

## REFORMING AMERICA'S LEGAL IMMIGRATION SYSTEM

**Table 1**  
**Key Reforms for America's Legal Immigration System**

IMMIGRATION CATEGORY	KEY PROBLEMS	SOLUTION	REFORMS TO AVOID
<b>H-1B Visas</b>	A low annual quota means U.S. employers often must hire high-skilled foreign nationals outside the U.S., creating jobs and innovations overseas.	Raise the H-1B quota significantly beyond the 65,000 annual quota and expand the exemption for foreign nationals with a graduate degree from a U.S. university.	Mandating recruitment and nondisplacement attestations will require employers to defend individual personnel decisions to DOL bureaucrats. Eliminating private wage surveys and reducing government categories from 4 to 3 levels will force employers to pay H-1B visa holders up to \$20,000 more than their U.S. counterparts. Attempts to prevent "outsourcing" will likely shift more work out of the United States.
<b>Employment-Based Green Cards</b>	The combination of a low 140,000 annual limit on employment-based green cards and per country limits has resulted in wait times of 6 to 10 years or longer for many skilled foreign nationals to gain permanent residence. Indians in the employment-based third preference have a theoretical wait time of 70 years.	Congress has not changed the 140,000 annual limit on employment-based green cards in 25 years. The annual limit should be increased, dependents no longer counted, and individuals with advanced degrees in STEM fields should be exempted. Congress should also eliminate the per country limits that cause individuals from India and China in particular to wait much longer than others. Use unused green cards from prior years to help eliminate current backlogs.	Avoid maintaining the status quo, which makes it more likely outstanding foreign nationals will pursue careers in countries other than the United States. Reforms to increase the labor mobility of individuals waiting years for an employment-based green card should be welcomed.
<b>Immigrant Entrepreneur Visas</b>	No visa category exists for immigrants to receive permanent residence as entrepreneurs.	Establish an immigrant entrepreneur visa category.	Make the criteria clear and objective to avoid problems of EB-5 Immigrant Investor Visa category.

*Reforming America's Legal Immigration System*

<b>IMMIGRATION CATEGORY</b>	<b>KEY PROBLEMS</b>	<b>SOLUTION</b>	<b>REFORMS TO AVOID</b>
<b>L-1 Visas</b>	Adjudicators deny a high proportion of L-1B petitions to transfer employees with specialized knowledge.	Management oversight and clear guidance should allow employers to transfer important employees into the country.	Excessive regulation of L-1B petitions has already resulted in high denial rates and many Requests for Evidence by adjudicators.
<b>Labor Certification</b>	DOL's current bureaucratic procedure for employment-based green card is expensive and relies on government micromanaging, including placing print advertisements.	Permit companies to achieve labor certification by documenting steps taken to hire individuals after engaging in recruitment typical for their size and industry.	Move away from DOL's outdated bureaucratic practices.
<b>Optional Practical Training</b>	OPT is vital for retaining international students post-graduation. Allowing more international students to stay 29 months post-graduation would help mitigate the negative impact of the H-1B cap.	OPT should be expanded to include more fields in the 29 month extension and for a greater length of time.	New bureaucratic requirements could result in more international students leaving the United States after graduation.
<b>Year-Round Visa for Low-Skilled Workers</b>	A key cause of illegal immigration is the lack of a year-round visa for lower-skilled work.	Establish a new visa category to allow year-round work in jobs in landscaping, hotels, restaurants and construction.	Low annual quotas and excessive bureaucratic rules, such as on recruitment or wages, will doom the category's effectiveness.
<b>H-2B Visas</b>	The H-2B quota for temporary, nonagricultural seasonal work has a low annual quota (66,000) and bureaucracy-laden rules.	Raise the quota, streamline the rules, and increase flexibility by allowing H-2B to be used for home caregivers and childcare.	Reform the current regulatory structure to make the visas easier to use.
<b>H-2A Visas</b>	H-2A visa regulations are so bureaucratic that most farm laborers enter and work unlawfully even though no quota exists on H-2A visas.	Streamline H-2A visas to ensure greater use of legal work visas over work by unlawful workers.	Retain the lack of quota but avoiding retaining many of the rules that stifle the use of the visa category.
<b>Family Immigration</b>	Wait times for the adult children and siblings of U.S. citizens range from 8 to 20 years or more, depending on the country of origin.	Raise family immigration quotas to reduce wait times and consider modifying per country limits for family-based immigrants.	Retain current family categories. Employment-based immigration can be increased without the need to eliminate family categories.

## H-1B VISAS

**Background:** H-1B temporary visas are typically the only practical way to hire a high-skilled foreign national to work long-term in the United States. H-1B visas allow foreign nationals to work in the United States on short-term projects, for longer-term work or as a prelude to a green card (permanent residence).<sup>1</sup> H-1B status is generally good for up to 6 years (with a renewal after three years). H-1B visas are economically important. Without such visas skilled foreign nationals generally could not work or remain in the United States.<sup>2</sup> If H-1B visas did not exist or if they became too burdened with bureaucratic rules, then U.S. employers could only hire such talented individuals outside the United States, thereby creating jobs and innovations in places other than America. At U.S. universities, 77 percent of the full-time graduate students in electrical engineering and 71 percent in computer science are international students.<sup>3</sup>

**Key Problem:** The low annual quota of 65,000 on H-1B visas has been reached before the end of every fiscal year since 1997. In practice, this has meant for several months at a time (or over a year) employers could not hire skilled foreign nationals to work in the United States on new H-1B visas. This year, an April 7, 2015 press release announced, "U.S. Citizenship and Immigration Services (USCIS) has reached the congressionally mandated H-1B cap for fiscal year (FY) 2016. USCIS has also received more than the limit of 20,000 H-1B petitions filed under the U.S. advanced degree exemption. USCIS will use a computer-generated process, also known as the lottery, to randomly select the petitions needed to meet the caps of 65,000 visas for the general category and 20,000 for the advanced degree exemption."<sup>4</sup>

Almost an identical press release was sent out by USCIS one year earlier. And, absent action by Congress, the same press release will be distributed next year. As noted earlier, a key reason H-1B visas are so important is they represent the only practical way to retain a foreign national, including an international student, long-term to work in the United States. Even an international student in Optional Practical Training status must eventually be approved for an H-1B petition or leave the country.

---

<sup>1</sup> A grant from the Ewing Marion Kauffman Foundation funded the research for this NFAP paper. The contents of this publication are solely the responsibility of the National Foundation for American Policy.

