

# National Foundation for American Policy

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## **Research: Congress and New President Should Support More Open Policies on International Students, Entrepreneurs and High-Skilled Immigrants**

### **New Restrictions Likely to Push More Work, Investment and Startup Activity Abroad, Hurting U.S. Workers**

Arlington, Va. – The next two to four years will be contentious on immigration, with a real threat that even high-skilled legal immigration will face new restrictions, concludes a new report released by the National Foundation for American Policy (NFAP), an Arlington, Va.-based policy research group.

“Imposing a vast array of new rules on companies employing high-skilled foreign nationals would contradict Donald Trump and the Republican Congress’s expressed desire to loosen the regulatory reins that have been blamed for slow growth in the U.S. economy,” said NFAP Executive Director Stuart Anderson, former head of policy at the Immigration and Naturalization Service under President George W. Bush. “A number of recent legislative proposals have been breathtaking in scope and amount to micromanaging the personnel policies of America’s most innovative companies.”

“Preventing high-skilled foreign nationals from being hired in the United States most harms U.S. workers by pushing more investment, innovations and startup activity abroad,” said Anderson.

The report, “Policy Recommendations on Employment-Based Immigration for the New President and Congress,” is available at [www.nfap.com](http://www.nfap.com).

This report provides facts and principles upon which to judge new legislative and regulatory proposals on high-skilled immigration:

#### ***Principle 1: Given Their Contributions and Our Country’s Implicit Support for Their Education, America Should Facilitate the Ability of International Students to Work in the United States After Graduation.***

- Today, 77 percent of the full-time graduate students in electrical engineering and 71 percent in computer science at U.S. universities are international students. Since it can take many years to sponsor an employee for permanent residence (due to bureaucratic rules, low annual limits and the per country limit), an H-1B visa remains often the only practical way for international students or other highly skilled individuals to work long-term in the United States.
- In addition to legislative changes to expand the number of H-1B visas and employment-based green cards, the most important measure to retain international students may be keeping in place the March 2016 regulation on Optional Practical Training (OPT) that codified an extension beyond 12 months for international students with degrees in science, technology, engineering and math (STEM). After being approved for OPT status, an

international student can work for any employer for 12 months (if that employer meets its program obligations) and, under the new regulation, for an additional 24-month extension for degrees in a qualifying STEM field. Since 1947, the federal government has recognized that the law permits international students to work in America after completing their studies.

- Several countries, such as Australia, Canada, Germany, France and Singapore, have better policies than the United States for retaining international students. Such students make valuable contributions to America. But without the proper policies in place the vast majority will return home and work for foreign competitors or in other countries, developing innovations and fostering job growth outside the United States.

***Principle 2: U.S. Policies Should Recognize that Labor Mobility is Important.***

- The 140,000 limit on employment-based green cards – approximately half of which go to dependent family members – has not changed since 1990. Meanwhile, the U.S. labor market has seen an explosion in the demand for high-skilled labor fueled by the World Wide Web, smartphones, mobile applications, social media and other innovations. Even though, contrary to popular belief, an individual in H-1B status can change jobs, a problem arises when an individual in H-1B status has applied for an employment-based green card and the wait time becomes so long that he or she is reluctant to change employers for fear of triggering a new green card application.
- While individuals can change jobs in certain circumstances without having to start a new green card application, that is not a certainty, nor as good as obtaining an employment authorization document (EAD) that permits complete mobility in the labor market. It is unfortunate that the Obama Administration had the authority to solve this problem but chose not to use that authority in its recent AC21 regulations. Absent more fundamental reform to the way high-skilled work visas are issued, such as to the individual worker with an employment authorization document and permanent residence after 3 years, the best reforms are eliminating the per country limit and increasing the number of employment-based green cards issued.

***Principle 3: One of the Best Ways to Keep More Work in the United States is to Allow High-Skilled Foreign Nationals to Work in America, Rather Than Companies Sending Would-Be Immigrants and Their Accompanying Jobs, Investment and Innovations Outside the United States.***

- The existence of a global labor market means new restrictions on high-skilled foreign nationals, including on foreign nationals who provide services in the United States, will result in more work being performed outside the United States.
- Increases in productivity bring higher wages and high-skilled foreign nationals play an important role in increasing productivity in the United States. Research by economists Giovanni Peri, Kevin Shih and Chad Sparber found, “[I]nflows of foreign STEM workers explain between 30% and 50% of the aggregate productivity growth that took place in the United States between 1990 and 2010,” and that “A 1 percentage point increase in the foreign STEM share of a city’s total employment increased the wage growth of native college-educated labor by about 7–8 percentage points.”
- Immigrant-led startup activity provides more evidence of the dynamic at work on high-skilled immigration. “Immigrants have started more than half (44 of 87) of America’s startup companies valued at \$1 billion or more and are key members of management or product development teams in over 70 percent (62 of 87) of these companies,” according to a 2016 National Foundation for American Policy study. Reducing or, in effect, eliminating high-skilled immigration through new restrictive measures would significantly lower startup activity in the high tech sector.

