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H-1B PETITIONS AND DENIAL RATES IN FY 2021

EXECUTIVE SUMMARY

The Trump administration’s losses in federal court returned H-1B denial rates for employers in FY 2021 to pre-Trump levels, according to a new analysis by the National Foundation for American Policy (NFAP). Judges declared the Trump administration’s actions to be unlawful, forcing changes in restrictive immigration policies that resulted in the denial rate for new H-1B petitions for initial employment in FY 2021 to drop to 4%, far lower than the denial rate of 24% in FY 2018, 21% in FY 2019 and 13% in FY 2020. The Trump administration managed to carry out what judges determined to be unlawful policies for nearly four years, and the policies imposed significant costs on employers, visa holders and the U.S. economy, likely contributing to more work and talent moving to other countries.

H-1B petitions for “initial” employment are primarily for new employment, typically for companies a case that would count against the H-1B annual limit. NFAP closely tracks H-1B petitions and denial rates. Absent significant changes in government policies, high denial rates are unusual since employers would be unlikely to apply for H-1B petitions for individuals who do not qualify given the time and expense.

Table 1
Denial Rate for H-1B Petitions for Initial (New) Employment

FISCAL YEAR	DENIAL RATE
FY 2021	4%
FY 2020	13%
FY 2019	21%
FY 2018	24%
FY 2017	13%
FY 2016	10%
FY 2015	6%
FY 2014	8%
FY 2013	7%
FY 2012	5%
FY 2011	7%
FY 2010	8%
FY 2009	15%

Source: USCIS, National Foundation for American Policy. Percentages are rounded off. Data extracted and analyzed from USCIS H-1B Employer Data Hub.

The increase in H-1B denials began in Donald Trump’s first year in office (2017) and the decline in the denial rate started in his last year (2020), affecting the fourth quarter of FY 2020 and later FY 2021. The impact of the court decisions and a legal settlement became evident in the final months of the Trump administration. The denial rate for new H-1B petitions for initial employment was 1.5% in the fourth quarter of FY 2020 (July 1 to Sept. 30, 2020), much lower than the denial rate of 21% through the first three quarters of FY 2020. The Biden administration has complied with court decisions and [a 2020 legal settlement](#) with the business group ITServe Alliance, as evidenced by the low denial rate in FY 2021. (FY 2021 began on October 1, 2020, while Donald Trump was still president.)

H-1B Petitions and Denial Rates in FY 2021

H-1B temporary visas are important because they generally represent the only practical way for a high-skilled foreign national, including an international student, to work long-term in the United States and have an opportunity to become an employment-based immigrant and a U.S. citizen. Many [founders of billion-dollar companies](#) and [individuals responsible for the vaccines](#) and medical care that has saved the lives of Americans during the pandemic have used H-1B visas and employment-based green cards.

The findings in the analysis include:

- The denial rate for H-1B petitions for initial employment was 4% in FY 2021, the lowest known level since data on H-1B denial rates became available. During the Trump administration, the denial rate for H-1B petitions for initial employment was much higher at 13% in FY 2017, 24% in FY 2018, 21% in FY 2019 and 13% in FY 2020. (Note: The denial rate in FY 2020 would have been higher if not for a legal settlement prior to the fourth quarter of FY 2020.) Between FY 2010 and FY 2015, the denial rate for H-1B petitions for initial employment ranged between 5% and 8%.
- NFAP found the denial rates in FY 2021 and FY 2015 to be similar for employers, meaning the Trump years were an aberration due to imposing restrictive policies that courts found to be unlawful. For several companies, particularly those that provide information technology (IT) services or other business services to U.S. companies, the denial rate for H-1B petitions for initial employment was far lower in FY 2021 than in FY 2020.
- The denial rate for H-1B petitions for continuing employment was 2% in FY 2021, much lower than the 12% denial rate in FY 2018 and FY 2019 and the lowest level since data on H-1B denial rates became available. H-1B petitions for “continuing” employment are usually extensions for existing employees at the same company or an H-1B visa holder changing to a new employer. The denial rate for H-1B petitions for continuing employment was 7% in FY 2020, but would have been higher if not for the impact in the fourth quarter of the court decisions and the legal settlement. In recent history, the 7% denial rate was still high compared to the 3% denial rate for H-1B petitions for continuing employment each year between FY 2011 and FY 2015.
- Much of the increase in denials for continuing employment during the Trump administration was due to an October 2017 [memo](#) that instructed adjudicators to no longer “give deference to the findings of a previously approved petition.” Many extensions of H-1B status were reviewed under a new, more restrictive standard based on policies that judges later determined to be unlawful. Employers and attorneys have credited USCIS Director Ur Jaddou and the Biden administration for rescinding the October 2017 memo.

