

**ANALYSIS: DATA REVEAL HIGH DENIAL RATES FOR
L-1 AND H-1B PETITIONS AT
U.S. CITIZENSHIP AND IMMIGRATION SERVICES**

EXECUTIVE SUMMARY

Analysis of new data obtained from U.S. Citizenship and Immigration Services (USCIS) reveals the agency has dramatically increased denials of L-1 and H-1B petitions over the past four years, harming the competitiveness of U.S. employers and encouraging companies to keep more jobs and resources outside the United States. Data indicate much of the increase in denials involves Indian-born professionals and researchers. U.S. Citizenship and Immigration Services adjudicators have demonstrated a capacity to keep skilled foreign nationals out of the United States by significantly increasing denials, along with often time-consuming Requests for Evidence (RFE), despite no change in the law or relevant regulations between 2008 and 2011.

The evidence indicates adjudicators or others at U.S. Citizenship and Immigration Services changed the standard for approving L-1B and other petitions in recent years, beginning in FY 2008 and FY 2009. If one considers that in FY 2011 63 percent of all L-1B petitions received a Request for Evidence and 27 percent were issued a denial, that means U.S. Citizenship and Immigration Services adjudicators denied or delayed between 63 percent to 90 percent of all L-1B petitions in 2011.

The dramatic increase in denial rates and Requests for Evidence for employment petitions without any change in the law or regulations raises questions about the training, supervision and procedures of the career bureaucracy that adjudicates petitions and the U.S. government's commitment to maintaining a stable business climate for companies competing in the global economy.

The high denial rates belie the notion adjudications have become more lenient. Employers report the time lost due to the increase in denials and Requests for Evidence are costing them millions of dollars in project delays and contract penalties, while aiding competitors that operate exclusively outside the United States – beyond the reach of U.S. Citizenship and Immigration Services adjudicators and U.S. consular officers. (The data in this report include only petitions at USCIS, not decisions made at consular posts.) Given the resources involved, employers are selective about who they sponsor. The high rate of denials (and Requests for Evidence) is from a pool of applicants selected by employers because they believe the foreign nationals meet the standard for approval, making the increase in denials difficult to defend. Denying employers the ability to transfer in key personnel or gain entry for a skilled professional or researcher harms innovation and job creation in the United States, encouraging employers to keep more resources outside the country to ensure predictability.

Analysis: Data Reveal High Denial Rates for L-1 and H-1B Petitions at USCIS

Among the findings contained in this NFAP analysis of official U.S. Citizenship and Immigration Services data:

- Denial rates for L-1B petitions filed with USCIS, which are used to transfer employees with “specialized knowledge” into the United States, rose from 7 percent in FY 2007 to 22 percent in FY 2008, despite no change in the law or relevant regulation. The denial rates stayed high for L-1B petitions at 26 percent in FY 2009, 22 percent in FY 2010 and 27 percent in FY 2011.¹ In addition, 63 percent of L-1B petitions in FY 2011 were at least temporarily denied or delayed due to a Request for Evidence.
- Denial rates for H-1B petitions increased from 11 percent in FY 2007 to 29 percent in FY 2009, and remained higher than in the past for H-1Bs at 21 percent in FY 2010 and 17 percent in FY 2011.
- Denial rates for L-1A petitions increased from 8 percent in FY 2007 to 14 percent in FY 2011. L-1A visas are used to transfer executives and managers into the United States.
- The denial rates also increased for O-1A petitions, which are used for “individuals with an extraordinary ability in the sciences, education, business, or athletics.”² Denials for O-1A petitions rose from 4 percent in FY 2008, to 10 percent just one year later in FY 2009, increased again to 11 percent in FY 2010, and stood at 8 percent in FY 2011.
- Along with increased denials have come skyrocketing rates of “Requests for Evidence” or RFEs, which are used by USCIS adjudicators to obtain more information in lieu of making an immediate decision on a petition. Employers note that simply the act of an RFE can result in months of delays, affecting costs and potentially delaying projects and contract performance.
- The Request for Evidence rate for L-1B petitions (to transfer employees with specialized knowledge) rose from 17 percent in FY 2007 to 49 percent in FY 2008, and, as noted, reached an astonishing level of 63 percent rate in FY 2011. As recently as FY 2004, USCIS adjudicators requested additional evidence for L-1B petitions in only 2 percent of the cases. There appears to be no reasonable explanation for the rate of Request for Evidence for L-1B petitions to rise from 2 percent to 63 percent in just 7 years.

¹ All data in this report is official data from U.S. Citizenship and Immigration Services, with the National Foundation for American Policy providing additional analysis. The numbers in the report are from a data run of Citizenship and Immigration Services Centralized Operational Repository (CISCOR). Note: Unless otherwise specified, data include both initial applications and extensions/renewals and are calculated by USCIS by measuring approvals and denials in a category in a year. USCIS data are labeled fiscal year in its data but CISCOR states the calendar year is used for data on I-129 petitions for L-1, H-1B, and O-1 petitions. Blanket L petitions handled by consular officers are not included in the data.

² U.S. Citizenship and Immigration Services.

Analysis: Data Reveal High Denial Rates for L-1 and H-1B Petitions at USCIS

- The Request for Evidence rate for L-1A petitions (to transfer managers and executives) increased from 4 percent in FY 2004, to 24 percent in FY 2007, up to 51 percent in FY 2011.
- For H-1B petitions, the Request for Evidence rate rose from 4 percent in FY 2004, to 18 percent by FY 2007, to a high of 35 percent in FY 2009. In FY 2011, the rate for H-1Bs was 26 percent.
- For O-1A petitions, the Request for Evidence rate increased from 1 percent in FY 2004, to 13 percent in FY 2007, and then more than doubled to 28 percent in FY 2009, 30 percent in FY 2010, and 27 percent in FY 2011.
- Country specific data on new (initial) L-1B petitions indicate U.S. Citizenship and Immigration Services is more likely to deny a petition from an Indian-born professional than nationals of other countries. The denial rate for Indian-born applicants for new L-1B petitions rose from 2.8 percent in Fiscal Year 2008 to 22.5 percent in FY 2009, a substantial increase that resulted in many employers being unable to transfer their employees into the United States to work on research projects or serve customers. In comparison, the denial rate for new L-1B petitions for Canadians rose from 2.0 percent in FY 2008 to only 2.9 percent in FY 2009. Illustrating the abrupt change, U.S. Citizenship and Immigration Services denied more L-1B petitions for new petitions for Indians in FY 2009 (1,640) than in the previous 9 fiscal years combined (1,341 denials between FY 2000 and FY 2008).