<sup>2</sup> See Stuart Anderson, *H-1B Visas Essential to Attracting and Retaining Talent in America*, NFAP Policy Brief, National Foundation for American Policy, May 2013. While other visa categories exist, they carry significant restrictions that limit their applicability to most skilled foreign nationals, such as an L-1 visa, which requires working abroad for a company for at least a year and then qualifying as a manager, executive or an employee with "specialized knowledge" under USCIS regulations to reenter the United States.

<sup>3</sup> National Science Foundation, Survey of Graduate Students and Postdoctorates in Science and Engineering, <https://ncesdata.nsf.gov/webcaspar/>. U.S. students include lawful permanent residents. If one includes part-time students, 67 percent of graduate students in electrical engineering and 57 percent in computer science are international students.

<sup>4</sup> "USCIS Reaches FY 2016 H-1B Cap," Press Release, U.S. Citizenship and Immigration Services, April 7, 2015.

---

*Reforming America's Legal Immigration System*

**Solution:** The solution to this problem is straightforward: raise the H-1B cap to a much higher level and provide a wide exemption (i.e., not limited to 20,000 annually) for international students with an advanced degree from a U.S. university.

**Reforms to Avoid:** Over the years, legislators have proposed numerous measures to restrict the use of H-1B visas. While the proposals often sound reasonable, in practice the measures would encourage more work and investment to take place outside the United States and would inject the federal government into micromanaging the personnel policies of many cutting edge companies.

U.S. companies recruit U.S. workers all the time. Few companies have more than 10 percent of its U.S. workforce made up of H-1B professionals. While in theory it may sound fine to require employers to attempt to recruit U.S. workers by offering the job to “any United States worker who applies and is equally or better qualified” before offering a job to an H-1B visa holder, in practice such a requirement would force companies to defend individual hiring decisions months or years after the fact to U.S. Department of Labor investigators.

Even less prescriptive measures, such as an amendment by Senator Orrin Hatch (R-UT) to S. 744 (113<sup>th</sup> Congress) during a 2013 Judiciary Committee markup, would establish a standard on recruitment that could leave companies legally vulnerable. The amendment required an employer to attest it “has taken good faith steps to recruit United States workers for the occupational classification for which the nonimmigrant or nonimmigrants is or are sought, using procedures that meet industry-wide standards . . . .” However, one need ask: What are “good faith steps”? What are “industry-wide standards”? The Department of Labor (DOL) would define these terms and use its substantial enforcement powers to punish employers. (S. 744 would have eliminated almost all constraints on DOL investigative authority.) In short, years after the fact, a particular hiring decision may need to be defended to Department of Labor investigators based on standards open to varying and subjective interpretations.

A similar problem can be seen with expanding the “nondisplacement” attestation beyond its current scope. Today, H-1B dependent employers (companies with at least 15 percent of its workforce in H-1B status) must attest they have not (and will not) displace a U.S. worker 90 days before or after filing an H-1B petition, including at third party sites. The Department of Labor judges whether a particular job is “essentially equivalent” to another job, which in itself can leave employers vulnerable. Proposals in Congress have sought to expand this in at least two ways.

S. 744 would have expanded the nondisplacement attestation by requiring all employers to attest they do not intend to displace a U.S. worker, leaving the Department of Labor to determine “intent” afterwards. Moreover, the bill would have created a new category of employer, “H-1B skilled worker dependent,” defined as not having more than 15

*Reforming America's Legal Immigration System*

percent H-1Bs in “skilled” positions, and requiring no displacement of a U.S. worker has or will take place within 90 days of filing for an H-1B petition. Again, the issue is requiring employers to prove something open to varying interpretation by DOL investigators.

**Table 2**  
**H-1B VISAS ISSUED AGAINST THE CAP BY YEAR**

<u>Year</u>	<u>CAP*</u>	<u>#Issued</u>	<u>#Unused</u>
1992	65,000	48,600	16,400
1993	65,000	61,600	3,400
1994	65,000	60,300	4,700
1995	65,000	54,200	10,800
1996	65,000	55,100	9,900
1997	65,000	65,000	0
1998	65,000	65,000	0
1999	115,000	115,000	0
2000	115,000	115,000	0
2001	195,000	163,600	31,400
2002	195,000	79,100	115,900
2003	195,000	78,000	117,000
2004	65,000	65,000	0
2005	65,000	65,000	0
2006	65,000	65,000	0
2007	65,000	65,000	0
2008	65,000	65,000	0
2009	65,000	65,000	0
2010	65,000	65,000	0
2011	65,000	65,000	0
2012	65,000	65,000	0
2013	65,000	65,000	0
2014	65,000	65,000	0
2015	65,000	65,000	0
2016	65,000	65,000	0

Source: Department of Homeland Security; National Foundation for American Policy.  
\*Does not include exemptions from the cap. Exemptions from the cap include those hired by universities and non-profit research institutes and 20,000 individuals who received a master's degree or higher from a U.S. university.

*Reforming America's Legal Immigration System*

There is a substantial body of literature that shows H-1B visa holders are paid similar wages to U.S. professionals in similar jobs and with similar experience.<sup>5</sup> However, past House and Senate legislation would have artificially inflated the wage required to be paid to skilled foreign-born professionals.<sup>6</sup> The bills would have done this by 1) eliminating the use of private wage surveys, which are far more accurate than government data and are now permitted under DOL regulations, and 2) requiring the employers to pay wages based on the U.S. Department of Labor's Foreign Labor Certification (FLC) unit, a part of the Employment and Training Administration, which uses data collected from the Occupational Employment Statistics (OES) program to create four levels of wages based on a formula.<sup>7</sup> The bills would have made the wage levels provided by the Foreign Labor Certification unit even less reflective of real world market wages by reducing the current four levels down to three levels and mandating a minimum wage paid for every H-1B worker that is no less than 80% of the mean wage for the occupation.<sup>8</sup>

An April 2014 NFAP analysis concluded, "Bills in Congress would require skilled foreign nationals to be paid substantially more – sometimes \$20,000 more per year – than U.S. professionals in similar positions. These new mandated minimum wages for skilled foreign nationals will make it more difficult for U.S. companies to compete in the global marketplace and to increase jobs and investment in the United States."<sup>9</sup>

Another target of legislators has been IT (information technology) services companies. Given the attention to cases in the news involving Disney and Southern California Edison it is expected members of Congress will seek to place new restrictions on companies that provide information technology solutions and services. What is less clear is whether any measures taken by Congress will do little more than shift where the new services are performed (i.e., outside the United States) or which companies perform the services.