H-1B Petitions and Denial Rates in FY 2021

- Amazon had the most approved H-1B petitions for initial employment in FY 2021 with 6,182. Amazon also had the most new H-1B petitions approved in FY 2020. Infosys had the second most H-1B petitions in FY 2021 approved for initial employment (5,256), followed by TCS (3,063), Wipro (2,121) Cognizant (1,481), Google (1,453), IBM (1,402), HCL America (1,299) and Microsoft (1,240).
- Processing issues likely inflated the number of approved H-1B petitions for top employers. In the U.S. Citizenship and Immigration Services (USCIS) data, H-1B petitions are counted in the fiscal year they are approved, *not* in the cap year the H-1B visa holder begins to work. NFAP determined approximately 18,000 more petitions were approved for initial employment in FY 2021 compared to FY 2020, possibly due to USCIS processing issues in FY 2020 caused by the pandemic and the higher denial rate in 2020. Another caveat to the numbers is that, according to attorneys, in FY 2019 and FY 2020 during the Trump administration, USCIS held or delayed H-1B applications for many IT services companies, which would have inflated the number of approved H-1B petitions for those companies in FY 2021.
- The top employers of approved H-1B petitions in FY 2021 were also among the fastest-growing employers of U.S. workers, providing evidence that companies that employ H-1B visa holders also seek out and employ U.S. workers in significant numbers. The information on the significant hiring of U.S. workers by employers of H-1B professionals helps demonstrate the fallacies of the zero-sum argument about high-skilled foreign nationals “taking” American jobs, particularly since economists have found hiring high-skilled personnel complements other high-skilled jobs as well as other types of employment at a company and in the economy.
- As of December 6, 2021, there were more than 1.5 million job vacancy postings in computer occupations in the United States, according to a National Foundation for American Policy analysis of EMSI data, and only about 56,000 new H-1B petitions annually are used by employers and H-1B employees in computer jobs, according to USCIS data. That means even if one incorrectly assumes there are a fixed number of jobs, there are *close to 30 times* more available jobs in computer occupations than H-1B visa holders who fill such positions annually.
- At U.S. universities, only approximately 25% of the full-time graduate students in electrical engineering and computer and information sciences are U.S. students.

Although the Trump administration’s legal losses and the ITServe Alliance settlement are most responsible for the lower H-1B denial rate in FY 2021, employers and attorneys give the Biden administration credit for adopting a more measured approach to business immigration. In 2017, the Trump administration moved aggressively against high-skilled immigration from almost the start of Donald Trump’s term. The “Buy American and Hire American”

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executive order was the first significant action, followed by a series of memos and directions to USCIS adjudicators that made it much more difficult for employers to gain approval for H-1B petitions. Courts ruled a number of these policies unlawful, including efforts to restrict who qualified for an H-1B visa. In April 2020, a presidential proclamation blocked the entry of employment-based immigrants and nearly all categories of immigrants. A June 2020 proclamation suspended the entry of H-1B visa holders and others. (A court blocked implementation of the June proclamation for many employers.)

The denial rates discussed in the report are separate from the large number of H-1B registrations rejected each year because of the low numerical limit under U.S. immigration law. In March 2021, employers [filed 308,613 H-1B registrations](#) for cap selection for FY 2022, but only 85,000 H-1B petitions could be chosen under the law, which means over 72% of H-1B registrations for high-skilled foreign nationals were rejected even before an adjudicator evaluated the application. That high percentage of rejections prior to adjudication indicates how restrictive current policies are toward high-skilled foreign nationals in America, particularly compared to other countries with which the United States competes for talent, including international students. Restrictive policies toward employment-based green cards are also a significant problem.

This NFAP analysis is based on data from the U.S. Citizenship and Immigration Services (USCIS) [H-1B Employer Data Hub](#). The report updates earlier work, including NFAP reports on H-1B petitions approved in [FY 2019](#) and [FY 2020](#).