BACKGROUND

While relatively few ways exist for a foreign national to work in the United States, the data presented here illustrate the enormous power U.S. Citizenship and Immigration Services adjudicators possess to approve or deny petitions to work in America. The significant increase in denial rates and Requests for Evidence from just four years earlier illustrate that USCIS adjudicators and/or others at the agency have made it far more difficult for skilled foreign nationals to work in America. In a highly competitive global marketplace, this is causing companies to consider moving more work out of the United States to avoid the difficulties of the U.S. immigration system.

The wait for green cards (permanent residence) can span years or even decades, which means obtaining temporary status is essential for international students, skilled foreign nationals abroad, and others seeking to work legally in the United States. The primary temporary categories are H-1B, which are for foreign nationals with the equivalent of a bachelor's degree or higher working in a specialty occupation, and L-1, which allows an employer to transfer an employee into the United States who has worked at least one year abroad for the employer. O-1A is used (less commonly) for "individuals with an extraordinary ability in the sciences, education, business, or athletics."³

L-1B status to transfer an employee with "specialized knowledge" into the United States can be valid for 5 years, while L-1A status to transfer a manager or executive can be valid up to 7 years. "Specialized knowledge" for an L-1B petition is defined in the law as "special knowledge of the company product and its application in international markets" or "an advanced level of knowledge of processes and procedures of the company."⁴

To obtain permission to transfer an employee with "specialized knowledge" into the United States an employer, in most cases, must first obtain an individual petition from U.S. Citizenship and Immigration Services and, in general, then use that approved petition to obtain a visa from a U.S. post abroad for the employee to gain entry to America. Some employers qualify to apply for "blanket" petitions from U.S. Citizenship and Immigration Services, which allow employees to file directly for L-1 visas with consulates abroad.

U.S. Citizenship and Immigration Services also must generally approve a petition for H-1B and O-1A before an individual can change status inside the United States (such as from an international student to and H-1B worker) or to use the approved petition to obtain a visa at a U.S. post abroad.

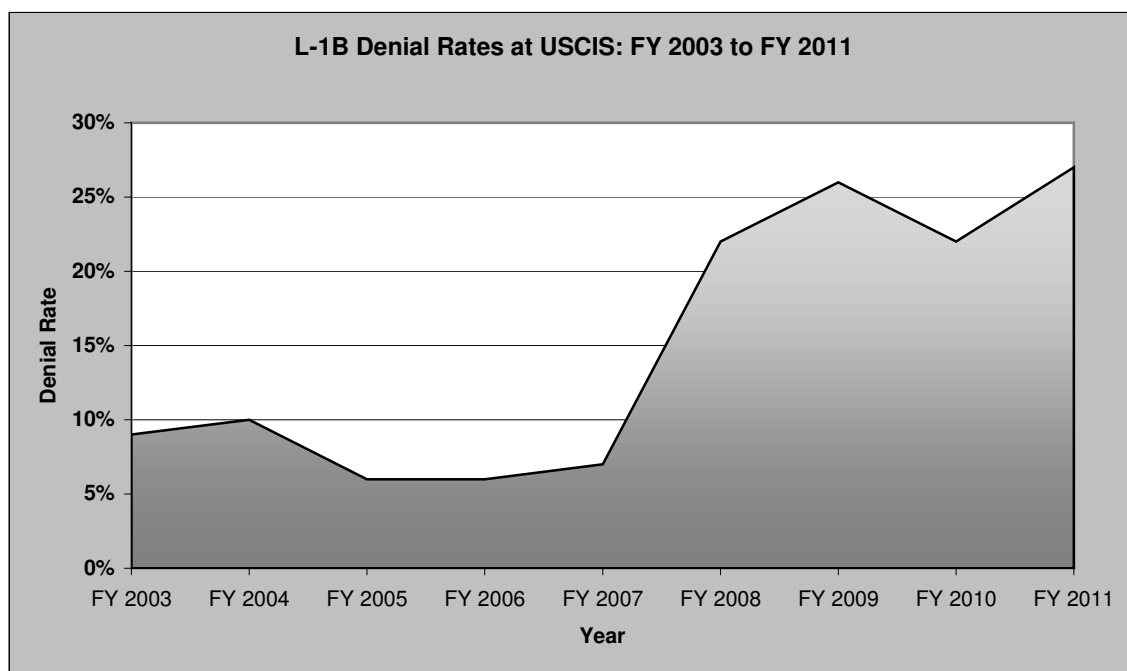
³ U.S. Citizenship and Immigration Services.

⁴ As cited in Daryl Buffenstein and Bo Cooper, *Business Immigration Law & Practice*, vol. 1, (Washington, D.C.: American Immigration Lawyers Association, 2011), p. 863.

DENIAL RATES FOR L-1B PETITIONS

Figure 1 and Table 1 show denial rates for L-1B petitions rose from 7 percent in FY 2007 to 22 percent in FY 2008, despite no change in the law or regulation on L-1Bs. The denial rates stayed high for L-1B petitions at 26 percent in FY 2009, 22 percent in FY 2010 and 27 percent in FY 2011.⁵ These include denials for both new (initial) cases for L-1B and extensions of individuals already working in the United States in L-1B status. L-1B petitions are used to transfer employees with “specialized knowledge” into the United States. Despite requests for additional data, USCIS has not provided a break down of approvals and denials for nationals by country for both initial and extension (renewal) cases. However, both information from companies and data in the next section indicate denials are more prevalent for employees born in India and, for reasons that are unclear, appear to be higher for extension/renewal cases for L-1B status.

Figure 1



Source: U.S. Citizenship and Immigration Services; National Foundation for American Policy; Data run for all nationalities of Citizenship and Immigration Services Centralized Operational Repository (CISCOR). Note: Data include both initial applications and renewals and are calculated by USCIS by measuring approvals and denials in a category in a year. USCIS labels its data fiscal year but CISCOR states the calendar year is used for data on I-129 petitions for L-1, H-1B, and O-1 petitions.

⁵ As noted earlier, USCIS data are labeled fiscal year in its data but CISCOR states the calendar year is used for data on I-129 petitions for L-1, H-1B, and O-1 petitions. Denial rates are calculated using the total approvals and denials in category in a year.

