

[New NFAP Policy Brief: Analysis: Data Reveal High Denial Rates For L-1 and H-1B Petitions, February 2012 | Press Release | Press Conference Call](#)

USA Today:

<http://www.usatoday.com/news/world/story/2012-02-09/work-visa-denials-increase-in-us/53033748/1>

Reuters:

<http://blogs.reuters.com/felix-salmon/2012/02/09/charts-of-the-day-us-legal-immigration-edition/>

Times of India:

<http://timesofindia.indiatimes.com/tech/careers/job-trends/Report-points-at-India-bias-in-H-1B-L-1-visa-denials/articleshow/11835103.cms>

Forbes:

<http://www.forbes.com/sites/stuartanderson/2012/02/12/new-research-finds-soaring-denial-rates-for-high-skill-professionals/>

<http://www.forbes.com/sites/stuartanderson/2012/02/19/over-regulated-america/>

February 15, 2012 House Immigration Subcommittee testimony (uses charts and data from study)

<http://judiciary.house.gov/hearings/Hearings%202012/Cooper%202152012%20%28Immigration%29.pdf>

The Daily Caller

<http://dailycaller.com/2012/02/29/visa-rejection-rate-for-skilled-workers-skyrockets-hurting-businesses/?print=1>

USA Today

Study Shows Increase of Work Visa Denials in U.S.

February 10, 2012

By Kevin Johnson

WASHINGTON – Denial rates for work-related visas to the [U.S.](#) have increased dramatically in the past four years, with Indian-born professionals and researchers being refused at higher rates than other foreign nationals, according to an analysis by the **National Foundation for American Policy**.

Citing data from the [Department of Homeland Security](#), the non-partisan foundation reported that petitions to transfer employees with specialized knowledge into the U.S., or those designated as executives, managers and other professionals have been denied at increasing rates since 2007.

In the case of applicants claiming "specialized knowledge" of company products, services or markets, the rate of denial jumped from 7% in fiscal year 2007 to 27% in fiscal year 2011.

In addition, according to the data maintained by Homeland Security's U.S. Citizenship and Immigration Services, authorities required special knowledge applicants to supply additional information supporting their petitions in 63% of cases in fiscal year 2011, up from 17% in 2007. The spike resulted in visa delays or denials in 90% of cases in the 2011 budget year.

Most likely to be denied as specialized knowledge applicants, according to the foundation analysis, were Indian-born applicants whose rates of refusal climbed in one year from 2.8% in fiscal year 2008 to 22.5% in 2009. By comparison, denial rates for Canadians increased during the same time period, from 2% to 2.9%.

[Stuart Anderson](#), the foundation's executive director, said the high denial rates for applicants from India could not be immediately explained.

"The dramatic increase in denial rates and requests for evidence for employment petitions ... raises questions about the U.S. government's commitment to maintaining a stable business climate for companies competing in the global economy," the study concluded. In many cases where the needs are immediate, the rising number of evidence requests "can scuttle" a company's U.S. operation or strategy, prompting some employers to move their bases elsewhere, Anderson said.

Randel Johnson, senior vice president for labor, immigration and employee benefits at the [U.S. Chamber of Commerce](#), said the denials represent a "serious breakdown."
"This has reached a fever pitch among our membership," he said. "We have to figure out what the proper solution is."

Homeland Security provided data to USA TODAY on Thursday that generally tracked the foundation's major findings. The agency said it would respond in more detail after reviewing the foundation's analysis.

Crystal Williams, executive director of the American Immigration Lawyers Association, said the standard for approval has become increasingly less clear for applicants.
"This kills new business," Williams said. "It's killing jobs in the U.S."

Information Week

H-1B Application Window Opens April 2

Controversial visa program allows foreign-born tech pros to work in the U.S. for up to six years.