In 2015, Gartner estimated companies around the world will spend \$3.9 trillion on information technology.<sup>10</sup> Given the expense, companies want value for their money. Often a company whose IT function is not core to their business

---

<sup>5</sup> S. Mithas and H.C. Lucas, "Are Foreign IT workers Cheaper? U.S. Visa Policies and Compensation of Information Technology Professionals," *Management Science* (56:5) 2010. See also Madeline Zavodny, "The H-1B Program and Its Effects on Information Technology Workers," Federal Reserve Bank of Atlanta, *Economic Review*, Third Quarter 2003; Magnus Lofstrom and Joseph Hayes, "H-1Bs: How Do They Stack Up to U.S. Workers?" IZA Discussion Paper #6259, December 2011; and Giovanni Peri, Kevin Shih and Chad Sparber, "STEM workers, H-1B Visas and Productivity in U.S. Cities," January 29, 2013.

<sup>6</sup> See *Updated Analysis: The Impact of Immigration Legislation on Salaries and Competitiveness*, NFAP Policy Brief, National Foundation for American Policy, April 2014.

<sup>7</sup> Section 212(p) of the INA lays out the Congressionally-devised formula.

<sup>8</sup> Nongovernmental surveys collect data from individuals at different education and experience levels, often 6 levels, and are used by companies to set compensation levels in the labor market. Companies consider nongovernmental wage surveys the "market" wage for individuals based on the job, the location and worker's education and experience.

<sup>9</sup> *Updated Analysis: The Impact of Immigration Legislation on Salaries and Competitiveness*, NFAP Policy Brief, National Foundation for American Policy, April 2014.

<sup>10</sup> Gartner.

---

*Reforming America's Legal Immigration System*

will seek a solution that involves outsourcing to a vendor with expertise in information technology. Companies also do this type of outsourcing for accounting, payroll, legal and other services. It is unlikely when putting contracts out for bid a company knows in advance whether whichever vendor wins the bid will have employees who work on visas. In the case of Southern California Edison (SCE) one source traced the 2014 outsourcing of IT functions to a 2012 consultant's report. "Some of the SCE employees say the outsourcing move is linked to a 2012 report that found fault with the IT management culture," according to *Computerworld*. "The report, by a consulting firm's incident management team, followed a December 2011 shooting, where an employee fatally shot two IT managers and wounded two other workers before taking his own life. The gunman worked in the IT department."<sup>11</sup>

Eventually, Southern California Edison put out for bid a contract to outsource all – or a substantial part of – its IT work to an outside company. Eight companies bid for the contract and the two companies that were awarded the contract used an unknown number of H-1B visa holders as at least part of the workforce to service the contract. This fact led employees and others to argue the H-1B visa holders replaced the incumbent job holders who were laid off at Southern California Edison.

Once the utility company made the decision to outsource the IT function it is unclear whether the incumbent employees would have been better off whether the new IT work were performed by visa holders, U.S. workers, or workers all located outside the United States.

It is not known when Disney decided to outsource part of its remaining in-house IT work to an outside vendor or if the company had any knowledge what the visa status would be of any workers employed by the business with which it contracted. However, similar to Southern California Edison, controversy erupted when Disney announced layoffs of workers and it turned out some number of workers at the company with which it contracted were in H-1B status.

Ten years earlier, in June 2005, Disney signed two large outsourcing deals that affected about 1,000 employees, approximately four times the number said to be affected by the recent IT outsourcing at Disney in 2014-2015. Although leading to job losses of up 1,000 employees, Disney's 2005 contracts with IBM for \$730 million and Affiliated Computer Services (ACS) for \$610 million did not attract the controversy of the 2014-2015 deal, presumably because no H-1B visa holders were known or reported to work on the contracts.<sup>12</sup>

---

<sup>11</sup> Patrick Thibodeau, "Southern California Edison IT Workers 'Beyond Furious' Over H-1B Replacements," *Computerworld*, February 4, 2015.

<sup>12</sup> Linda Rosencrance, "IBM Signs \$730M IT Services Deal with Disney," *Computerworld*, June 14, 2005. There is no information on how many Disney employees were hired by either IBM or ACS.

---

*Reforming America's Legal Immigration System*

Several of the proposals to target “outsourcing” companies may violate existing U.S. trade commitments (on access to H-1B and L-1 visas) under the General Agreement on Trade in Services (GATS). That could lead to a challenge before the World Trade Organization (WTO) and retaliation against U.S. exporters.<sup>13</sup> For example, requiring companies to attest no displacement of a U.S. worker took place before or after 180 days of filing an H-1B petition (rather than 90 days) would likely violate GATS and essentially covers a one-year time period.<sup>14</sup> Similarly, not allowing companies to use H-1B or L-1 visas (or to not use them to supply services offsite) if the employers have 50 percent of its workforce in such status would raise similar GATS concerns.

If the goal of any legislation is to “put these companies out of business,” as some legislators have expressed, then it is unlikely any measures will do so. Legislation can make life more difficult for IT services companies to operate in the U.S. market but it is more likely the impact will be to shift much more work outside the United States. Work may also shift to companies less affected by any future immigration legislation but that still will not solve the problem incumbent employees are seeking to solve.

When compared to France and some other European countries, U.S. labor laws do not protect incumbent employees, making it is easier to fire or lay off a worker in the U.S. That means layoffs at large U.S. companies will always take place, but not because of immigration policy. Rather, companies will seek to remain profitable (or avoid unprofitability or falling behind competitors) by focusing on core competencies and outsourcing other functions.

By making it more difficult to fire or lay off employees, France, for example, also makes it less likely employers will want to hire new employees in the first place, since removing workers from payrolls may be difficult or impossible. As a result, the unemployment rate in France is nearly twice as high as in the United States – 10.5 percent in France vs. 5.5 percent in the U.S.<sup>15</sup> The international experience demonstrates the cost of more protection of incumbent employees would be a far less dynamic economy.

According to the U.S. Department of Labor, approximately 55 million U.S. workers leave their jobs each year, either by quitting, being laid off, discharged or for other reasons. And of those 55 million about 20 million are due to “involuntary separations,” meaning the result of layoffs, firings, company or division closings, etc.<sup>16</sup> Even the most ardent critics of H-1B visa holders have not claimed the two or three cases cited each year of company layoffs in which a new contractor used workers on H-1B visas have an impact on that 20 million annual figure of “involuntary separations” in the U.S. labor market, a figure that would rise to approximately 100 million over a five-period.