Analysis: Data Reveal High Denial Rates for L-1 and H-1B Petitions at USCIS

Companies believe that denials either at U.S. Citizenship and Immigration Services or at consulates, particularly involving Indian nationals, share the common attribute of new (unwritten) arbitrary standards that go beyond the statute and regulations. Employers say it has become difficult to plan projects and personnel placement in light of the shifting adjudications landscape. In short, the uncertainty means employers are unclear which cases are likely to be approved, which denied, and which likely to undergo a lengthy Request for Evidence.

Employers say that at times they believe applicants are rejected for L-1B status if a particular consular officer or an adjudicator believes a company could not possibly have more than three to five people with specialized knowledge in a particular area. Nothing in the statute or regulations indicates “specialized knowledge” need be restricted to a handful of people in a company. In fact, in companies employing thousands of people in highly specialized fields and product lines, it would not even be feasible to operate in most circumstances if specialized knowledge was restricted to three or four people at a time in a specific subject area, product or service.

Another type of denial, employers say, comes from USCIS adjudicators and consular officers requiring a standard of “extraordinary ability” be met to permit the transfer of employees into the United States with specialized knowledge. Requests for Evidence for L-1B have included asking whether the individual received a patent. And companies note that even patent holders have been denied L-1B petitions under the new, arbitrary standards.

Table 1
L-1B Denial Rates: FY 2003 to FY 2011

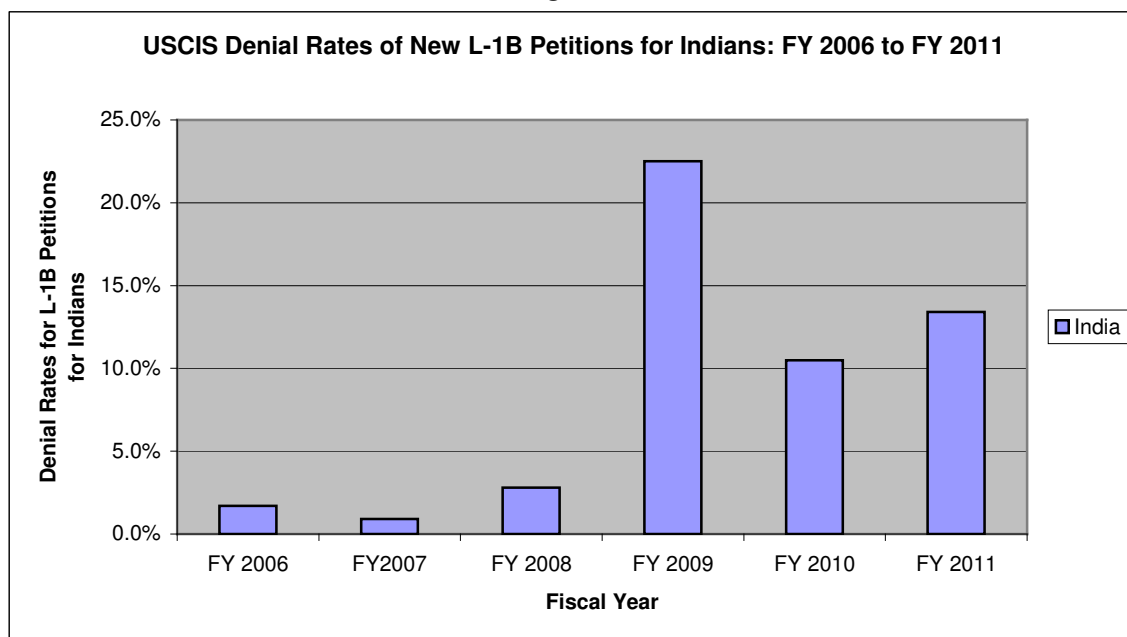
Fiscal Year	L-1B Denial Rates
FY 2003	9%
FY 2004	10%
FY 2005	6%
FY 2006	6%
FY 2007	7%
FY 2008	22%
FY 2009	26%
FY 2010	22%
FY 2011	27%

Source: U.S. Citizenship and Immigration Services; National Foundation for American Policy; Data run for all nationalities of Citizenship and Immigration Services Centralized Operational Repository (CISCOR). Note: Data include both initial applications and renewals and are calculated by USCIS by measuring approvals and denials in a category in a year. USCIS labels its data fiscal year but CISCOR states the calendar year is used for data on I-129 petitions for L-1, H-1B, and O-1 petitions.

INDIAN L-1B DENIALS FOR NEW CASES HAVE INCREASED DRAMATICALLY

Figure 2 and Table 2 illustrate the increase in denials may largely be a case of dramatic increases in denials of Indians, much more so than nationals of any other country. In FY 2006 the L-1B denial rate of new (initial) petitions (not extensions) for Indians was 1.7 percent, falling to 0.9 percent in FY 2007, and then rising to 2.8 percent in FY 2008. However, in FY 2009, the denial rate of new L-1B petitions for Indians skyrocketed to 22.5 percent even though there had been no change in the law or regulations between FY 2008 and FY 2009. The denial rate remained high for new Indian L-1B petitions in FY 2010 at 10.5 percent, well above its historic levels, and rose to 13.4 percent in FY 2011.⁶

Figure 2



Source: U.S. Citizenship and Immigration Services; National Foundation for American Policy (analysis of data). Data run of Citizenship and Immigration Services Centralized Operational Repository (CISCOR). Data in figure 2 are only for Indians.

⁶ All data in the report from USCIS. The data on country-specific approvals and denials, which focuses on (new) initial applications for L-1, were run separately by USCIS and may not correspond precisely with the other data run highlighted in this report (overall denial rates, not country-specific) that include renewals and, it is stated, were tabulated on a calendar year basis. According to the Department of Homeland Security, denial rates are calculated by utilizing the number of approvals and denials in a fiscal year. The number of receipts in a year should not be used because cases received in one fiscal year may not be processed in the same fiscal year, according to DHS. Also, USCIS data are based on the country of birth of the applicant. While this naturally corresponds to the location of the foreign national in the vast majority of the cases there are instances where an individual born in one country may not be applying for a transfer for work from the country of birth. These factors should not affect USCIS data that use the same methodology over the time period examined.

Analysis: Data Reveal High Denial Rates for L-1 and H-1B Petitions at USCIS

Table 2 illustrates another indicator of the significant shift in adjudications – U.S. Citizenship and Immigration Services denied more new L-1B petitions for Indians in FY 2009 (1,640) than in the previous 9 fiscal years combined (1,341 denials between FY 2000 and FY 2008).