- According to experts who advise companies on outsourcing decisions, two important facts about contracting out, including offshoring, are: 1) Companies make decisions on whether to outsource and make layoffs *before* a contract is put out for bids among contractors; and 2) H-1B visas play a minor (if any) role in this process, often during the transition phase from the old to the new contract. It is during this transition phase, when a foreign national is spotted on-site at a company, that employees and others start to blame the foreign nationals for layoffs that would have happened whether any foreigners appeared on-site or if a different contractor, including one employing entirely U.S. workers, had been chosen to service the contract.
- In the past two years, new immigration restrictions have been proposed following negative media stories involving layoffs at Disney and Southern California Edison, layoffs that closer examination reveals would not have been averted regardless of U.S. immigration policy. There is no evidence that any of the legislative measures that have been proposed in Congress would have changed the decisions by Disney and Southern California Edison to contract out work to outside firms specializing in information technology services. In both cases, the companies had a choice of service providers and had made the key decisions on outsourcing long before the contracts were awarded.

***Principle 4: Unless Congress Provides a New and Viable Alternative, H-1B Visas Are the Only Practical Way for High-Skilled Foreign Nationals to Work Long-Term in the United States.***

- Several members of Congress would like to empower the U.S. Department of Labor to take a significant role in high tech hiring decisions and to decide whether an employee should go to perform services at a customer's site. Approximately 20,000 employers in America hire at least one foreign national on H-1B visas each year, which means the reach of new government-imposed rules on immigration against companies could be significant.
- Such measures are likely to compel employers to defend to Department of Labor investigators potentially years after the fact personnel decisions that are inherently subjective, with definitions, such as "essentially equivalent" jobs, open to varying degrees of interpretation. Since approximately 70 to 80 percent of the graduate students in key high tech fields at U.S. universities are foreign nationals, no one should be surprised foreign nationals make up a significant part of the labor pool from which U.S. companies recruit.
- The number of H-1B visas permitted annually by Congress is low and needs to be increased. The supply of H-1B visas has been exhausted during (or, at times, before) each of the past 14 fiscal years. In FY 2017, in just the first week of April 2016 (6 months before the 2017 fiscal year started), U.S. Citizenship and Immigration Services received more than 236,000 H-1B petitions. That means in just the first week the federal government received 151,000 applications more than the 85,000 limit (65,000 plus the 20,000 exemption) would allow. Every year, many thousands of highly-skilled individuals are denied the opportunity to work in America, which results in the United States failing to gain from their talents. Unless Congress raises the H-1B limit, simply rearranging how the small number of petitions are distributed, as some have discussed or proposed, only changes which talented people will be denied.
- To undermine support for H-1B visas more generally, critics have argued that Indian-based companies use most of the H-1B petitions approved each year. However, the 7 Indian-based companies who had the most H-1B petitions approved for new employment used 14,610 in FY 2015, or only about 13 percent of the total approved new petitions that year, and their total declined by 35 percent between FY 2012 and FY 2015. The 14,610 individuals with new H-1B petitions from the 7 leading Indian-based companies come to a tiny 0.009 percent of the U.S. labor force, while the 109,292 new H-1B petitions approved

for all employers in 2015 also represents a small proportion of the U.S. labor force at 0.07 percent.

- The United States committed itself under the General Agreement on Trade in Services to not impose restrictions to prevent legitimate “trade in services” and other measures that would affect employers of all types. A National Foundation for American Policy legal analysis found, “Passing legislation with measures that violate GATS risks retaliation against U.S. companies and can undermine U.S. efforts to open markets in other nations to American goods and services.” Imposing new restrictions is also likely to harm the improved relationship the United States has been fostering with India on defense and foreign policy issues.

#### **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, Ohio University economist Richard Vedder, former U.S. Senator and Energy Secretary Spencer Abraham 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).

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