Should The H1-B Visa Cap Be Raised?

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Despite growing competition for talent and tremendous changes in the U.S. and world economies over the past 16 years, the U.S. immigration system for highly skilled professionals—with modest exceptions—has only become worse since 1990. Companies now pay hefty government fees—between $2,200 and $3,200 per H-1B visa holder—endure longer waits, and submit to more restrictive regulations when hiring qualified and hard-to-find IT employees.

The Comprehensive Immigration Reform Act (S. 2611), which passed the Senate in May, would change that. The bill demonstrates that America is again ready to compete for IT talent. Even with more U.S. workers, demand for skilled programmers, developers, and engineers outpaces supply. Native-born U.S. workers alone can't fill the need for skilled IT professionals.

Since it can take years for an American employer to sponsor a skilled foreigner for permanent residence or a green card, availability of H-1B temporary visas is important. Otherwise, skilled foreign nationals—particularly graduates of U.S. universities—couldn't work or remain in the United States.

In 2003, 24% of new H-1B applications approved were for systems analysts and programmers, with the rest spread among occupations such as engineering, architecture, education, and science. Twenty-eight percent of new H-1B visa holders were from India, 11% from China, and about 6% each from Canada and the Philippines.

Last year, U.S. universities awarded 55% of master's degrees and 67% of Ph.D.s in electrical engineering to foreign nationals, according to the American Association of Engineering Societies. The data is similar in other IT fields. While

in the past we retained most of these individuals in the U.S. workforce, there's no guarantee we'll do so in the future.

S. 2611 addresses two problems. First, the annual limit on H-1B visas—including the 20,000 exemptions for those with advanced degrees from U.S. universities—is reached so quickly that employers often must wait a year or more to hire a desired employee. Second, even if an employer obtains an H-1B visa for a worker, the scarcity of green cards—140,000 per year for employment-based immigrants—means that those sponsored for permanent residence can wait five years or more.

While a skilled foreign-born professional waits years for permanent residence, he or she often can't buy a home or travel freely outside the United States. These restrictions harm innovation because those with new ideas can't go on to start new companies or gain venture capital in this country.

In S. 2611, Sens. John Cornyn (R-Texas) and Arlen Specter (R-Pa.) nearly doubled the H-1B cap to 115,000 a year from 65,000, and exempted a broader range of well-educated individuals from the numerical limit—which generally would apply to IT and non-IT professionals. The bill would also increase employment-based immigrant visas and allow those with a master's degree or higher from a U.S. university to obtain a green card without being subject to the annual limit on employment green cards.

America can choose between a policy of openness—as signified by the recently passed Senate bill—or the closed approach, with rolling 12-month moratoriums on hiring individuals with new H-1B visas and de facto five-year waits for permanent residence for foreign-born technology professionals.

These frustrations force more companies to hire skilled workers for facilities outside the United States rather than bringing them here. Isn't it better to return to the more open approach that has made America and its economy so dynamic?

*Stuart Anderson is executive director of the **National Foundation for American Policy**, an Arlington, Va., policy research group focusing on trade and immigration.*

No: The H-1B program is vulnerable to abuse, and raising the cap on temporary work visas hurts U.S. IT workers

Ralph Wyndrum

If Ford or General Motors discovered serious mechanical flaws in one of its car models, the company would correct the problems before continuing to manufacture the vehicle. The last thing the company would do is increase production with the flaws intact. But that's exactly what the Senate is proposing to do with the H-1B program in the major immigration reform legislation it passed in May.

The Senate wants to increase the annual H-1B cap from 65,000 to 115,000, automatically raise the cap by 20% any year the 115,000 is reached, and add a new exemption for foreign nationals with high-tech graduate degrees. But the Senate is silent in regard to reforming the flawed program by strengthening safeguards such as job security for U.S. and foreign technology workers.

Numerous government reports, however, are loud and clear. The administration's Office of Management and Budget concluded in 2004 that the H-1B program is "vulnerable to fraud or abuse." A recent U.S. Department of Labor report revealed "corrupt employers, labor brokers, and lawyers who file fraudulent applications. The prevalence of these cases consistently demonstrates the susceptibility of the program to fraud."

After examining the reports and analyzing H-1B applications, the *San Jose Mercury News* in April concluded that "the program gives U.S. citizens virtually no protection from being replaced by a foreign worker." The newspaper added that "employers are not required to prove American workers were not available for those jobs."

This conclusion flies in the face of a common misperception that the H-1B program lets U.S. employers seek H-1B applicants only when qualified Americans can't be found. The majority of U.S. companies aren't subject to such a restriction. And while companies are compelled to pay H-1B holders prevailing wages, the law leaves it to each employer to determine the amount of the wage.

Earlier this year, the U.S. Department of Labor ordered two New Jersey employers, Home Mortgage Co. of America and Priority I Software Solutions, to pay $567,090 in back wages to 16 H-1B workers because they weren't paid prevailing wages. In November 2005, Southfield, Mich.-based Computech Inc., a "job shop" that supplies H-1B holders to other companies, agreed to pay

$2,250,000 in back wages to 232 H-1B employees and a $400,000 fine "to settle immigration law violations," according to the Labor Department. Computech also violated the law by frequently "benching the workers without compensation."

The *Mercury News* reported that employers admitted to investigators at the General Accounting Office—since renamed the Government Accountability Office—that they "hired H-1B workers in part because these workers would often accept lower salaries than similarly qualified U.S. workers." This undermines green-card holders and U.S. employees, and makes indentured servants of the H-1B workers, whose ability to move from job to job is more limited than that of U.S. citizens and legal permanent residents.

At the same time that thousands of H-1B employees have entered the U.S. workforce, many U.S. high-tech job opportunities have disappeared. According to the Bureau of Labor Statistics, IT employment dropped by 132,000 in six major computer and engineering job classifications between 2000 and 2005. The greatest increase (123,000) was among computer and information systems managers; the greatest decrease (164,000) was among computer programmers.

So before Congress even thinks about expanding a flawed program, it should pass legislation that protects U.S. technology workers from displacement by foreign professionals, ensures market wages and other workplace protections for H-1B holders, and prohibits the outplacement, outsourcing, leasing, or contracting of H-1B workers from one company to another.

Ralph Wyndrum is president of IEEE-USA in Washington, D.C., the U.S. affiliate of the Institute of Electrical and Electronics Engineers.