Table 2
Denials of New L-1B Petitions for Indians: FY 2000 to FY 2009

Fiscal Year	Number of Denials of New L-1B Petitions for Indians
FY 2009	1,640
FY 2000 to FY 2008 (total)	1,341

Source: U.S. Citizenship and Immigration Services; National Foundation for American Policy (analysis of data). Data run of Citizenship and Immigration Services Centralized Operational Repository (CISCOR). Data in Table 2 are only for Indians.

Concern that L-1B petitions for Indians have been singled out might be alleviated if the data showed other countries have experienced similar increases in the rates of denial for L-1B petitions with U.S. Citizenship and Immigration Services. However, the data show that while other foreign nationals experienced an increase in denial rates for new L-1B petitions starting in FY 2009, those denial rate increases were far lower than for Indian nationals. L-1 visa issuance declined at U.S. posts in Indian in FY 2011 but rose overall for the rest of the world.⁷

The next 7 highest filing countries of origin for L-1 petitions in recent years, after India, have been Canada, China, France, Germany, Japan, Mexico and the United Kingdom. In FY 2008, the 2.8 percent denial rate for new L-1B petitions for Indians was similar to the other 7 countries. China's denial rate was 2.1 percent, the petitions for new L-1B applicants born in the United Kingdom had a 2.7 percent denial rate and France, at 3.8 percent, actually had a higher rate of denial than India in FY 2008. All that changed in FY 2009.

Table A1 in the Appendix illustrates that in FY 2009, the denial rate for new L-1B petitions for employees of Indian origin increased eight-fold from FY 2008, from 2.8 percent to 22.5 percent, while the denial rate for Canadians rose only from 2.0 percent in FY 2008 to 2.9 percent in FY 2009. The denial rate doubled or tripled for China, France, Germany, Japan and the United Kingdom in FY 2009, but all within a range of 4.1 percent to 5.9 percent, compared to India's denial rate of 22.5 percent. Moreover, the denial rate for France, Japan and the United Kingdom dropped back in FY 2010 to a level similar to the denial rates for those countries in FY 2008. Only applicants from Mexico (for one year) experienced an increase in denial rates for L-1B petitions similar to Indians.

⁷ *L-1 Visa Approvals Decline Significantly in India in 2011*, NFAP Policy Brief, November 2011.

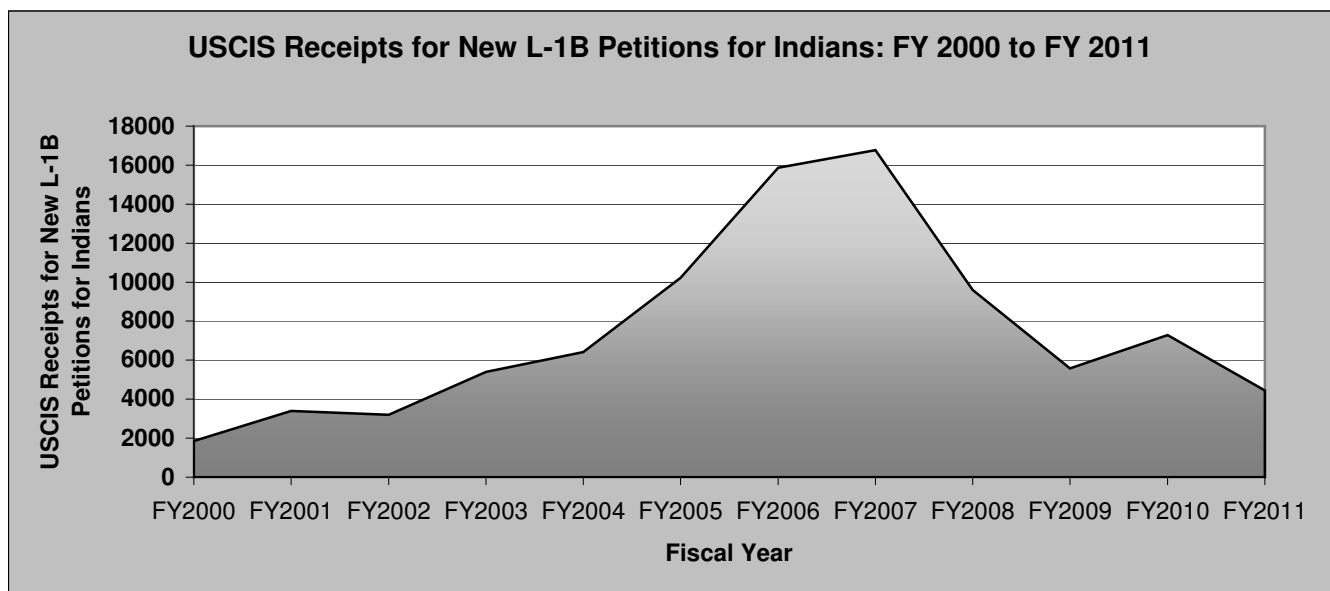
Analysis: Data Reveal High Denial Rates for L-1 and H-1B Petitions at USCIS

DECLINING NEW L-1B RECEIPTS IN RESPONSE TO DENIALS

A November 2011 NFAP Policy Brief utilized official data from the State Department and found, “The number of L-1 visas issued at U.S. posts in India declined by 28 percent from 2010 to 2011 . . . The official data from the State Department show that L-1 visa approvals went from 35,896 in FY 2010 to 25,898 in FY 2011, a drop of approximately 10,000 visas.”⁸ As noted earlier, increased delays, denials and inconsistent processing of L-1 applications have become a major concern for employers in the United States.

The USCIS data provide at least a partial explanation for the L-1 visa decline in FY 2011. After consecutive years of high denial rates from U.S. Citizenship and Immigration Services adjudicators, it appears many employers decided against pursuing an L-1 visa, either keeping the work abroad or, in some cases, applying for another visa for the individual.⁹ According to USCIS, as illustrated in Figure 3, the number of receipts for new L-1B petitions for Indian professionals fell by nearly 40 percent between FY 2010 and FY 2011. The State Department has not provided data on denial rates, which makes it impossible to know to what extent visa denials at U.S. posts abroad contributed to the decline in the number of L-1 visas issued in FY 2011.

Figure 3



Source: U.S. Citizenship and Immigration Services; National Foundation for American Policy (analysis of data). Data run of Citizenship and Immigration Services Centralized Operational Repository (CISCOR). Data in Figure 3 only for Indians.