---

<sup>13</sup> See *House and Senate Legislation on High Skill Immigration*, NFAP Policy Brief, National Foundation for American Policy, June 2014 and Jochum Shore & Trossevin, *Legal Analysis: Proposed Changes to Skilled Worker Visa Laws Likely to Violate Major U.S. Trade Commitments*, National Foundation for American Policy, June 2010.

<sup>14</sup> *Ibid.*

<sup>15</sup> Trading Economics, Bureau of Labor Statistics. Data are for April 2015 for France and May 2015 for the United States.

<sup>16</sup> JOLTS survey, U.S. Department of Labor.



## EMPLOYMENT-BASED GREEN CARDS

**Background:** To stay permanently in the United States, a high-skilled foreign national must obtain permanent residence, often called a “green card.” H-1B visas and Optional Practical Training are important for retaining international students after graduation. However, if international students or other high-skilled foreign nationals want to make their careers in this country, then they require an employment-based green card (permanent residence).

**Key Problem:** High-skilled foreign nationals sponsored for employment-based green cards can wait 6 to 10 years or longer to receive permanent residence. The reason is not slow processing or bureaucracy, though the process could be improved, but a combination of inadequate numbers and a per country limit that generally restricts annual admission to no more 7 percent of the total in a category. That has resulted in longer waits for skilled immigrants from China, India and the Philippines.

The current annual limit of 140,000 employment-based immigrant visas includes dependents, which account for more than half of the total. In addition, 10,000 to 20,000 of the 140,000 go towards the 4<sup>th</sup> and 5<sup>th</sup> preferences of the employment-based immigration categories, leaving only about 60,000 a year to individual scientists, engineers, computer specialists, etc. to receive permanent residence in a given year.

The most common category is the third employment-based preference (EB-3). The category includes “professionals and skilled workers.”<sup>17</sup> A 2011 NFAP report concluded, “A highly skilled Indian national sponsored today for an employment-based immigrant visa in the 3<sup>rd</sup> preference could wait potentially 70 years to receive a green card.”<sup>18</sup> Examining recent State Department Visa Bulletins reveals the potential for a 70-year wait time remains today. The estimated backlog for Indians in the EB-3 category still exceeds 200,000 and, because of the per country limit, fewer than 3,000 individuals can typically receive green cards in a given year.

---

<sup>17</sup> Under the law, there are 5 employment-based preferences: First Preference (EB-1, priority workers); Second Preference (EB-2, worker with advanced degrees or exceptional ability); Third Preference (EB-3, professionals, skilled workers and other workers); Fourth Preference (EB-4, special workers, such as religious workers); and the Fifth Preference (EB-5, employment creation or investor visas). A total of 40,040, or 28.6 percent of the 140,000 annual quota is used by each of the first, second and third preferences. However, the first preference can use any numbers not utilized by the fourth and fifth preferences, which are limited to 7.1 percent (or 9,940) each. The second preference (EB-2) can use any numbers not utilized by EB-1, while EB-3, the third preference, can use any visa numbers not utilized by the EB-2 category.

<sup>18</sup> The 70-year wait estimate is derived from calculating that there exists a backlog of 210,000 or more Indians in the most common skilled employment-based category (the 3<sup>rd</sup> preference or EB-3) and dividing that by the approximately 2,800 Indian professionals who receive permanent residence in the category each year under the law.

**Table 3**  
**Current Estimated Wait Times for Employment-Based Green Cards**

Category	INDIA	CHINA	PHILIPPINES	REST OF WORLD
<b>EB-2</b> <b>(Employment-Based Second Preference)</b>	7 to 10 years	2 to 4 years	Current	Current
<b>EB-3</b> <b>(Employment-Based Third Preference)</b>	10 to 70 years	4 to 6 years	8 to 12 years	2 to 8 years

Source: National Foundation for American Policy estimates; July 2015 State Department Visa Bulletin. Waiting times affected by demand, quotas, per country limit and when an individual applied. Outer range of estimates is for those who apply today. Analysis includes examining trends in Visa Bulletins.

Analyzing the State Department Visa Bulletin reveals the wait time for Indians in the employment-based second preference (EB-2) is 7 to 10 years (or longer).<sup>19</sup> For Chinese immigrants the situation has improved in recent years, with waits of two to four years, though that could change based on the demand for visas. In the employment-based third-preference (EB-3), the wait time for skilled immigrants from the Philippines, which includes nurses, is currently 8 to 12 years. The wait for Filipinos has fluctuated from year to year but the trend has been for longer waits. The EB-2 category is “current” for individuals from countries other than India and China, meaning such individuals do not have any significant wait to receive an immigrant visa. In the EB-3 category, the wait times are much shorter for individuals from countries other than India, China and the Philippines, ranging from 2 to 8 years, though in recent years the wait typically has been at least 6 years.

**Solution:** The solution to the long waits for employment-based immigrants is higher annual quotas, exemptions from the quotas, eliminating the per country limit for employment categories, and utilizing unused green cards from previous years for backlog reduction. A 2013 Congressional Budget Office analysis of S. 744 concluded, “The increase in the number of visas available each year plus the availability of recaptured visas (totaling about 250,000) would enable everyone in the backlog for employment-based visas to be admitted by the end of 2016.”<sup>20</sup>

S. 744 would nominally have retained the 140,000 annual limit on employment-based green cards. However, it would have effectively raised the annual admission of high-skilled immigrants by exempting from the annual limit

<sup>19</sup> As noted in other NFAP policy briefs, to stay within the annual immigration quotas, the State Department uses the monthly Visa Bulletin to publish cut-off dates to indicate when individuals can file the final part of their green card application and receive permanent residence. For employment-based immigrants the cut-off or priority date is often the date upon which a labor certification application was filed with the Department of Labor.

<sup>20</sup> Congressional Budget Office Cost Estimate of S. 744, Congressional Budget Office, June 18, 2013.

---

*Reforming America's Legal Immigration System*

those who qualify for the current EB-1 (employment-based first preference) category, individuals with a Ph.D., foreign nationals with a master's degree or higher in a STEM field from a U.S. university, and dependents (spouse and children under 21 years old.). To achieve backlog reduction, S. 744 would have "recaptured" 200,000 or more employment-based green cards unused in previous fiscal years.<sup>21</sup>

"CBO expects that the increase in the number of visas available each year plus the availability of recaptured visas (totaling about 250,000) would enable everyone in the backlog for employment-based visas to be admitted by the end of 2016," according to the Congressional Budget Office.<sup>22</sup>

**Reforms to Avoid:** Based on simple arithmetic, increasing the annual level of H-1B visas without expanding the number of employment-based green cards would lengthen the wait times for employment-based immigrants, which is another reason that addressing EB green cards is important.