*H-1B Petitions and Denial Rates in FY 2021***H-1B DENIAL RATES RETURN TO PRE-TRUMP LEVELS**

The denial rate for H-1B petitions for initial employment was 4% in FY 2021, the lowest known level since data on H-1B denial rates became available.¹ The 4% level in FY 2021 is much lower than the denial rate of 13% in FY 2017, 24% in FY 2018, 21% in FY 2019 and 13% in FY 2020 during the Trump administration. (Note: The denial rate in FY 2020 would have been higher if not for a legal settlement prior to the fourth quarter of FY 2020.) The 4% denial rate for H-1B petitions for initial employment in FY 2021 was close to the denial rate of between 5% and 8% for H-1B petitions for initial employment between FY 2010 and FY 2015.

NFAP found the denial rates in FY 2021 and FY 2015 to be similar for employers, meaning the Trump years were an aberration due to imposing restrictive policies that courts found to be unlawful. For several companies, particularly those that provide IT services or other business services to U.S. companies, the denial rate for H-1B petitions for initial employment was far lower in FY 2021 than in FY 2020. For example, for HCL America, the denial rate was 19 percentage points lower in FY 2021 than FY 2020, while for Accenture, the denial rate was 16 percentage points lower in FY 2021 vs. FY 2020. (See Table 3).

Table 2
Denial Rate for H-1B Petitions for Initial (New) Employment: 4th Quarter FY 2020 vs. 4th Quarter FY 2019

H-1B Denial Rate (Initial Employment) 4th Quarter FY 2019	15.0%
H-1B Denial Rate (Initial Employment) 4th Quarter FY 2020	1.5%

Source: USCIS, National Foundation for American Policy. Data extracted and analyzed from USCIS H-1B Employer Data Hub.

Legal defeats ended the Trump administration's H-1B policies. The fourth quarter of FY 2020 began on July 1, 2020. On June 17, 2020, USCIS was compelled to issue a [new policy memo](#) and withdraw a February 2018 [memo](#) on "Contracts and Itineraries Requirements for H-1B Petitions Involving Third-Party Worksites" after losing a court case and then agreeing to [a settlement](#) with the business group ITServe Alliance. USCIS also lost cases on who qualified for an H-1B petition, and rescinded the ["Neufeld" memo](#), a January 2010 memo interpreted more aggressively during the Trump years to deny H-1B petitions when H-1B visa holders worked at customer sites.

The memos and their interpretation were blamed for increased costs and higher denial rates for H-1B petitions, particularly for IT services companies. Data on H-1B denials in the fourth quarter of FY 2020 revealed the impact of the rescission of the two memos. The denial rate for H-1B petitions for initial employment was 1.5% in the fourth quarter of FY 2020, far lower than the 15% denial in the fourth quarter of FY 2019. (See Table 2.)

¹ Reliable historical data on denial rates go back to FY 2009. H-1B petitions for "initial" employment are primarily for new employment, typically a case that would count against the H-1B annual limit.

H-1B Petitions and Denial Rates in FY 2021

Table 3
Approved H-1B Petitions and Denial Rates for Initial Employment: FY 2021 vs. FY 2020 and FY 2015

Employer	FY 2021 Approved Petitions Initial Employment	FY 2020 Approved Petitions Initial Employment	FY 2021 Denial Rate Initial Employment	FY 2020 Denial Rate Initial Employment	FY 2015 Denial Rate Initial Employment	Change in Denial Rate in Percentage Points from FY 2020 to FY 2021
Amazon	6,182	4,774	2%	3%	1%	-1
Infosys	5,256	3,512	4%	36%	2%	-32
TCS	3,063	2,409	4%	10%	6%	-6
Wipro	2,121	1,004	5%	26%	7%	-21
Cognizant	1,481	2,005	1%	43%	8%	-42
Google	1,453	1,682	1%	1%	1%	+0
IBM	1,402	1,360	4%	9%	3%	-5
HCL America	1,299	1,405	3%	22%	2%	-19
Microsoft	1,240	1,791	1%	2%	2%	-1
Deloitte	1,235	1,231	6%	17%	18%	-11
Facebook	1,196	1,184	1%	1%	0%	+0
Tech Mahindra	1,104	887	5%	17%	4%	-12
Accenture	1,076	1,140	4%	20%	4%	-16
Apple	1,071	748	2%	1%	2%	+1
Capgemini	889	1,413	4%	21%	5%	-17
Goldman Sachs	640	399	2%	1%	1%	+1
Oracle	592	522	1%	3%	1%	-2
Larsen & Toubro	566	784	3%	18%	2%	-15
Intel	549	788	2%	2%	1%	+0
Ernst & Young	489	528	3%	7%	0.3%	-4
Qualcomm	485	557	1%	2%	0.4%	-1
Mindtree	480	254	5%	1%	2%	+4
Hexaware Tech.	423	247	5%	11%	4%	-6
Cisco	417	488	3%	5%	1%	-2
Walmart	380	435	2%	3%	3%	-1