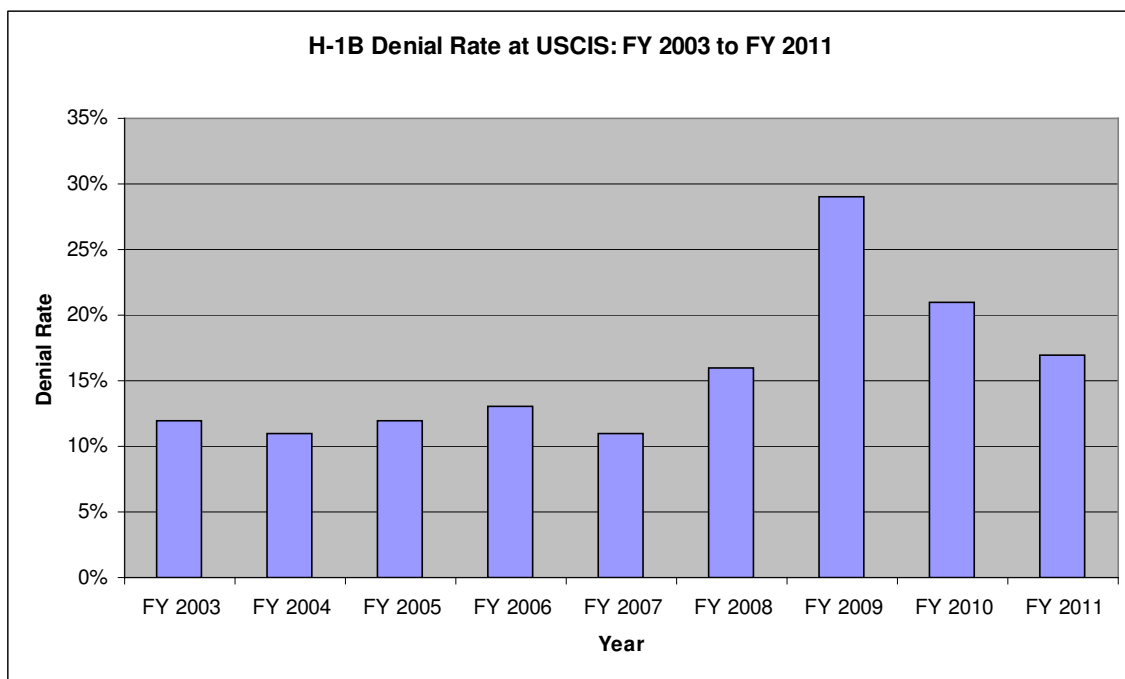
⁸ *L-1 Visa Approvals Decline Significantly in India in 2011*, NFAP Policy Brief, November 2011.

⁹ Some employers may have used a blanket petition.

H-1B DENIAL RATES

Denial rates for H-1B petitions for all nationalities increased from 11 percent in FY 2007 to 29 percent in FY 2009. The denial rates remained higher than the historical pattern for H-1Bs at 21 percent in FY 2010 and 17 percent in FY 2011. Note that these figures include both renewals and new (initial employment) H-1Bs.

Figure 4



Source: U.S. Citizenship and Immigration Services; National Foundation for American Policy; Data for all nationalities. Data run of Citizenship and Immigration Services Centralized Operational Repository (CISCOR). Note: Data for all nationalities and include both initial applications and renewals and are calculated by USCIS by measuring approvals and denials in a category in a year. USCIS labels its data fiscal year but CISCOR states the calendar year is used for data on I-129 petitions for L-1, H-1B, and O-1 petitions.

Analysis: Data Reveal High Denial Rates for L-1 and H-1B Petitions at USCIS

**Table 3
Denial Rates for H-1B Petitions (All Nationalities)**

Year	H-1B Denial Rate
FY 2003	12%
FY 2004	11%
FY 2005	12%
FY 2006	13%
FY 2007	11%
FY 2008	16%
FY 2009	29%
FY 2010	21%
FY 2011	17%

Source: U.S. Citizenship and Immigration Services; National Foundation for American Policy; Data run of Citizenship and Immigration Services Centralized Operational Repository (CISCOR).
 Note: Data include both initial applications and renewals and are calculated by USCIS by measuring approvals and denials in a category in a year. USCIS labels its data fiscal year but CISCOR states the calendar year is used for data on I-129 petitions for L-1, H-1B, and O-1 petitions.

L-1A DENIAL RATES

Denial rates for L-1A petitions increased from 8 percent in FY 2007 to 14 percent in FY 2011. L-1A visas are used to transfer executives and managers into the United States.

**Table 4
L-1A Denial Rates: FY 2003 to FY 2011 (All Nationalities)**

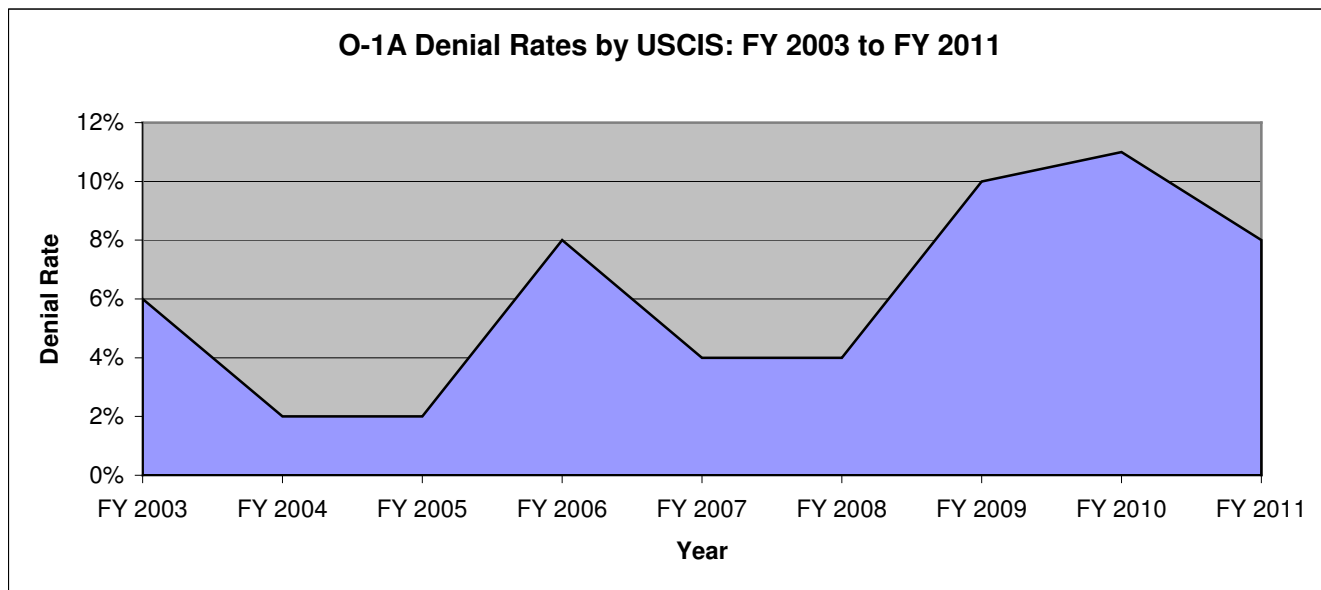
Fiscal Year	L-1A Denial Rates
FY 2003	12%
FY 2004	13%
FY 2005	11%
FY 2006	9%
FY 2007	8%
FY 2008	9%
FY 2009	15%
FY 2010	13%
FY 2011	14%