By Paul McDougall

March 01, 2012

Foreign nationals seeking high-tech and other specialty employment in the U.S. can submit applications for H-1B visas for the 2013 fiscal year beginning Monday, April 2, U.S. Citizenship and Immigration Services has announced.

Visas obtained after that date allow workers to begin employment starting Oct. 1. The numerical limit of 65,000 H-1B visas for the current fiscal year, not including 20,000 reserved for those with a master's degree or higher from a U.S. university, was reached on Nov 22.

H-1B visas allow foreigners to work in the U.S. for three years, and can be renewed for one additional three-year period. Although the visas are used by workers in occupations as diverse as fashion modeling and journalism, the majority of them are obtained by IT professionals--particularly those from countries such as India with burgeoning tech sectors and educational programs.

The program isn't without [controversy](#). Backers, including major computer companies such as Microsoft and Oracle, say it's necessary in order to make up for what they claim is a shortage of American-born IT workers, especially when it comes to skills related to hot new technologies such as cloud and mobile computing.

H-1B supporters cite studies that indicate that the program actually helps to create jobs for Americans. "In today's global marketplace, we cannot afford to keep turning away those with skills that our country needs to grow and to succeed," said New York mayor Michael Bloomberg, during a [speech last October](#) sponsored by the U.S. Chamber of Commerce.

[A study](#) released this month claims that H-1B visas are becoming more difficult to obtain.

Application rejection rates rose to 17% in fiscal 2011, compared to 11% in fiscal 2007, according to research by the **National Foundation for American Policy**. NFAP said the higher rejection rates are "harming the competitiveness of U.S. employers and encouraging companies to keep more jobs and resources outside the United States."

Critics of the program, however, question claims of a skills shortage and suggest that H-1B visas are merely a way for corporations to import cheap labor, at the expense of U.S. workers. Last year, American IT worker Jack Palmer sued India-based outsourcer Infosys, accusing the company of systematically discriminating against Americans in its U.S. hiring practices.

Palmer also alleged that Infosys' management openly discussed ways of flouting H-1B rules during meetings at which he was present. The case remains pending in Alabama circuit court.

The Daily Caller

February 29, 2012

Visa Rejection Rate for Skilled Workers Skyrockets, Hurting Business

In his State of the Union address last month, President [Barack Obama](#) called for a new route to citizenship for students at American universities that would enable them to stay and [work in the United States](#). But an analysis of data from the State Department has found that a sharply increasing number of such highly skilled workers has been denied visas to work in the U.S. during the past four years, for seemingly inconsistent reasons.

The study, conducted by the **National Foundation for American Policy (NFAP)**, confirmed that skilled workers — particularly Indian nationals — have had a dramatically harder time acquiring visas in recent years, primarily because of government adjudicators' formal requests for additional information, known as Requests for Evidence (RFEs). Those requests often result in the delay or outright denial of pending visa applications.

The study focused on H-1B and L-1 visas. The H-1B is for foreigners employed by U.S. companies who have at least a college degree, though the majority of H-1B recipients have a master's degree or higher, according to data from U.S. Citizenship and Immigration Services ([USCIS](#)). Many applying for H-1B visas are foreigners educated at U.S. graduate schools.

The L-1 visa is for those already employed overseas by a company that wishes to transfer them to the U.S. An L-1A is for managers and executives; an L-1B is for those with “specialized knowledge.”

Across the board, these two types of visas have become significantly harder to acquire.

Denials of L-1B visas rose sharply from 7 percent to 22 percent from 2007 to 2008, and remained at similarly high levels in the following years: 26 percent in 2009, 22 percent in 2010 and 28 percent in 2011.

RFEs also skyrocketed during this period. In 2007, only 17 percent of petitions were “at least temporarily denied or delayed” due to these requests, according to the study. By 2011, that number had risen to 63 percent.

The rejection rate for H-1B visas nearly tripled from 2007 to 2009 and has remained high. Eleven percent were denied in fiscal year 2007, but by 2009 that number jumped to 29 percent. The rate eventually fell to 17 percent in 2011.