Source: USCIS, National Foundation for American Policy. Data extracted and analyzed from USCIS H-1B Employer Data Hub. Percentages are rounded off. Note: IBM and IBM Private India were combined, as were Amazon and its related entities, and Larsen & Toubro and L&T Technology Services.

TOP EMPLOYERS OF NEW H-1B VISA HOLDERS AND U.S. EMPLOYMENT

Amazon had the most approved H-1B petitions for initial employment in FY 2021 with 6,182. Amazon also had the most new H-1B petitions approved in FY 2020. Infosys had the second most H-1B petitions approved for initial employment (5,256) in FY 2021, followed by TCS (3,063), Wipro (2,121) Cognizant (1,481), Google (1,453), IBM (1,402), HCL America (1,299) and Microsoft (1,240).

Among the top users of H-1B visas in FY 2021, the number of approved H-1B petitions was likely inflated by processing issues. In the USCIS data, H-1B petitions are counted in the fiscal year they are approved, *not* in the cap year the H-1B visa holder begins to work. There were approximately 18,000 more approved petitions in FY 2021 compared to FY 2020, possibly due to USCIS processing issues caused by the pandemic and increased denials in 2020. Another caveat to the numbers is that, according to attorneys, in FY 2019 and FY 2020 (during the Trump administration), USCIS held or delayed H-1B applications for many IT services companies, which would have inflated the approved H-1B petitions in FY 2021 for several IT services companies.

The caveat to the numbers is relevant because critics have sometimes argued that IT services company cost U.S. workers their jobs. This is generally based on anecdotes, some involving news reports from a decade or more ago, where a company has decided to contract out services, and a layoff of U.S. workers resulted, with the company that received the contract being blamed for the job loss if the firm employed H-1B visa holders. It is unfortunate when people lose their jobs. However, no evidence was presented in the news reports that if a different company had won the contract, the employees' jobs would have been preserved. Multiple firms bid on the reported contracts. The fault often lies with the parent company that has not maintained sufficient training for the employees so that when a change is needed due to competition or business demands for a technological solution, the existing employees can become part of the solution. In some cases, companies decide they no longer want a function in-house and contract out to focus on core competencies (i.e., the company's main line of business), which leaves employees in an unfortunate position but has no connection with U.S. immigration policy.

Some statistics and perspective: As of December 6, 2021, there were more than 1.5 million job vacancy postings in computer occupations in the United States, according to a National Foundation for American Policy analysis of EMSI data. In comparison, only approximately 21,000 of the H-1B petitions among the top 25 employers of new H-1B visa holders were for companies that provide information technology or other business services. The 21,000 equals 0.01% of U.S. labor force, a tiny proportion by any measurement. (There are currently about 70 times more job vacancy postings in computer occupations as new H-1B petitions approved for IT or business services companies in FY 2021.) In addition, the number of H-1B petitions for initial employment approved for those companies declined by approximately 22% between FY 2021 and FY 2015. For the top 7 Indian-based companies,

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the decline was approximately 7% between FY 2021 and FY 2015, a drop that might have been greater if not for likely inflated approval numbers in FY 2021 due to USCIS processing issues. In sum, this is a small number of professionals in the context of the U.S. economy, and the number has declined in recent years.

The top employers of approved H-1B petitions in FY 2021 were also among the fastest-growing employers of U.S. workers. Below is a look at U.S. employment news for a number of companies to provide better economic context. The purpose of the data on hiring in the United States is to illustrate there is readily available information that indicates companies of all types that employ H-1B visa holders also seek out and employ U.S. workers in significant numbers. The information helps demonstrate the zero-sum argument about “taking” American jobs is not valid, particularly since economists have found hiring high-skilled personnel complements other high-skilled jobs as well as different types of employment at a company and in the economy.