## IMMIGRANT ENTREPRENEUR VISAS

**Background:** Immigrant entrepreneurs make great contributions to the U.S. economy. A National Foundation for American Policy study found nearly half of the top 50 venture-funded companies in America were started by immigrants.<sup>23</sup> However, today nearly all immigrant entrepreneurs received permanent residence in America as family-sponsored or employer-sponsored immigrants, not because they started a business. For most foreign nationals, founding a business usually must wait until after receiving a green card, which entitles someone to remain permanently in America. Entrepreneurs and potential investors both need a degree of certainty. That often means years of delay before a business can get started. And, in business, delay can often mean denial, as a company's "window" to start and develop a new product or service could be lost.

**Key Problem:** No visa category exists for a foreign national to gain permanent residence as an entrepreneur. The Government Accountability Office (GAO) has written about "cases in which entrepreneurs attempting to establish very early-stage technology start-ups were unable to obtain H-1B or other work visas for themselves and either relocated the project abroad or had to abandon the start-up."<sup>24</sup>

**Solution:** Establish an entrepreneur visa that awards permanent residence after evidence of starting a business and employing U.S. workers.

---

<sup>21</sup> See also *House and Senate Legislation on High Skill Immigration*, NFAP Policy Brief, National Foundation for American Policy, June 2014.

<sup>22</sup> Congressional Budget Office Cost Estimate of S. 744, Congressional Budget Office, June 18, 2013.

<sup>23</sup> Stuart Anderson, *Immigrant Entrepreneurs and Key Personnel in America's Top 50 Venture-Funded Companies*, NFAP Policy Brief, National Foundation for American Policy, December 2011.

<sup>24</sup> *H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program*, Government Accountability Office, GAO-11-26, January 2011, p. 23.

---

*Reforming America's Legal Immigration System*

**Reforms to Avoid:** Criteria for approval should be objective to avoid problems that have plagued the immigrant investor visa (EB-5) category.

## **L-1 VISAS**

**Background:** L-1 visas are used to transfer employees from abroad into the United States to work. The employee must have worked for the employer at least one year overseas. Managers and executives use L-1A visas. But in recent years, the bigger concern for employers has involved gaining approvals for employees who need an L-1B visa. To obtain permission to transfer an employee with “specialized knowledge” in L-1B status an employer generally must first obtain an individual petition that is approved by U.S. Citizenship and Immigration Services. The employer would then use that approved petition and seek to obtain a visa from a U.S. post abroad. That would allow the employee to gain entry to America.<sup>25</sup> The maximum stay for an employee transferred in L-1B status is 5 years, with regulations limiting the initial period of admission to three years.

**Key Problem:** Data obtained via Freedom of Information (FOIA) requests have showed denial rates have skyrocketed for L-1B petitions even though there has been no underlying change in the law or regulation. “The denial rate for L-1B petitions to transfer high-skilled employees into the United States increased to an historic high of 35 percent in FY 2014, according to data obtained from U.S. Citizenship and Immigration Services (USCIS),” according to a 2015 National Foundation for American Policy report. As recent as FY 2006 the denial rate for L-1B petitions was only 6 percent. The NFAP report noted, “Employers say USCIS actions affect their ability to increase jobs, innovations and production inside the United States.”<sup>26</sup>

The data and analysis revealed, “The denial rate for L-1B petitions to transfer employees of Indian origin is a remarkable 56 percent for FY 2012 through FY 2014, compared to an average denial rate of 13 percent to transfer employees from all other countries during the same period.”<sup>27</sup> Moreover, “Surprisingly, USCIS denies L-1B petitions at a higher rate for employees already working in the U.S. and extending their status (41 percent in FY 2014) than initial applications (32 percent).”<sup>28</sup> In addition, “Time-consuming Requests for Evidence (RFE) from adjudicators for L-1B petitions have continued at a high level – 45 percent in FY 2014. In FY 2004, only 2 percent of cases received a Request for Evidence.”<sup>29</sup>

---

<sup>25</sup> Some employers qualify to apply for “blanket” petitions from U.S. Citizenship and Immigration Services. That allows employers to pre-certify the qualifying corporate relationship and for employees then to file directly for L-1 visas with consulates abroad, documenting their qualifications or credentials in the process. L-1A visas are used to transfer managers and executives.

<sup>26</sup> *L-1 Denial Rates Increase Again for High Skill Foreign Nationals*, NFAP Policy Brief, National Foundation for American Policy, March 2015.

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

*Reforming America's Legal Immigration System*

“The implications of these numbers, and others cited in the report, are troubling; almost all extension beneficiaries were interviewed by a Department of State consular officer before obtaining their L-1B visas, and in many cases, USCIS had reviewed and approved a prior petition filed by the employer for the same beneficiary,” noted the USCIS Ombudsman, commenting on the NFAP analysis. “The extension denial rates confirm stakeholder concerns regarding the quality and consistency of L-1B adjudications.”<sup>30</sup>

**Table 4**  
**L-1B Denial Rates for Employees Transferred into the U.S**  
**FY 2006 to FY 2014**

Fiscal Year	L-1B Denial Rates
FY 2014	35%
FY 2013	34%
FY 2012	30%
FY 2011	27%
FY 2010	22%
FY 2009	26%
FY 2008	22%
FY 2007	7%
FY 2006	6%

Source: USCIS; National Foundation for American Policy.

The key problem is that adjudicators began to interpret the term “specialized knowledge” as a way to require employees on L-1B petitions to possess knowledge or ability beyond that required by the statute. That included adjudicators substituting their own beliefs on how many workers a large company should be expected to employ with “specialized knowledge.” Under the law, “An alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.”<sup>31</sup>

**Solution:** In 2015, USCIS released guidance aimed at addressing the high denial rates and Requests for Evidence. Analysts have been skeptical as to the impact of this guidance. But good management oversight of adjudicators could ensure that eligible cases are approved and Requests for Evidence are reserved for a small percentage of the cases, not as the typical response by adjudicators.

<sup>30</sup> Citizenship and Immigration Services Ombudsman, *Annual Report 2015*, June 29, 2015, Department of Homeland Security, p. 45.

<sup>31</sup> INA §214(c)(2)(B).

---

*Reforming America's Legal Immigration System*

**Reforms to Avoid:** It is already difficult and unpredictable for employers to gain approval to transfer an employee to work in the United States. No new restrictions, such as a new wage requirement, are needed on the category.