Source: U.S. Citizenship and Immigration Services; National Foundation for American Policy; Data run of Citizenship and Immigration Services Centralized Operational Repository (CISCOR).
 Note: Data include both initial applications and renewals and are calculated by USCIS by measuring approvals and denials in a category in a year. USCIS labels its data fiscal year but CISCOR states the calendar year is used for data on I-129 petitions for L-1, H-1B, and O-1 petitions.

O-1A DENIAL RATES

The denial rates have increased for O-1A petitions, which are used for “individuals with an extraordinary ability in the sciences, education, business, or athletics.”¹⁰ Denials for O-1A petitions rose from 4 percent in FY 2008, to 10 percent just one year later in FY 2009. The denial rate increased again to 11 percent in FY 2010, and stood at 8 percent in FY 2011.

Figure 5



Source: U.S. Citizenship and Immigration Services; National Foundation for American Policy; Data run of Citizenship and Immigration Services Centralized Operational Repository (CISCOR).
 Note: Data include both initial applications and renewals and are calculated by USCIS by measuring approvals and denials in a category in a year. USCIS labels its data fiscal year but CISCOR states the calendar year is used for data on I-129 petitions for L-1, H-1B, and O-1 petitions. Data in Figure 5 for all nationalities.

¹⁰ U.S. Citizenship and Immigration Services.

REQUESTS FOR EVIDENCE

Along with increased denials have come skyrocketing rates of “Requests for Evidence” or RFEs, which are used by USCIS adjudicators to obtain more information in lieu of making an immediate decision on a petition. Employers note that simply the act of an RFE can result in months of delays for an application, affecting costs and potentially delaying projects and harming the ability to fulfill terms of a contract.

If the Request for Evidence rate remains high it will negate much of the benefit even of improvement in denial rates, since employers still must undergo potentially months of uncertainty and additional costs without decisions made on the transfer or employment of key personnel.

The Request for Evidence rate for L-1B petitions (to transfer employees with specialized knowledge) rose from 17 percent in FY 2007 to 49 percent in FY 2008 and reached what analysts would see as an astonishing level of 63 percent rate in FY 2011.¹¹ As recently as FY 2004, USCIS adjudicators requested additional evidence for L-1B petitions in only 2 percent of the cases.

The Request for Evidence rate for L-1A petitions (to transfer managers and executives) has seen a steady rise, increasing from 4 percent in FY 2004, to 24 percent in FY 2007, up to 51 percent in FY 2011.

For H-1B petitions, the Request for Evidence rate rose from 4 percent in FY 2004, to 18 percent by FY 2007, to a high of 35 percent in FY 2009. In FY 2011, the rate for H-1Bs was 26 percent.

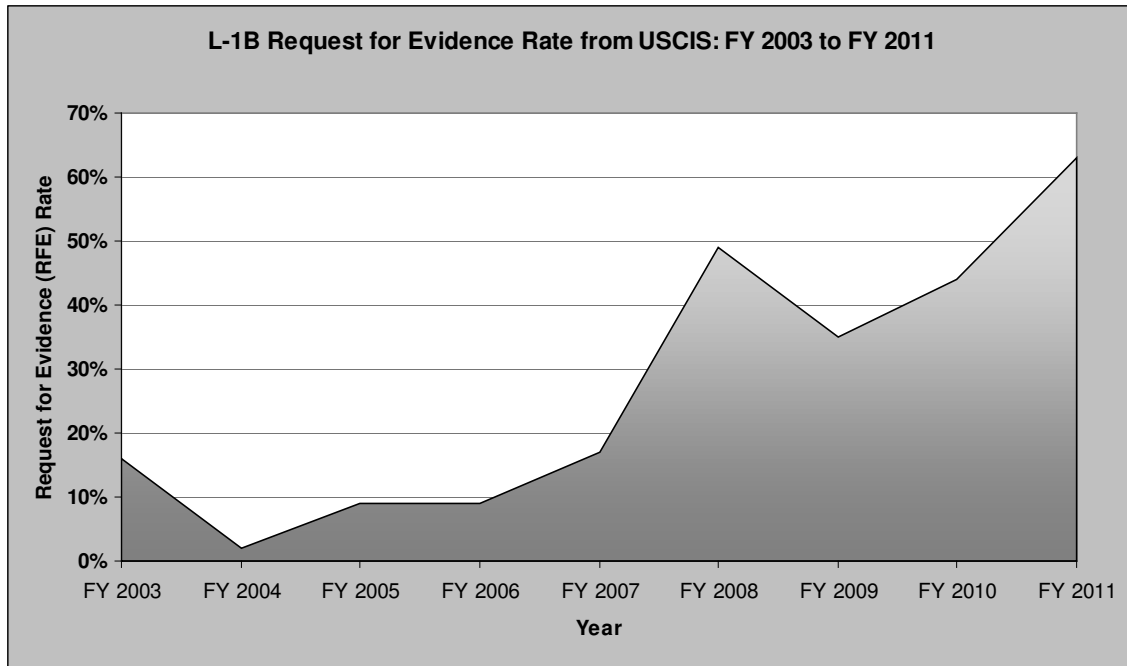
For O-1A petitions, the Request for Evidence rate increased from 1 percent in FY 2004, to 13 percent in FY 2007, to more than doubling to 28 percent in FY 2009, 20 percent in FY 2010, and 27 percent in FY 2011.

The figures and tables on the next pages illustrate the significant increase in Requests for Evidence by U.S. Citizenship and Immigration Services adjudicators.