Amazon was the top recipient of approved H-1B petitions for initial employment in FY 2021, but to argue Amazon was hiring foreign nationals instead of U.S. workers ignores the significant overall hiring taking place at the company. In September 2021, Amazon announced plans to hire 125,000 additional workers in the United States, on top of the rapid expansion of its workforce in recent years that has made Amazon the second largest employer in America behind only Walmart.²

The story is similar if less dramatic for other employers near the top of the approved initial H-1B petitions list for FY 2021.

“India's largest software services company Tata Consultancy Services (TCS) [announced] on Wednesday it has seen a surge in demand for its services and expects to recruit 10,000 individuals in the US by 2022,” according to a report on *Mint*. “The Mumbai-based company has hired over 21,500 employees in the past five years in the U.S.”³ In 2021, TCS announced plans to “expand its operations in Ohio by hiring more than 800 local employees at its Seven Hills Park campus outside of Cincinnati and other offices across the state by 2022.” Ohio Republican Governor Mike DeWine and Ohio Republican Senator Rob Portman applauded the hiring, investment and expansion of K-12 STEM programs.⁴

“In 2017, Infosys committed to hiring 10,000 American workers over two years and has exceeded that goal by creating 13,000 jobs in the U.S. to date,” according to a company release. “Through this expanded commitment, Infosys will hire an additional 12,000 workers by 2022 across a variety of roles. The company will target experienced

² <https://press.aboutamazon.com/news-releases/news-release-details/amazon-announces-plans-hire-125000-employees-hundreds-cities-and>; <https://247wallst.com/retail/2021/11/06/this-is-the-largest-employer-in-america/>.

³ “TCS To Hire 10,000 Staff in U.S. by 2022,” *Mint*, October 10, 2020.

⁴ <https://www.tcs.com/tcs-expands-ohio-footprint-plans-to-hire-800-employees>.

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technology professionals as well as recent graduates from major universities, liberal arts colleges, and community colleges. . . In the past three years, Infosys has launched six Technology and Innovation Centers in the U.S. across Indiana, North Carolina, Connecticut, Rhode Island, Texas, and Arizona.” The centers include extensive training.⁵

“Texas is our home for a new technology center, and we have over 2,000 employees throughout the state,” said Amar Naga, vice president of U.S. strategic engagements at Wipro, in an interview with *India Global Business*. “Localization has been a key strategy for Wipro in the U.S. and across other geographies over the last several years. Today, nearly 70% of our U.S.-based employees are Americans. Specific to Texas, we look at it as a strategic location, with the talent availability and our ability to be near our customers in the region, given Texas is the 10th largest economy in the world. In the last few years, we have grown our employee base in Texas by roughly 50%.”⁶

On Indeed, Cognizant, a U.S. company headquartered in Teaneck, New Jersey, listed approximately 1,900 technology-related and other job openings available at the company in the United States in January 2022. Wipro listed approximately 700 job openings on Indeed in January 2022. (The information on company hiring and available jobs are meant to be illustrative, not exhaustive; the number of jobs on internet sites vary daily.)

ECONOMIC FINDINGS AND RESPONSES ON H-1B VISA HOLDERS

Every year, no matter the economic conditions, critics make what many economists and analysts would consider inaccurate claims about H-1B visa holders and their impact on the U.S. labor force. Below is an effort to place in context the FY 2021 H-1B numbers and foreign-born scientists and engineers.

The claim that H-1B visa holders prevent U.S. professionals from working in technology positions is not credible. As of December 6, 2021, there were more than 1.5 million job vacancy postings in computer occupations in the United States, according to a National Foundation for American Policy analysis of EMSI data, and only about 56,000 new H-1B petitions annually are used by employers and H-1B employees in computer jobs, according to [U.S. Citizenship and Immigration Services data](#). That means even if one incorrectly assumes there are a fixed number of jobs, there are *close to 30 times* more available jobs in computer occupations than H-1B visa holders who fill such jobs annually.⁷

If there are nearly 30 times more available jobs in computer occupations than H-1B visa holders who fill such jobs annually, then a reasonable question is: How are H-1B professionals preventing U.S. professionals from pursuing or attaining those jobs? The answer is that difficulties individual U.S. professionals may have in their careers are

⁵ <https://www.infosys.com/newsroom/press-releases/2020/american-jobs-commitment.html>.