The trend was less dramatic for L-1A visas: Denial rates increased only slightly from 8 percent in 2007 to 14 percent in 2011. RFEs for L-1A applicants increased substantially,

however, rising from 4 percent in 2004 to 24 percent in 2007. The figure stood at a whopping 51 percent in 2011.

Indian-born applicants in particular faced a significant increase in denials and delays. Denial rates for L-1B visas for Indians went from 2.8 percent in 2008 to 22.5 percent in 2009.

USCIS “denied more L-1B petitions for new petitions for Indians in [fiscal year] 2009 (1,640) than in the previous 9 fiscal years combined (1,341 denials between FY 2000 and FY 2008),” according to the NFAP study.

By contrast, the rate of rejections of L-1B petitions from native Canadians hardly changed between 2008 and 2009.

Even as applicants are apparently witnessing a seismic shift in the standards for acquiring or extending a visa, there has been no relevant change in federal [immigration law](#) or any announcement of new guidelines during this time period.

Applicants who already have visas are not immune from these challenges, because many are denied without any apparent justification when they apply for extensions, a situation some companies find “extremely odd,” said Stewart Anderson, executive director of the National Foundation for American Policy.

A statement from the U.S. Chamber of Commerce, prepared in advance of a congressional hearing on [immigration](#), cited the extraordinary case of a game software company’s foreign engineer whose visa extension was significantly delayed. That delay was due to a RFE that demanded to know “whether the worker qualifies to retain the same job for the same employer that he is already fulfilling,” even though the worker held “several patents related to the game.”

Workers who have acquired specialized knowledge over the course of several years of employment “arguably should be more specialized than when they were approved” for a visa the first time, said one employee of a global company that relies on a highly skilled workforce in its US operations. The source agreed to speak to The Daily Caller on the condition of anonymity.

“They’re asking for information that goes beyond what they asked previously, that gets into the qualifications of other employees,” the source said.

USCIS is “rejecting documentation that once was considered good documentation,” said Crystal Williams, executive director of the American Immigrations [Lawyers Association](#). “Applicants aren’t even sure what they can give the agency to convince them that the qualifications are what they are.”

Companies are also being asked to provide more information about themselves, such as proof that they are a financially viable institution that has a compelling reason to require a visa for a foreign employee.

“Large companies that in the past have never had a problem getting petitions approved were suddenly being asked, ‘Please give us all your financial records to show you’re a viable organization and prove that this person is a manager,’” said Lynn Shotwell, executive director of American Council on International Personnel.

Requests of that type can be cumbersome and significantly delay the visa approval process for a company with thousands of employees, Shotwell told TheDC.

Even though companies have sought visas for other employees many times in the past, USCIS adjudicators in some cases have requested this type of information from them again, as if the companies had never applied before.

Some large global companies that regularly apply for visas had been able to use so-called “blanket petitions,” which allowed them to skip the USCIS process and work directly with the consulate. Recently, however, consulates have denied these petitions and referred the companies to USCIS for approval, Shotwell explained.

When a worker is finally approved, Shotwell added, there often seems to be no clear reason why one employee succeeded in the process where another failed. “Maybe a company has a group of employees coming over who are on paper all the same, and half are approved, and half are denied,” she said.

This inconsistency has led to several well-publicized embarrassments for USCIS. Last year, for example, ABC News reported the story of Amit Aharoni, an Israeli who founded a company in the U.S. after attending Stanford University. Aharoni employed nine workers but was subsequently denied a visa to stay in the country himself; he received his visa only after subsequent media coverage.

Shah Peerally, an [immigration lawyer](#) whose clients are primarily Indian and Pakistani, said his clients are occasionally left stranded while vacationing in those countries because the government, for arbitrary reasons, sometimes refuses to stamp their visas and approve their return to the U.S..

“We don’t have any mode to fight this, and by the time we fight this, the projects here get finished and both the company and the candidate get finished,” Peerally said.