## LABOR CERTIFICATION

**Background:** For most employer-sponsored immigrants to obtain permanent residence (or a “green card”) they must receive “labor certification” from the U.S. Department of Labor. Under the law, the sponsored alien must satisfy the Department of Labor that “(I) there are not sufficient workers who are able, willing, qualified . . . (ii) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.”<sup>32</sup>

**Key Problem:** Over the years, the Department of Labor has invented various hoops for employers to jump through to satisfy the requirements of labor certification. That has contributed to costs for employers of up to \$40,000 to sponsor a single foreign national from an initial H-1B visa through to an employment-based green card.<sup>33</sup> Labor certification typically involves “testing” the labor market through advertising, job postings and other government-approved recruitment mechanisms.

However, the Department of Labor’s rules on labor certification are unnecessarily complicated and, in essence, created out of whole cloth. Attorney Gary Endelman writes, “There was no mention of individualized recruitment in the proposed labor certification regulations on November 19, 1965, or the final version of these same implementing rules that came out on December 3, 1965. There was no sense that employers had to advertise; the availability of U.S. workers, or their nonavailability, was based solely on statistics as embodied in Schedules A and B, respectively.”<sup>34</sup>

In discussing labor certification in the 1965 Act, Senator Edward Kennedy (D-MA) stated:

It was not our intention, or that of the AFL-CIO, that all intending immigrants must undergo an employment analysis of great detail that could be time consuming and disruptive to the normal flow of immigration. We know that the Department of Labor maintains statistics on occupations, skills, and labor in short supply in this country. Naturally, then, any applicant for admission who falls within the categories should not have to wait for a detailed study by the Labor Department before his certificate is issued ...[W]e would expect the

---

<sup>32</sup> 8 USC Section 1182. Immigration and Nationality Act Section 212(a)(5)(A). See also *Certifiable: The Department of Labor's Approach to Labor Certification*, NFAP Policy Brief, National Foundation for American Policy, July 2008.

<sup>33</sup> Council on Global Immigration.

<sup>34</sup> Gary Endelman, “Labor Certification From 1952 to PERM: Part I,” *Interpreter Releases*, October 4, 2004, p. 1362.

---

*Reforming America's Legal Immigration System*

Secretary of Labor to devise workable rules by which he could carry out his responsibilities under the law without unduly interrupting or delaying immigration to this country.<sup>35</sup>

Despite this, employers must endure the Department of Labor's PERM (Program Electronic Review Management) as well as audits that include intensive "supervised recruitment" procedures, micromanaged by DOL, that can take a year or longer. The authors of a chapter in an AILA (American Immigration Lawyers Association) handbook stated: "Understanding PERM has been one of the greatest challenges in recent times in the practice of immigration law."<sup>36</sup>

**Solution:** S. 744 would have exempted many employer-sponsored immigrants from labor certification, reasoning that typically employers already engage in ongoing recruitment and DOL's current requirements are a waste of resources. An alternative or additional approach would be to permit companies to use their own real world recruitment to satisfy the requirements of labor certification. That could be done by examining what companies do today to recruit both U.S. and foreign-born professionals and incorporating that into an attestation.

**Reforms to Avoid:** It makes no sense to "tighten" labor certification. The current process is costly to employers and few people outside the federal government believe the rules make economic sense or "protect" U.S. workers. In effect, current DOL rules for "testing" the labor market compel companies to use U.S. workers as test subjects by placing employment advertisements and seeing which U.S. workers respond to the advertisements. The respondents are evaluated to determine if the foreign national will receive labor certification from the Department of Labor. Adding this type of requirement to temporary visa categories, such as H-1B visas, would only expand the scope of DOL's intrusive and questionable policies, while driving companies to place more workers outside the United States.

## OPTIONAL PRACTICAL TRAINING (OPT)

**Background:** Current rules allow international students to receive Optional Practical Training (OPT) with an employer for 12 months after completing their degrees. Until recently, if the student's most recent degree was in a STEM (science, technology, engineering, and math) field, then that 12 month period could be extended to 29 months. This has become crucial for many employers for a number of reasons, but for one in particular: Since the annual supply of H-1B petitions is often exhausted, if an H-1B visa is not available during one filing period, then the extended time in OPT allows the student-worker to remain in OPT status until the next filing H-1B filing period. OPT has become important for retaining international students in the United States after graduation.

---

<sup>35</sup> Statement of Senator Edward Kennedy, Congressional Record, September 17, 1965, as cited in Gary Endelman, "Labor Certification From 1952 to PERM: Part I," *Interpreter Releases*, October 4, 2004, p. 1359.

<sup>36</sup> Romy Kapoor, Edward R. Litwin, Deborah J. Notkin, and Linda Rose, "A Magical Mystery Tour: Selected PERM Issues," *Immigration & Nationality Law Handbook*, 2007-08, AILA, p. 180.

---

*Reforming America's Legal Immigration System*

In August 2015, a federal court vacated the STEM extension. However, it allowed the extension to 29 months to remain until February 12, 2016 to avoid “hardship” and “disruption” and to give time for the Department of Homeland Security to issue notice and comment on a regulation. “One likely option is for DHS to issue a new proposed rule that implements plans announced by the White House to issue a new proposed regulation on employment for F-1 students with STEM degrees, as part of its modernization program for the legal immigration system,” concluded Fragomen Worldwide. “A key, and positive, aspect of the court’s ruling is the court’s conclusion that the agency’s substantive interpretations in this area were entitled to deference, and that the agency does have the substantive authority to interpret and implement the statute along the lines set out in the existing rule.”<sup>37</sup>

**Key Problem:** DHS needs to issue new regulations to abide by the court ruling. Substantively, one issue for employers and those who receive OPT is that the current 29 month period is still not always sufficient in OPT status, including because of the H-1B cap. Moreover, fields such as economics, accounting, management analysis and other business-related degrees are not eligible for 29 months of OPT.

**Solution:** The number of years and the fields allowed for OPT should be increased. According to a letter from Senator Charles Grassley (R-IA), the Obama Administration may propose new rules for OPT that could be beneficial. The new rules could “allow foreign students with degrees in STEM fields to receive up to two 24-month extensions beyond the original 12-month period provided under OPT regulations.”<sup>38</sup> However, the Obama Administration has not announced such rules.

**Key Reforms to Avoid:** Instituting new bureaucratic hurdles could lead to more international students working outside the United States, whether for U.S. companies or their foreign competitors.

