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Immigration Reform Boosts Bureaucrats Not Business

By Shikha Dalmia - Apr 24, 2013

Immigration reform might not be able to fix every shortcoming of U.S. policy. The risk now is that it might make the system worse.

This is what will happen if the bipartisan “Gang of 8” senators’ [proposal](#) to change the high-skilled visa program is included in the final legislation, all in the name of protecting American jobs. The only jobs protected will be those of labor bureaucrats.

The technology industry has a hard time obtaining work permits, called [H-1B visas](#), for foreign workers because the low annual cap on these visas is [filled](#) within the first few weeks of the year. This forces companies that don’t win the visa lottery to wait another year to try again.

Furthermore, foreign nationals who get an H-1B sometimes have to wait decades to gain permanent residency or green cards because of backlogs created by the low cap and limits on numbers from individual countries. During this time, their lives are on hold. Their spouses can’t work. They can’t change jobs in the same company, much less move to a new one, without having to begin the process again. With no certainty that their green-card quest will ultimately [succeed](#), many of them forgo buying homes or otherwise putting down roots in the U.S.

The proposed measure would raise the base H-1B visa cap from 65,000 to 110,000 immediately and up to 180,000 subsequently. It would also offer 25,000 visas, up from 20,000, to foreign students who graduate from U.S. universities in science, technology, engineering and mathematics fields.

Reducing Backlogs

More significantly, these graduates would no longer be subject to the green-card cap and, if they wanted, could get the green card without first having to obtain an H-1B. This would relieve the backlog somewhat and cut wait times for all technology applicants. Although the changes aren’t adequate, they would have represented [progress](#) had the Gang of 8’s plan left it at that. In exchange for these fixes, however, the measure would hand the Labor Department sweeping new powers over employers to ensure that they don’t replace Americans with foreign nationals.

Since 1998, “H-1B dependent” employers -- those with 15 percent or more of their workforce on [H-1Bs](#) -- have had to attest that they are hiring foreign nationals only after making a good-faith effort to recruit qualified Americans. This includes advertising

through channels prescribed by the Labor Department and interviewing a requisite number of candidates.

The employers must also be prepared to justify the discharge of any American worker 90 days before or after hiring an H-1B employee. They have to demonstrate either that the employee's departure was voluntary or caused by poor performance or unacceptable behavior. A company that is found to be willfully violating the law can be barred for three years from hiring foreign workers and slapped with thousands of dollars in fines.

Instead of freeing companies from such mandates, the Gang of 8's [plan](#) would impose them on every company that hires even a single H-1B visa holder.

It gets worse.

Currently, the Labor Department can start investigations to ensure that companies aren't firing Americans to hire foreign nationals. To do so, however, officials have to receive a complaint from an aggrieved party who is willing to go on the record. Or there has to be evidence of violations that the labor secretary has scrutinized and certified as credible. Under the proposed changes, anyone -- even an anonymous tipster -- could set off an investigation. In addition, the secretary would no longer be required to certify the evidence -- the administrative equivalent of showing probable cause and obtaining a court warrant.

Unchecked Powers

Any Labor Department bureaucrat who decided, for whatever reason, to investigate a company -- after, say, reading a newspaper article or relying on hearsay -- could certify his own evidence and proceed as he sees fit, according to Stuart Anderson of the **National Foundation for American Policy**, a research organization that [studies](#) immigration issues.

"Basically, Labor Department investigators will get unchecked powers to launch fishing expeditions of companies," he says.

As if the prospect of losing control over personnel decisions and inviting intrusive federal scrutiny isn't enough to render the H-1B program useless, the Gang of 8's proposal goes further. Under current law, employers must pay foreigners the same wages as American workers. But the senators, including Democrat [Dick Durbin](#) of [Illinois](#) and Republican Lindsey Graham of [South Carolina](#), want to require that foreign nationals be paid "significantly more."

How much more? Essentially, the proposed reforms would eliminate the first tier of the four-tier formula that is currently used to calculate prevailing wages in an industry, Anderson says. This would mean that employers would have to pay foreign nationals who are just out of college the same wage as an American with several years of experience in the company. Anderson estimates that this could add up to \$10,000 to \$18,000 more for every H-1B hired.

Supporters of this [formula](#) say it would protect American workers from being replaced by younger foreign counterparts. In reality, it is aimed at pricing foreigners out of the labor market.

Such labor protectionism won't save American jobs. If the U.S. technology industry is forced to pay a premium for talent as well as open itself to government harassment, it will be more tempted to outsource operations to friendlier climes, hardly a recipe for [job creation](#). The proposed H-1B "reforms" deserve no place in the [final](#) law.

(Shikha Dalmia, a contributor to Bloomberg View, is a Detroit-based senior analyst at the Reason Foundation. The opinions expressed are her own.)