¹¹ The Request for Evidence rate is the percentage of applications in a year in which an adjudicators formally requested additional evidence from an employer.

Analysis: Data Reveal High Denial Rates for L-1 and H-1B Petitions at USCIS

Figure 6



Source: U.S. Citizenship and Immigration Services; National Foundation for American Policy; Data run of Citizenship and Immigration Services Centralized Operational Repository (CISCOR). Note: Data include both initial applications and renewals. USCIS labels its data fiscal year but CISCOR states the calendar year is used for data on I-129 petitions for L-1, H-1B, and O-1 petitions. Data for all nationalities.

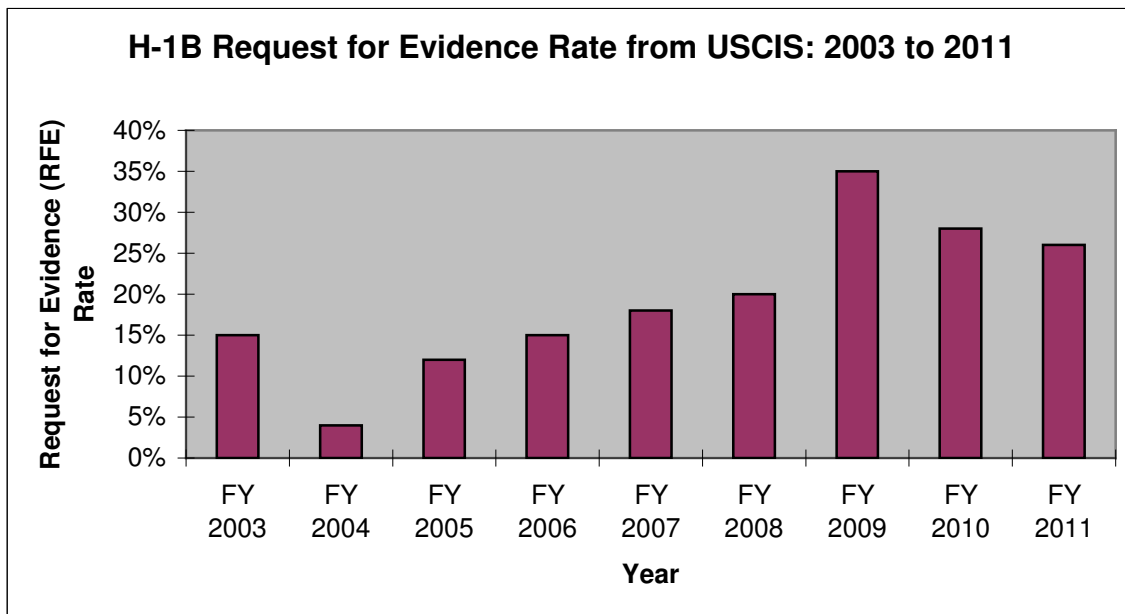
Table 5
USCIS Rate of Requests for Evidence for L-1B Petitions

Year	Request for Evidence Rate for L-1B Petitions
FY 2003	16%
FY 2004	2%
FY 2005	9%
FY 2006	9%
FY 2007	17%
FY 2008	49%
FY 2009	35%
FY 2010	44%
FY 2011	63%

Source: U.S. Citizenship and Immigration Services; National Foundation for American Policy; Data run of Citizenship and Immigration Services Centralized Operational Repository (CISCOR). Note: USCIS labels its data fiscal year but CISCOR states the calendar year is used for data on I-129 petitions for L-1, H-1B, and O-1 petitions. Data for all nationalities.

Analysis: Data Reveal High Denial Rates for L-1 and H-1B Petitions at USCIS

Figure 7



Source: U.S. Citizenship and Immigration Services; National Foundation for American Policy; Data run of Citizenship and Immigration Services Centralized Operational Repository (CISCOR). Note: USCIS labels its data fiscal year but CISCOR states the calendar year is used for data on I-129 petitions for L-1, H-1B, and O-1 petitions. Data for all nationalities.

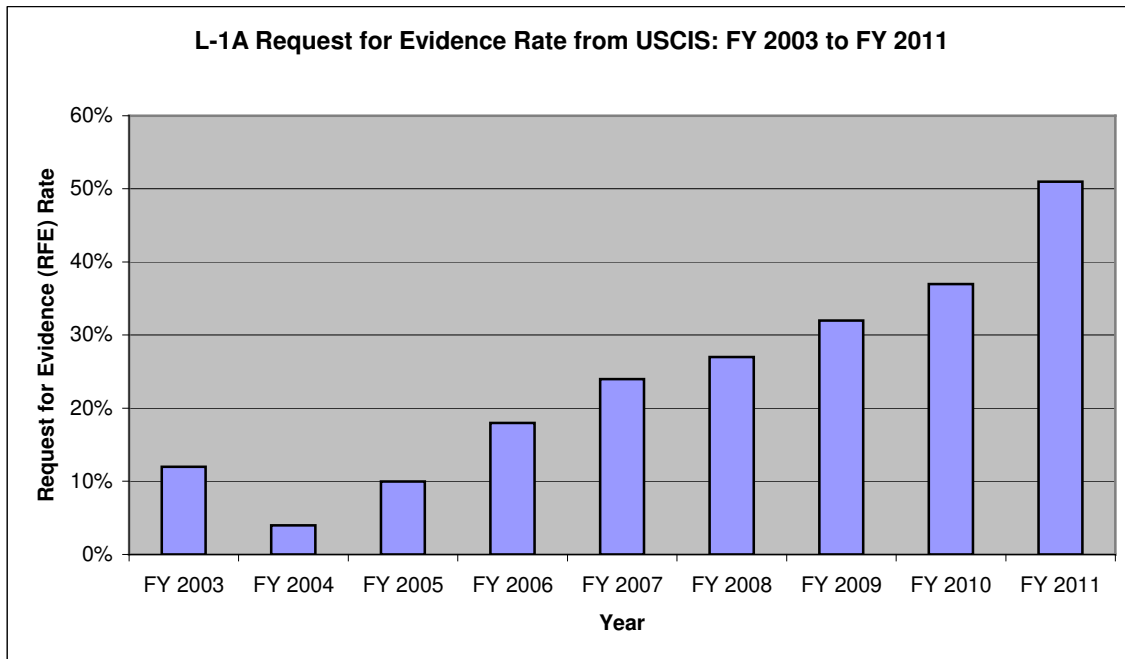
Table 6
USCIS Rate of Request for Evidence for H-1B Petitions

Year	Request for Evidence Rate for H-1B Petitions
FY 2003	15%
FY 2004	4%
FY 2005	12%
FY 2006	15%
FY 2007	18%
FY 2008	20%
FY 2009	35%
FY 2010	28%
FY 2011	26%

Source: U.S. Citizenship and Immigration Services; National Foundation for American Policy; Data for all nationalities run of Citizenship and Immigration Services Centralized Operational Repository (CISCOR). Note: Data include both initial applications and renewals. USCIS labels its data fiscal year but CISCOR states the calendar year is used for data on I-129 petitions for L-1, H-1B, and O-1 petitions. Data for all nationalities.