## **YEAR-ROUND VISA FOR LOWER-SKILLED WORK**

**Background:** No visa category exists for year-round work for jobs that do not require a college degree.

**Key Problem:** The majority of individuals who enter (or stay in) the United States unlawfully work in jobs that would be considered year-round. In other words, outside of jobs in agriculture, most jobs in America filled by foreign nationals would not be considered seasonal. However, U.S. immigration law does not allow foreign nationals to fill jobs that are year-round and do not require a college degree. Generally only foreign nationals with an undergraduate

---

<sup>37</sup> “Federal Court Vacates STEM OPT Extension Programs, But Allows It to Stay in Place Pending Further Action from DHS,” U.S. Client Alert, Fragomen Worldwide, August 13, 2015.

<sup>38</sup> Senator Charles Grassley letter to Jeh Johnson, Secretary, U.S. Department of Homeland Security, June 8, 2015.



---

*Reforming America's Legal Immigration System*

degree or its equivalent and in a “specialty occupation” can fill year-round jobs utilizing H-1B visas. There is no equivalent visa for jobs in construction, hotels, restaurants and similar sectors.

The lack of a year-round visa for “lower-skilled” jobs has been a primary cause of illegal immigration. During the Bracero Program, increases in legal admission led to dramatic reductions in illegal entry.<sup>39</sup> The ending of the Bracero Program in 1964, the lack of a follow-on program and the absence of a visa for year-round work in nonagricultural jobs started the trend in illegal immigration that we have seen up to the present day. It has also contributed to hundreds of migrant deaths each year, since there are few legal options for an individual from south of the border to enter America to work.<sup>40</sup>

**Solution:** Create a year-round visa for lower-skilled work with sufficient numbers (likely at least 250,000 a year) and flexibility for both workers and employers.

**Reforms to Avoid:** Creating a category with numbers that are too low, as seen in S. 744, or with too much bureaucracy would negate the benefits for the U.S. economy, and prevent the new category from reducing both migrant deaths and illegal immigration.

## H-2B VISAS

**Background:** Employers can use H-2B visas to fill short-term seasonal jobs that are nonagricultural. Both the job and the employer’s need must be temporary. Crab picking in Maryland for three months is an H-2B eligible job but working fulltime for a construction company year-round is not. The annual quota for H-2B visas is low, only 66,000 in a U.S. labor force of over 150 million people. “Seasonal and mostly manual labor jobs are not attractive to most Americans,” notes Craig Regelbrugge, senior vice president, Industry Advocacy & Research at AmericanHort, a trade group. “Yet, having a visa category employers can use to legally fill such jobs supports the employment of Americans in year-round and more attractive jobs in these companies. In landscaping, for example, seasonal laborers help to ensure continued opportunity for managers and supervisors, salespeople, designers, equipment maintenance workers, and others.”<sup>41</sup>

---

<sup>39</sup> See history of the Bracero Program in Stuart Anderson, *The Impact of Agricultural Guestworker Programs on Illegal Immigration*, National Foundation for American Policy, November 2003.

<sup>40</sup> Stuart Anderson, *How Many More Deaths? The Moral Case for a Temporary Worker Program*, NFAP Policy Brief, National Foundation for American Policy, March 2013.

<sup>41</sup> Interview via email with Craig Regelbrugge.

---

*Reforming America's Legal Immigration System*

**Key Problem:** In addition to the low annual quota, which is regularly exhausted, regulations promulgated during the Obama Administration made the already cumbersome process for H-2B visas even more bureaucratic. A court ruled DOL did not have the authority to issue the regulations, which threw the visa category into more turmoil.<sup>42</sup>

**Solution:** Reform H-2B by increasing the annual quota and reducing the bureaucratic burden, replacing it with something that is more flexible for both workers and employers, such as allowing workers to change jobs easily while taking into account the costs incurred by employers.

**Reforms to Avoid:** Continuing the current policies of low numbers and high bureaucracy benefits neither employees or employers, nor the interests of Americans in encouraging workers to enter the United States through legal means.

## H-2A VISAS

**Background:** H-2A visas are used for seasonal jobs in agriculture and such related specialties as nurseries and landscaping. The category has no annual limit but the bureaucratic process employers must follow has limited the numbers such that most farm workers for field work are here unlawfully. Farm worker advocates have pressed to tighten the existing rules, which has left the status quo in place for years.

**Key Problem:** Growers find the H-2A visa category difficult to use. "The program is indeed cumbersome and litigation-prone. Employers must wade through a regulatory maze in order to achieve some sort of basic understanding of what is required of them," testified John R. Hancock, formerly the Department of Labor's chief of the agricultural certification unit responsible for administration of the H-2 program, before a 1997 House Immigration Subcommittee hearing. "The H-2A program is not currently a reliable mechanism to meet labor needs in situations where domestic workers are not available."<sup>43</sup> Nothing has changed to improve the situation for growers or workers.

The difficulty of using H-2A visas has increased illegal immigration and worked against the U.S. goal to reduce illegal immigration into the United States. A recent problem with the State Department in issuing visas threatened the crops of many farmers who have tried to use the H-2A category.<sup>44</sup>

**Solution:** Reform H-2A visas in a manner that addresses the wage, housing and labor mobility of workers and employers and leads to increased use of the visa category in place of illegal entry.

---

<sup>42</sup> "Obama's Visa Double Game," Review & Outlook, *The Wall Street Journal*, April 7, 2015.

<sup>43</sup> Testimony of John R. Hancock before the Subcommittee on Immigration and Claims of House Committee on the Judiciary, September 24, 1997.

<sup>44</sup> Miriam Jordan, "Visa Glitch Stalls Workers, Straining Farms," *Wall Street Journal*, June 15, 2015.

---

*Reforming America's Legal Immigration System*

**Reforms to Avoid:** The status quo should be avoided as well as reforms that make it even more difficult for employers to use the category.

## **FAMILY IMMIGRATION**

**Background:** In general, a U.S. citizen can sponsor for permanent residence a spouse, child, parent or sibling (see Table 5). A lawful permanent resident (green card holder) can sponsor a spouse or child. The wait times and quotas vary for the categories, with the application of per-country limits creating much longer waits in some preference categories for nationals of Mexico and the Philippines. In addition to the social benefits of uniting families, family immigration can also help economically, such as by allowing the parents of U.S. citizens to provide childcare, enabling mothers to work, and by joining together family members for family-owned businesses.

