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H-1B work visa full of uncertainties for immigrants

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By Mark Roth / Pittsburgh Post-Gazette

It would be hard to find an international student who is more international than Andrew Achilleos.

Born to a Cypriot father and a half-British, half Cypriot mother, the 29-year-old was raised in Bahrain, went to high school and college in England, worked in Athens, Greece, and is now nearing graduation from Carnegie Mellon University's Master of Business Administration program.

Mr. Achilleos hopes to stay in the United States to help start a custom men's suit company here. To do that, he is seeking an H-1B visa.

The H-1B is the primary work visa used by highly educated foreign-born students, and it is the subject of an ongoing controversy that is often overshadowed by the larger debate on undocumented immigrants and border controls.

Proponents of the H-1B program say that its annual cap of 85,000 visas — 20,000 for graduate students who work at universities and 65,000 for those who work for American companies — is badly outdated and causes a growing number of highly talented U.S. college graduates to return to their home countries or go elsewhere to start their careers.

Critics of the program say it exploits foreign-born graduates by underpaying them, tying them to the companies that sponsor their visas and displacing middle-aged American-born employees in the process.

Mr. Achilleos is an unusual H-1B candidate on two counts. First, he plans to become a business manager and entrepreneur, while most H-1B recipients are computer programmers, engineers or scientific researchers.

Second, he is a British citizen, and they make up only about 1 percent of all H-1B recipients. Indians composed about 64 percent of H-1B recipients, and the Chinese another 8 percent, according to a 2013 report by U.S. Citizenship and Immigration Services.

Despite those distinctions, though, he faces many of the same uncertainties as other H-1B applicants.

Will he get it?

Mr. Achilleos is not scheduled to graduate until May, but the annual H-1B visa lottery is held on April 1. That means he will have to work for several months on an OPT visa, which stands for optional practical training, while the company he plans to work for, TMD Holdings of Pittsburgh, applies for his H-1B.

Even then, it will be a tossup. The 65,000 visa cap has not changed in 10 years, and demand from employers is high. This year, the government received 172,500 applications, and it took just nine days for the visas to run out. Even coming out of the recession in fiscal 2010 and 2011, the visa limit was reached after several months.

Those who favor expanding the H-1B program say higher numbers are important not just to meet employers' needs, but because many immigrants now have to wait years to get permanent residency green cards to stay and work in the U.S.

When America's immigration laws were overhauled in 1965, it got rid of the quotas that limited migration from Asia and parts of Europe, but substituted an "equality rule" that said no country could get more than 7 percent of the visas issued each year.

For populous nations like India, China and the Philippines, that has created huge backlogs in visa applications. Right now, the State Department said, the wait for employment-based green cards is 11 years for people from India, four years for those from China and two years for those from the Philippines.

Because that entry point is so clogged, some say, employers need a program like the H-1B visa to meet their fast changing needs.

"It's not realistic for most people to get sponsored for a green card, since the wait times can be six to 10 years or longer," said Stuart Anderson, who runs the **National Foundation for American Policy** in Arlington, Va. "Nobody you know goes for an interview and the employer says, 'Oh great, show up at noon on Jan. 1, 2022, and Mary will show you around the office.'"

The bottom line: Mr. Achilleos may not get an H1-B even after a year of working on his new venture.

A need to be flexible

But he is willing to take that risk, Mr. Achilleos said. His future employer has told him, "Don't worry — we'll sort it out."

Henry Wang, the co-owner of TMD Holdings with his brother Tommy, said they like Mr. Achilleos' international experience and the work he did for them during a recent summer

internship. If the H1B doesn't come through, one possibility is to have him set up the suit business in Europe.

The proposed venture, Henry Thomas Tailors, intends to compete for the luxury suit business in Pittsburgh, both by opening stores Downtown and in Shadyside, but also by making appointments to take measurements in customers' offices. Using factories it owns or does business with in Shanghai and Europe, Mr. Wang said, TMD Holdings hopes to offer bespoke suits at 25 percent less than existing prices at such high-end stores as Larrimor's and Brooks Brothers. The holding company, which already provides products to 30,000 retail outlets in the U.S., is starting to launch startups using the talents of people like Mr. Achilleos.

Mr. Achilleos sees serious problems with the nation's immigration system. "You're bringing some of the brightest students in the world here, and after educating them, you send them away. You do lose a lot of prime candidates because of that."

It's the same argument immigration reform advocates make.

One of the leading voices on the topic is Vivek Wadhwa, author of the 2012 book "The Immigrant Exodus: Why America is Losing the Global Race to Capture Entrepreneurial Talent."

Mr. Wadhwa, who holds appointments at Stanford and Duke universities, said the H-1B visa caps are "causing other countries to benefit. You go around the rest of the world, and entrepreneurship is booming, in India, China and Brazil. Many of those entrepreneurs are returnees from the United States. We've been spreading democracy and capitalism by sending all these people trained over here back to their home countries, which is good for those countries, but not so much for us."