⁶ <https://www.indiaglobalbusiness.com/analyses/snap-analysis/wipro-has-continued-to-create-local-jobs-in-the-us>.

⁷ See Stuart Anderson, “The Outlook on H-1B Visas and Immigration in 2020,” *Forbes*, January 3, 2021.

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not connected to the ability of a relatively small number of foreign nationals to be permitted to work in the United States each year.

The 85,000 new H-1B petitions allowed each year for companies represent only 0.05% of the approximately 162 million people in the U.S. labor force.

There is no evidence U.S.-born professionals have been prevented from earning high salaries because of H-1B visa holders. “Median earnings of [native] college graduates with a computer-related major are 35 percent higher than other STEM (science, technology, engineering and math) majors and fully 83 percent higher than non-STEM majors,” according to research by economist Madeline Zavodny. “The substantial earnings premium for IT professionals and computer-related majors is consistent with persistently strong demand for workers with these technical skills. Even during a period of temporary and permanent immigration into the U.S. of skilled foreign-born workers and offshoring of technical jobs outside of the U.S., U.S.-born IT professionals and computer and information systems majors continued to earn, on average, substantially more than other professional workers and other majors.”⁸

Critics argue if it were difficult to find technical talent, employers would go to greater efforts to find or retain that talent. There is no evidence that critics have examined the work of recruiters seeking to hire technology talent for their companies, so such an argument appears to be rhetorical rather than substantive. In addition to the 1.5 million job vacancy postings in computer occupations in the United States, another indicator of the demand for tech talent is the report in December 2021 that Apple informed engineers they have been awarded stock bonuses—shares that vest over four years—that “ranged from about \$50,000 to as much as \$180,000 in some cases. Many of the engineers received amounts of roughly \$80,000, \$100,000 or \$120,000 in shares.” While press articles couched the report in the context of Apple’s battle for tech talent with Facebook (Meta Platforms), it’s clear if tech talent were easily attainable, such bonuses would not be necessary to retain workers.⁹ As noted above, “U.S.-born IT professionals . . . earn, on average, substantially more than other professionals.”

The claim that H-1B visa holders are “cheap labor” is not credible and sometimes used to disparage the worth of people not born in the United States. According to a [U.S. Citizenship and Immigration Services \(USCIS\) report](#), “Median annual compensation for all approved H-1B beneficiaries in FY 2020 was \$101,000.” Moreover, 64% of H-1B professionals have earned a master’s degree or higher.¹⁰

⁸ Madeline Zavodny, *The Earnings of IT Professionals Compared With Other Professionals*, NFAP Policy Brief, National Foundation for American Policy, June 2021.

⁹ <https://fortune.com/2021/12/29/apple-bonuses-stock-grants-talent-retention-silicon-valley/>.

¹⁰ *Characteristics of H-1B Specialty Occupation Workers, Fiscal Year 2020 Annual Report to Congress*, Department of Homeland Security, U.S. Citizenship and Immigration Services, February 17, 2021.

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It is required under [U.S. law](#) for employers to pay the higher of the actual or prevailing wage paid to U.S. workers with similar experience and qualifications. That does not include [legal and government fees](#) employers typically pay to petition for H-1B professionals that can range from \$5,000 to \$30,000, as well as \$10,000 to \$15,000 to sponsor them for permanent residence, according to an NFAP analysis.¹¹

Many studies, both academic and government, have concluded H-1B visa holders are paid the same or higher than comparable U.S. professionals and do not harm the economics prospects of U.S. professionals.

- The Government Accountability Office (GAO) found in the category Electrical/Electronics Engineering Occupations (age group 20-39), the median salary for an engineer in H-1B status was \$5,000 higher than for a U.S. engineer.¹²
- An analysis by Glassdoor concluded: “Across the 10 cities and roughly 100 jobs we examined, salaries for foreign H-1B workers are about *2.8 percent higher* than comparable U.S. salaries on Glassdoor.”¹³
- University of Maryland researchers Sunil Mithas and Henry C. Lucas, Jr., after examining the skills and compensation of over 50,000 IT professionals, wrote, “[C]ontrary to popular belief, non-U.S. citizen IT professionals are not paid less compared to American IT professionals.”¹⁴
- Economists Magnus Lofstrom and Joseph Hayes with the Public Policy Institute of California found, “[O]verall H-1B workers in STEM occupations have higher earnings than their otherwise observationally similar U.S. born counterparts.”¹⁵
- In a May 2020 National Foundation for American Policy study, economist Madeline Zavodny concluded, “H-1B visa holders do not adversely affect U.S. workers. On the contrary, the evidence points to the presence of H-1B visa holders being associated with lower unemployment rates and faster earnings growth among college graduates, including recent college graduates.”¹⁶
- A [study](#) by economists Giovanni Peri, Kevin Shih, Chad Sparber and Angie Marek Zeitlin examined the last recession and found that denying the entry of H-1B visa holders due to the annual limits harmed job growth