**Problem:** The wait times for the close relatives of U.S. citizens and lawful permanent residents are long. A November 2014 State Department report placed the family preference backlog at 4.3 million.<sup>45</sup> In the first family preference, a U.S. citizen would need to wait 21 years for an unmarried adult child to immigrate legally from Mexico.<sup>46</sup> The wait time is 15 years in that category for an adult child from the Philippines and 8 years from other countries. Married adult children of U.S. citizens (the third family preference category) wait 11 years from all countries except Mexico and the Philippines, from which the wait time is even longer at over 20 years. The wait times are similar for the siblings of U.S. citizens.

**Solution:** The solution to reducing the wait times is straightforward: increase the annual quotas in the family preference categories and possibly relax the per country limits in the categories. While some have called for eliminating certain family categories, such calls mistake how small a percentage the family preference categories are in overall immigration numbers. At 23,400 a year, each of the adult child (married and unmarried) preference categories come to only about 2 percent of the annual level of approximately 1 million legal immigrants. The sibling category is only about 6 percent of the annual total.<sup>47</sup>

Most family immigration is derived from the spouses and minor children of U.S. citizens and lawful permanent residents, categories that no serious participants in the immigration debate have called for eliminating.

---

<sup>45</sup> Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based preferences Registered at the National Visa Center as of November 1, 2014, U.S. Department of State.

<sup>46</sup> Estimates based on Visa Bulletin.

<sup>47</sup> Numbers from State Department Visa Bulletin and 2013 Yearbook of Immigration Statistics, Office of Immigration Statistics, U.S. Department of Homeland Security.

**Table 5**  
**Estimated Wait Times for Family-Sponsored Immigrants**

	<b>China</b>	<i>India</i>	<i>Mexico</i>	<i>Philippines</i>	<b>All Other Countries</b>
<b>Unmarried Adult Children of U.S. Citizens (1<sup>st</sup> Preference)</b> 23,400 a year	8 year wait	8 year wait	21 year wait	15 year wait	8 year wait
<b>Spouses and Minor Children of Permanent Residents (2<sup>nd</sup> Preference – A)</b> 87,934 a year*	2 year wait	2 year wait	2 year wait	2 year wait	2 year wait
<b>Unmarried Adult Children of Permanent Residents (2<sup>nd</sup> Preference - B)</b> 26,266 a year	7 year wait	7 year wait	20 year wait	11 year wait	7 year wait
<b>Married Adult Children of U.S. Citizens (3<sup>rd</sup> Preference)</b> 23,400 a year	11 year wait	11 year wait	21 year wait	22 year wait	11 year wait
<b>Siblings of U.S. Citizens (4<sup>th</sup> Preference)</b> 65,000 a year	13 year wait	13 year wait	18 year wait	24 year wait	13 year wait

Source: U.S. Department of State Visa Bulletin, July 2015; National Foundation for American Policy estimates.

**Reforms to Avoid:** Some argue it is necessary to reduce family immigration in order to increase employment-based immigration. But this is untrue. There is no “zero-sum” game in the legal immigration system, which means both family and employment-based immigration could be increased, which has happened in previous legislation, such as the 1990 Act.

**Table 6**  
**The Myth of Chain Migration: 41 Years Passing Between Application for First Immigrant and Entry of Second Family-Sponsored Immigrant**

Action	Year Occurred	Years Elapsed
<b>U.S. Citizen Files a Petition for Adult Married Son or Daughter Who is a Citizen of Mexico</b>	1992	
<b>Immigrant Visa Becomes Available</b>	2010	18 years
<b>Administer Consular Processing, Security Checks, and Interviews</b>	2011	1 year
<b>The Spouse of the New Immigrant Waits 5 Years and Applies to Become A Citizen</b>	2016	5 years
<b>Completes Naturalization Process</b>	2017	1 year
<b>Now a U.S. Citizen, the Spouse of the Former Adult Married Son or Daughter from Mexico Files a Petition for a Brother</b>	2017	0 year
<b>Immigrant Visa Becomes Available</b>	2032	15 years
<b>Administer Consular Processing, Security Checks, and Interviews and the "Chain" Relative Enters</b>	2033	1 year
<b>Total Time Between the Application of the First Immigrant and the Entry of the Second immigrant in the "Chain"</b>		<b>41 years</b>

Citizenship and Immigration Services Ombudsman, *Annual Report 2010*, U.S. Department of Homeland Security, June 30, 2010, p. 32.

Eliminating family preference categories would make life more difficult for U.S. citizens and lawful permanent residents who seek to sponsor close relatives. Eliminating the categories without at least grandfathering in all existing individuals on the waiting lists would be particularly bad policy. Those who have decried unauthorized immigrants by saying such individuals should have "waited in line" should not enact policies to deprive those who have waited in line in accordance with U.S. law.

Some have argued for eliminating family categories to reduce "chain migration." But as pointed out in previous NFAP reports, "chain migration" is a contrived term that seeks to put a negative light on a phenomenon that has

*Reforming America's Legal Immigration System*

taken place throughout the history of the country – some family members come to America and succeed, and then sponsor other family members.<sup>48</sup> Using data from the Visa Bulletin and the U.S. Citizenship and Immigration Service Ombudsman, an NFAP policy analysis found that it is likely over 40 years would pass from the time a U.S. citizen sponsored a married adult child from Mexico and that adult child's spouse could welcome the arrival of her sibling, hardly the "continuous" chain for immigrants portrayed by critics.<sup>49</sup>

**CONCLUSION**

Many problems exist in America's legal immigration system. There is no visa category for workers to fill year-round jobs in sectors like construction, restaurants and hotels. And the visa categories that exist for lower-skilled workers are plagued by bureaucratic rules. Over the years, these problems have contributed to illegal immigration and thousands of migrant deaths at the border. Employment-based immigrants are saddled with wait times of 6 to 10 years or longer and employers typically are unable to hire many high-skilled foreign nationals on H-1B temporary visas due to low annual quotas. These problems can largely be addressed by increasing the annual limits in these categories. Similarly, the annual limit on family-based immigration has led to long waits for U.S. family members sponsoring close relatives. Many problems in the legal immigration system can be addressed by either relaxing bureaucratic rules or by increasing annual quotas. Such changes would be in the best tradition of America as a nation of immigrants.

---

<sup>48</sup> Stuart Anderson, *Waiting and More Waiting: America's Family and Employment-Based Immigration System*, NFAP Policy Brief, National Foundation for American Policy, October 2011.

<sup>49</sup> *Ibid.*

## **ABOUT THE NATIONAL FOUNDATION FOR AMERICAN POLICY**

Established in 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, former U.S. Senator and Energy Secretary Spencer Abraham, Ohio University economist Richard Vedder, former INS Commissioner James Ziglar 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).