The limits also spur U.S. firms to expand their operations in other countries. One of the best known examples is Microsoft's software engineering center in suburban Vancouver, British Columbia. It's stocked with employees the company wanted to hire in the U.S., but could not get an H-1B visa for.

"I don't think people realize that when you have a business, it has to be based on some kind of predictability," said the National Foundation's Mr. Anderson, "and when people aren't able to hire the people they want to hire, it encourages them to expand outside the U.S."

The program's critics

The H-1B program has strong critics as well, even among groups that want to increase America's high-tech immigration numbers.

One of the most vociferous is Norm Matloff, a computer science professor at the University of California-Davis.

He has argued that bringing in thousands of lesser paid H-1B employees has thrown middle-aged, America-born computer programmers out of work. In one 2003 study he did, he found that

the employment rate for American-born computer science graduates working as programmers fell from 57 percent five years out of college to just 19 percent 20 years after graduation, while the employment rate in their field for American-born civil engineers 20 years after graduation was still 52 percent.

“The tech industry argues that only the young people have the latest skills,” Mr. Matloff said, “and that the older people are fat and lazy and complacent. That’s a false argument.

“Google will tell you that only 5 percent of its employees are H-1Bs, but a lot are former H-1Bs. I believe job opportunities for Americans are greatly reduced because of these H-1B programs, to the point where a lot of Americans have to bail out at age 35 or 40.”

But other researchers have found the H1-B program has a much more positive effect.

In a study earlier this year, Harvard Business School professor William Kerr and his colleagues found that hiring H-1B workers actually increased the overall number of skilled workers in a company, and that if the H-1B employees are paid less than other workers in a company, the differential is only about 3 to 5 percent.

Also, he told the school’s Working Knowledge website, in companies that hire H-1B employees, “the share of workers over age 40 does go down, but we’re not seeing amongst our firms in the study evidence of people being pushed out of their jobs. The employment of older workers is not growing as quickly as the other groups, but there are also not absolute declines in employment levels.”

If middle-aged computer programmers are losing jobs because their skills are out of date, added Michael Malone, an innovation columnist for the Wall Street Journal, the onus should be on the government. “How much do we devote to retraining older engineers? I think we must take care of citizens who were once skilled and have been left behind.”

Mr. Matloff said some people have blamed most of the underpayment of H-1B employees on Indian-owned firms that hire large numbers of these workers for their American-based operations, but he thinks American firms are guilty of the same thing, even if they pay at a somewhat higher level. “It doesn’t matter whether you’re [American-owned] Intel or [Indian-owned] Infosys, my research shows that both categories of companies are abusing the program. It’s just like buying a car. You can buy a Corolla or a Camry. If you are told you could get 20 percent off, that’s a nice deal, and it doesn’t matter whether you’re getting 20 percent off the Corolla or the Camry.”

But Mr. Wadhwa disputes the notion that H-1B workers are routinely underpaid. “I think at most, 10 to 20 percent of H-1Bs might be abused, but that is the case with almost any government program. My guess is that no matter what you come up with, there will be some abuse. It’s human nature.”

Guaranteed green cards?

Some experts feel the best way to solve any problems in the H-1B program is the approach embodied in House bill 6429, which was passed in late 2012 with Republican leadership.

Rather than hire skilled foreign-born students under a temporary visa program, the bill would give employers up to 55,000 green cards each year for foreign-born Ph.D. and master's students in STEM programs — science, technology, engineering and math — who graduate from American universities.

Russell Harrison, director of government relations for the Institute of Electrical and Electronics Engineers, said he prefers that method of hanging on to the world's best and brightest. "You can't build an American workforce with a rented workforce," he said.

One of the major problems with the H1-B program, he said, is that it ties the employees to the firm that sponsored them for the visa, giving them no negotiating power or ability to move to another job.

"The key to our position is we are in favor of high skilled immigration, and immigration means you get to become American. There are very smart people born elsewhere, but the best way for them to come to America is to give them a green card. Pittsburgh benefits from this kind of immigration more than almost any university city in the country today. They are bringing in some of the top talent the world has to offer, and if Pittsburgh can add these skilled workers to the workforce, that's only for the good."

Mr. Achilleos said that if he could get a green card in the United States, he would strongly consider it. He would like to have the ability to start his own business someday, and "from an investment and taxation viewpoint, things are simply easier when you are the same [legal status] as a local."

His prospective employer, Mr. Wang, who was born in Taiwan but immigrated to the U.S. as a child, said he does not spend much time thinking about the whole H-1B debate, even though his firm has hired several computer scientists and engineers under the program.

As an entrepreneurial company, he said, "we can't let our business be determined by certain immigration policies. If there is a brick wall, we just put our head down and run through it."