The Daily Caller has heard similar stories about other employees’ struggles with their visas, but the sources asked that The DC not publish them for fear that they would be too easily identifiable.

“Companies themselves, I think, are hesitant to publicly criticize an agency that ultimately is responsible for either permitting or denying employees to be allowed in the country,” Anderson explained.

“We’re more than happy to talk privately about our problems with government officials; we welcome those opportunities because we hope that that leads to these problems being addressed in some way,” said one source who requested anonymity. “We’re very sensitive to speaking openly and publicly about it because it would seem to suggest that we’re going outside the realm of government.”

Additionally, the source noted, companies “don’t want to be singled out” by their competitors.

Both USCIS and the State Department declined to address the matter directly, but they responded to concerns about Indian visa applicants in statements to TheDC.

“The Department of State is committed to building on our broad partnership between the United States and India by facilitating visas to qualified applicants,” said a State Department official. “India is the single largest beneficiary of H-1B and L-1 visas, by a wide margin. In fiscal year 2011, U.S. embassies and consulates in India issued more than 67,000 H-1B visas and more than 25,000 L-1 visas.”

“Last year, our embassies and consulates in India adjudicated more H-1B applications from Indian applicants than at other time in history,” the official said. “Over the course of the past four fiscal years, consular officers in India issued more than 47 percent of all H-1B visas and more than 43 percent of all L-1 visas worldwide.”

“USCIS adjudicates H-1 and L1-B cases based on the facts presented in the petition and the law,” said Bill Wright, a USCIS spokesperson. “We have actively engaged with the public on the L1-B classification, including most recently at a forum at the end of January hosted by the Chamber of Commerce.”

But Anderson noted that the data he used in his study came directly from the State Department. In some cases, he said, USCIS had even crunched the numbers for him.

“They had already calculated the denial rate and the request for evidence rate in most cases,” Anderson said, noting that NFAP performed additional calculations.

Other explanations for the increase in visa denials and delays center on the economy and USCIS training programs.

“It’s possible that the way the economy shifted in 2008, 2009, that that encouraged adjudicators to take a harder line on applications,” Anderson suggested.

Shotwell said the problem may be with the training new adjudicators are receiving. But because individual USCIS adjudicators do not sign the petitions they investigate, there is

no way to know if the increasing inconsistencies in the handling of visas are due to different standards of individual adjudicators or if the change is systemic.

Anderson was careful to note that the data from his study did not suggest any political motive behind the shift. He said some of the changes began in 2008, when President George W. Bush was in office, while others did not become apparent until 2009, after President Obama had been inaugurated.

Whatever its cause, the problem will hinder the president's efforts to attract business and investors, sources warned.

"I don't think it's an understatement to say that probably our single largest concern, inhibitor is the U.S. immigration system," said Fransisco D'Souza, CEO of technology giant Cognizant, during a meeting at the U.S. Chamber of Commerce.

"Our clients are the biggest banks, the biggest insurance companies, the biggest health care companies," he added. "All of them are becoming more technology intensive. All of them need to employ the most advanced technology, and in order to do that they need access to skilled professionals. We're simply not creating enough skilled professionals at the rate at which the U.S. companies need to be truly competitive," D'Souza said.

"It's incredibly disruptive to [companies'] business planning," Shotwell said. Companies are devoting much more time and energy to "more extensive screening of their employees, trying to really screen and determine who's going to be clearly eligible for the visa. ... They're spending many more resources internally preparing applications and submitting any possible info they think might be relevant to the case to get it approved," Shotwell continued.

Companies are also trying to account for the now-expected delays and denials when planning future projects, but at a certain point, Shotwell said, the companies begin to ask, "What's the cost of doing that versus doing it something else?" Ultimately, many do opt to take their business elsewhere.

"When you attract investment and want to keep investment ... it's important to have a stable legal environment," Anderson said.