Policy

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Contact: Stuart Anderson, 703-351-5042, [info@nfap.net](mailto:info@nfap.net)

## **New Research: High Skill Immigration Restrictions Driving Jobs and Innovation Offshore**

Arlington, Va. – U.S. technology companies, research labs and companies serving clients in a range of fields are being driven by Congress to pursue offshore alternatives due to current and proposed restrictions on high-skill immigration, concludes a new study released by the National Foundation for American Policy (NFAP), an Arlington, Va.-based policy research group. The burgeoning demand for skilled labor throughout the U.S. economy and an increasing need to compete globally has created a demand for scientists, engineers and professionals in the United States that cannot be filled by Americans alone.

The study “Driving Jobs and Innovation Offshore: The Impact of High Skill Immigration Restrictions on America” can be found on the NFAP website at [www.nfap.com](http://www.nfap.com).

“The reality of the global economy is that employers and their capital will follow the talent – wherever that talent is permitted to work and flourish,” said NFAP Executive Director Stuart Anderson, noting that during the past decade, low H-1B and green card quotas have caused the country’s employers to lose opportunities to grow and innovate. “While Members of Congress often talk about “protecting” American jobs, those who persist in pursuing restrictions on hiring skilled foreign nationals unfortunately are inhibiting job creation and innovation in the United States.”

The availability of H-1B temporary visas, which generally are good for 6 years, is crucial, otherwise skilled foreign nationals, particularly graduates of U.S. universities, could not work or remain in the United States, since waits for green cards take many years. The supply of H-1B visas has been exhausted before the start of each of the past four fiscal years, often leaving employers with no choice but to hire skilled foreign nationals outside the United States or see these scientists, engineers and professionals lost to competitors overseas. Despite this, some Members of Congress, often relying on anecdotes rather than the realities of the global economy, have launched concerted efforts to make it even more difficult to use H-1B visas by proposing a variety of restrictive amendments to current law. This comes at a time when the European Union is opening its doors wider to attract skilled immigrants.

“A number of the provisions proposed by lawmakers view skilled foreign nationals as something that must be kept from our shores, rather than as human beings with skills and ambitions that benefit our nation,” said Stuart Anderson.

Research and interviews show efforts at restriction often are based on myths, including the belief by some that H-1B visa holders are hired only as “cheap labor.” In fact, if companies simply wanted to save money they would hire foreign nationals only in other countries, where wage rates can be a fraction of U.S. salaries. Companies are employing skilled foreign nationals because they help create innovations, fuel growth and fill skill gaps, not because they’ll work more cheaply. The issue is not simply one of numbers, nor is it confined to the information technology industry. “We’re losing people all the time,” said a director of a top research facility. “Perhaps nothing impedes more the chain of brilliance in medical research in America than the H-1B cap.”

Among the study's findings:

- Under current law, H-1B professionals must be paid the *higher* of the prevailing wage or the actual wage paid to similarly employed Americans. In addition, companies generally pay approximately \$6,000 in legal and government-imposed fees when hiring an H-1B visa holder (and up to \$10,000 more to sponsor an individual for permanent residence). Even among the relatively small number of employers where suspicion of abuse has been present the average underpayments owed to H-1B workers have turned out to be relatively small. In examining all DOL final agency actions between 1992 and 2004, one finds the average amount of back wages owed to an H-1B employee was only \$5,919 – that is about the amount of money U.S. employers typically pay in H-1B legal and government-imposed fees.
- Despite the impression created by critics we do not see a large number of investigations, complaints filed or serious violations uncovered. Moreover, among the comparatively small number of violations found in recent years, the Department of Labor concluded employers either committed paperwork violations or misread employer obligations in a non-willful manner in almost 90 percent of the investigations. (Only approximately 7 to 15 willful violations have been found each year since 1992.)
- H-1B visa holders are not “indentured servants,” as critics allege. They change companies frequently and Congress made it easier for those in H-1B status to change jobs. “Someone on an H-1B can usually get a new job in a few weeks,” notes an immigration attorney.
- It is inaccurate (and offensive) to argue that people not born in the United States have no value in the marketplace unless they work more cheaply than Americans. Official data show 57 percent of new H-1B professionals have earned a master’s degree or higher. When recruiting on college campuses, companies find that foreign nationals account for 50 to 80 percent of advanced degree candidates in science and engineering disciplines at leading American universities.
- For 12 months at a time during each of the past four fiscal years no new H-1Bs could even enter the U.S. labor market because the annual quota had been reached before the year started, so those facing unfortunate economic difficulties cannot blame H-1B visa holders (since it’s unlikely employers would hold jobs open for a year if a qualified U.S. professional was available). New H-1B professionals accounted for only 0.07 percent of the U.S. labor force in 2006.
- A May 2006 *Money* magazine survey ranked software engineer first among jobs based on salary, strong growth prospects and potential for creativity. The unemployment rate for those in math and computer occupations is at 2.8 percent, compared to 4.7 percent nationally. This is virtually full employment, with those seeking work primarily between jobs, located in the wrong geographic region, or possessing the wrong skill set. This low unemployment rate is indicative, along with the demand for H-1B visas, of the demand for technology professionals in non-IT businesses that need to utilize information technology (IT), as well as in more traditional technology firms. Between 2003 and 2006, salaries in math and computer occupations increased by 9.5%, slightly more than the 8.2% for all occupations. Salaries for computer and information scientists increased 14.1% over the same 3 years.
- Congressional critics seeking to add new restrictions and fees on H-1B visa holders are attempting to cripple the use of the visas and prevent companies from hiring skilled foreign nationals in the United States. Many of the measures are so extreme that it is implausible to believe Congressional critics are simply trying to “reform” the use of H-1B or L-1 (intracompany transferee) visas.

- Some proposals would even require companies to gain advance permission from the Department of Labor before a company's employees could provide service at a client's location. Such a poor understanding of the global economy and the alternatives faced by companies to conducting work in the U.S. undermines the already tenuous arguments offered by critics against educated foreign nationals.
- Due to sketchy statutory definitions like "essentially equivalent" job, many proposed H-1B restrictions would cause a General Counsel to conclude his or her company may be unlikely to be in compliance if they hire H-1B professionals, which appears to be the goal of Congressional critics. In the days of flexible job functions and multiple locations, the safer alternative for companies is to expand outside the United States rather than risk such legal liability.
- In an apparent effort to discredit the use of visas to hire foreign nationals in general, in 2007 critics started arguing that most H-1B visas are used by companies headquartered in India and that this deprives U.S. companies of the visas. However, the 10 "outsourcing" companies cited most by critics used less than 14 percent of new H-1B petitions approved in 2006 for initial employment, according to U.S. Citizenship and Immigration Services. Employers snapped up all H-1B visas the first day applications were submitted in FY 2008, meaning the approximately 15,000 petitions used by these 10 companies has no major impact on the overall availability of H-1Bs. If critics were truly concerned about American companies gaining greater access to H-1B visas they would support a higher annual limit or expanded exemptions from the H-1B cap.
- Further restricting the conditions under which companies obtain H-1B and L-1 visas for skilled foreign nationals, even in exchange for higher annual limits on H-1Bs, is likely to result in less innovation and job creation in the United States as companies hire more individuals abroad. A more sensible policy is to increase quotas for H-1B visas and green cards without new conditions and to enforce existing law.

#### **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](http://www.nfap.com).

2111 Wilson Blvd., Suite 700, Arlington, VA 22201  
phone: (703) 351- 5042 fax: (703) 351-9292 [www.nfap.com](http://www.nfap.com)