Analysis: Data Reveal High Denial Rates for L-1 and H-1B Petitions at USCIS

Figure 8



Source: U.S. Citizenship and Immigration Services; National Foundation for American Policy; Data run of Citizenship and Immigration Services Centralized Operational Repository (CISCOR). Note: Data include both initial applications and renewals. USCIS labels its data fiscal year but CISCOR states the calendar year is used for data on I-129 petitions for L-1, H-1B, and O-1 petitions. Data for all nationalities.

Table 7
USCIS Request for Evidence Rate for L-1A Petitions

Year	Request for Evidence Rate for L-1A Petitions
FY 2003	12%
FY 2004	4%
FY 2005	10%
FY 2006	18%
FY 2007	24%
FY 2008	27%
FY 2009	32%
FY 2010	37%
FY 2011	51%

Source: U.S. Citizenship and Immigration Services; National Foundation for American Policy; Data for all nationalities run of Citizenship and Immigration Services Centralized Operational Repository (CISCOR). Note: Data include both initial applications and renewals. USCIS labels its data fiscal year but CISCOR states the calendar year is used for data on I-129 petitions for L-1, H-1B, and O-1 petitions. Data for all nationalities.

Table 8
USCIS Request for Evidence Rate for O-1A Petitions

Year	Request for Evidence Rate for O-1A Petitions
FY 2003	17%
FY 2004	1%
FY 2005	14%
FY 2006	17%
FY 2007	13%
FY 2008	19%
FY 2009	28%
FY 2010	30%
FY 2011	27%

Source: U.S. Citizenship and Immigration Services; National Foundation for American Policy; Data for all nationalities run of Citizenship and Immigration Services Centralized Operational Repository (CISCOR). Note: Data include both initial applications and renewals. USCIS labels its data fiscal year but CISCOR states the calendar year is used for data on I-129 petitions for L-1, H-1B, and O-1 petitions. Data for all nationalities.

CONCLUSION

The significant increase in denial rates and Requests for Evidence from just four years earlier indicates USCIS adjudicators and/or others at the agency have made it far more difficult for skilled foreign nationals to work in America. In a highly competitive global marketplace, this is causing companies to consider moving more work out of the United States to ensure more predictability and avoid the difficulties of the U.S. immigration system.

Employers have noted that the delays and uncertainty created by increased denials and Requests for Evidence for L-1 and other categories have harmed growth, delayed projects and inhibited product development in the United States. When companies use L-1 visas they are transferring temporarily into the United States individuals who already are employed by the companies in another country. It is unclear, given the qualifications required to gain L-1 status, why moving an experienced employee from one location to another would mean a job loss for a U.S. worker, which is a concern some express.

To qualify, L-1 beneficiaries must have worked abroad for the employer for at least one continuous year (within a three-year period) prior to a petition being filed. Moreover, there is not a fixed number of jobs in the United States and additional personnel providing managerial or specialized expertise can help a company operating in the U.S. to expand or become more competitive.

Analysis: Data Reveal High Denial Rates for L-1 and H-1B Petitions at USCIS

In the past, the official government response to the issue of denials has been to suggest that since the United States issues many visas in general in India and Indians receive a large percentage of the L-1 visas or H-1B petitions issued each year that means there is nothing wrong with the petition and visa approval process. However, simply because India has a large, growing pool of skilled professionals that employers find desirable to hire (or transfer) tells us nothing in particular about whether individual cases are decided properly and whether standards for approval have changed substantially.

In November 2011, in response to a question from the National Foundation for American Policy about Indian refusal rates on L-1 cases, a spokesperson for the Bureau of Consular Affairs replied in writing: “On the question about decline, we have heard concerns from some companies that they are experiencing high refusal rates. We have seen an uptick in unqualified applicants in this category due to a much broader use of complex ‘specialized knowledge’ provisions as the basis of L-1 application, *which may account for the perception of increased refusals.*”¹²

The data from U.S. Citizenship and Immigration Services demonstrate the large increase in denial rates for Indian applicants and others for L-1B, H-1B, L-1A, and O-1A petitions. In these categories the denial rates starting in FY 2008 or FY 2009 have increased significantly, with no corresponding change in the immigration law or relevant regulations. That is not a matter of “perception,” anymore than people in a town shoveling out from 30 inches of snow have experienced only the perception of a snowstorm.

¹² Response received via email from spokesperson for the Bureau of Consular Affairs, November 1, 2011. Emphasis added.

Analysis: Data Reveal High Denial Rates for L-1 and H-1B Petitions at USCIS

APPENDIX

Table A1
L-1B Denial Rates for New Petitions By Country of Origin: FY 2006 to FY 2011

Fiscal Year	India	Canada	China	France	Germany	Japan	Mexico	United Kingdom
FY 2006	1.7%	1.9%	1.6%	4.8%	2.2%	2.0%	6.0%	3.0%
FY 2007	0.9%	1.1%	2.5%	3.2%	1.4%	0.3%	2.2%	1.4%
FY 2008	2.8%	2.0%	2.1%	3.8%	1.6%	1.7%	2.3%	2.7%
FY 2009	22.5%	2.9%	5.9%	6.3%	4.7%	4.4%	15.1%	4.1%
FY 2010	10.5%	2.2%	5.3%	2.4%	3.2%	2.0%	5.5%	3.1%
FY 2011	13.4%	2.9%	3.6%	6.1%	3.2%	1.9%	3.6%	2.7%

Source: U.S. Citizenship and Immigration Services; National Foundation for American Policy (analysis of data).

Note: Does not include extensions. Data run of Citizenship and Immigration Services Centralized Operational Repository (CISCOR).

ABOUT THE NATIONAL FOUNDATION FOR AMERICAN POLICY

Established in the Fall 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.