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H-1B Visa Season Is Here

The U.S. government begins accepting applications on Apr. 1, and all 85,000 H-1B visas available are expected to be used

By [Moirra Herbst](#)

On Apr. 1, the U.S. Citizenship & Immigration Service (USCIS) will begin accepting applications for H-1B visas for skilled workers. The number of applications will reveal U.S. employers' current appetite for overseas workers.

Because of the recession, the overall volume of applications is expected to be down from the previous two years, in which the offices were instantly flooded with applications from tech companies, outsourcing firms, school districts, and a variety of other employers. Still, it's widely believed that the 85,000 visas available under the cap will be used before the fiscal year begins on Oct. 1. That's because there is some pent-up demand from 2008 applicants who didn't receive visas, and because employers say there are positions they can't fill with U.S. labor, even as unemployment rises.

"It's fair to say that American companies are likely to file for fewer visas [in 2009]," Robert Hoffman, a vice-president at Oracle ([ORCL](#)) and spokesman for Compete America, a lobbying group advocating for more avenues for skilled immigration, said in a Mar. 31 conference call. "Still, all the [85,000] visas will be needed. If we're going to get out of the recession, we're going to have to innovate our way out...Continued use of the H-1B visa program is critically important."

U.S. Unemployment Raises Questions

However, critics of the H-1B visa program, who point to its potential for abuse and fraud, say that with U.S. unemployment rising, it's not clear there is a shortage of skilled workers in the U.S. "You'd be hard-pressed to make that argument," says Ron Hira, an assistant professor of public policy at the Rochester Institute of Technology and an outspoken critic of the program. "There may be a small number of very specialized positions that can't be filled by the U.S. workforce."

Under the current system, the number of high-skilled workers allowed in each year on temporary work visas is capped at 65,000, with a further 20,000 for those with advanced degrees. Compete America, which also represents Intel ([INTC](#)), Google ([GOOG](#)),

Microsoft ([MSFT](#)), and others, has advocated for the cap to be increased to at least 115,000.

Microsoft has been among the most vocal champions of increasing skilled immigration into the U.S., with Bill Gates testifying before Congress several times. The company's stance has attracted heat from critics of the H-1B program, especially as Microsoft announced it would [lay off some U.S. workers](#). But on Mar. 31, Microsoft General Counsel Brad Smith continued to advocate for more skilled immigration, posting a blog item outlining the company's views on H-1B visas. "While the number of visa holders is very small compared to the U.S. workforce, their contribution is huge," Smith wrote. "For example, last year 35% of Microsoft's patent applications in the U.S. came from new inventions by visa and green card holders."

Microsoft Defends the Program

"The future success of Microsoft and every other U.S. technology company depends on our ability to recruit the world's best talent," adds Smith. "While the vast majority of Microsoft's U.S. workforce is American, Microsoft hires foreign workers to bring specially needed skill sets to our U.S. operations and to fill roles when qualified American workers are not available."

Oracle's Hoffman agrees. He says the debate over H-1B visas is misguided because visa holders complement the U.S. workforce, rather than supplant it. "The H-1B workforce is a highly skilled workforce and one that contributes to the...development of new, innovative businesses in this country."

Critics like Hira, however, question whether H-1B visa applicants do in fact have unusual capabilities that can't be found in the U.S. workforce. "Most H-1B visa workers do not have unique and exceptional skills that are rare among available workers in the U.S.," says Hira. He points to 2005 USCIS data, the most recent made available by the agency, showing the educational breakdown of H-1B visa holders. In that year, for initial employment, 44% of H-1B holders had no more than a bachelor's degree.

Others point out that under current law, employers seeking H-1B visas do not need to prove that they have first tried to hire an American worker for the job. On Mar. 31, Bright Future Jobs, a U.S. tech worker lobbying group, posted on its Web site 13 advertisements for jobs in which the employer designated a preference for H-1B visa workers or targeted them specifically for the positions, according to the [Web site](#). "It doesn't matter if they are the best and the brightest or the worst and the dumbest; corporations want to continue to legally recruit abroad first for their U.S. job openings," says Donna Conroy, executive director of Bright Future Jobs.

Conroy says her group advocates legislation requiring all U.S. companies to seek domestic workers for their U.S. job openings before allowing them to recruit from abroad. In the final version of the economic stimulus bill in February, Senate and House negotiators agreed to stricter limits on banks and other firms receiving [taxpayer bailouts](#)

that use the H-1B visa program. Senators Dick Durbin (D-Ill.) and Charles Grassley (R-Iowa) are expected to introduce legislation that would require all companies to observe such stricter limits before looking at H-1B visa workers.

Foreign Grads Returning Home

U.S. tech firms also say they need access to foreign-born students graduating from U.S. universities. About half of those graduating with master's degrees in electrical engineering in the U.S. are foreign-born, as are 70% of PhD graduates in that field. The companies say it doesn't make sense to exclude these graduates from a potential pool of hires because there are not enough H-1B visas. However, recent surveys conducted by Duke University professor Vivek Wadhwa indicate that the primary reasons such graduates are leaving the U.S. are [not related to visa issues](#), but rather ties to family and friends and greater work opportunities back home.

Another category of H-1B applicants that has been controversial is Indian outsourcing firms. In 2008, Indian outsourcers Infosys Technologies ([INFY](#)), Wipro ([WIT](#)), Satyam ([SAY](#)), and Tata Consulting ([TCS.BO](#)) were the top four recipients of H-1B visas, followed by Microsoft, according to U.S. government data. Critics worry that these firms bring in cheaper workers for short periods and ultimately rotate them back to their home countries to perform work U.S. companies send offshore.

Stuart Anderson, executive director of the **National Foundation for American Policy (NFAP)**, a think tank, says the emphasis on the outsourcing firms is overblown. A recent [report](#) from that foundation noted that Indian IT firms used only 11.9% of new H-1B petitions issued in 2008—or 15.1% of the 85,000 allowed under the cap—contrasting with the popular perception that these firms collect most of the visas. (Some employers are exempt from the caps.) "This [data] puts the numbers in perspective," Anderson says. NFAP's calculation, which requires a review of 26,000 employers' use of H-1B visas, has not been verified by federal officials.

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