¹¹ Stuart Anderson, “New Increase In H-1B Visa Fees Further Shatters ‘Cheap Labor’ Myth,” *Forbes*, November 1, 2021.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Madeline Zavodny, *The Impact of H-1B Visa Holders on the U.S. Workforce*, NFAP Policy Brief, National Foundation for American Policy, May 2020.

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for U.S.-born professionals. “The number of jobs for U.S.-born workers in computer-related industries would have grown at least 55% faster between 2005-2006 and 2009-2010, if not for the denial of so many applications in the recent H-1B visa lotteries,” concluded the economists.¹⁷

- [Research](#) by Britta Glennon, an assistant professor at the Wharton School of Business at the University of Pennsylvania, found new restrictions on H-1B visas are likely to push jobs out of the United States, concluding, “[A]ny policies that are motivated by concerns about the loss of native jobs should consider that policies aimed at reducing immigration have the unintended consequence of encouraging firms to offshore jobs abroad.”¹⁸

H-1B PETITIONS FOR CONTINUING EMPLOYMENT

The denial rate for H-1B petitions for “continuing” employment (primarily for existing employees) was 2% in FY 2021, much lower than the 7% rate in FY 2020, and far lower than the 12% denial rate in FY 2018 and FY 2019. This decline in the H-1B denial rate in FY 2020 for continuing employment cases reflects the impact of court decisions and the legal settlement. The 12% denial rate for H-1B petitions for continuing employment in FY 2018 and FY 2019 during the Trump years was four times as high as the 3% denial rate between FY 2011 and FY 2015.

Table 4
Denial Rate: H-1B Petitions for Continuing Employment

FISCAL YEAR	DENIAL RATE
FY 2021	2%
FY 2020	7%
FY 2019	12%
FY 2018	12%
FY 2017	5%
FY 2016	4%
FY 2015	3%
FY 2014	3%
FY 2013	3%
FY 2012	3%
FY 2011	3%
FY 2010	5%
FY 2009	6%

Source: USCIS, National Foundation for American Policy. Percentages are rounded off. Data extracted and analyzed from USCIS H-1B Employer Data Hub.

¹⁷ Giovanni Peri, Kevin Shih, Chad Sparber and Angie Marek Zeitlin (June 2014), *Closing Economic Windows: How H-1B Visa Denials Cost U.S.-Born Tech Workers Jobs and Wages During the Great Recession*, Partnership for a New American Economy.

¹⁸ Britta Glennon, *How Do Restrictions on High-Skilled Immigration Affect Offshoring? Evidence from the H-1B Program*, Carnegie Mellon University, May 2019.

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Table 5
Approved H-1B Petitions and Denial Rates for Continuing Employment: FY 2021 vs. FY 2020 and FY 2015

Employer	FY 2021 Approved Petitions Continuing Employment	FY 2020 Approved Petitions Continuing Employment	FY 2021 Denial Rate Continuing Employment	FY 2020 Denial Rate Continuing Employment	FY 2015 Denial Rate Continuing Employment	Change in Denial Rate in Percentage Points from FY 2020 to FY 2021
Amazon	10,703	9,466	1%	2%	1%	-1
Infosys	10,170	6,334	2%	21%	1%	-19
TCS	7,460	6,016	7%	10%	3%	-3
Cognizant	7,410	12,873	3%	16%	3%	-13
Deloitte	6,427	5,326	7%	20%	5%	-13
Microsoft	5,203	5,209	1%	1%	2%	+0
Google	5,011	4,138	1%	1%	0.4%	+0
Facebook	3,904	3,226	1%	1%	0.2%	+0
Apple	3,656	3,134	1%	0.4%	1%	+0
Wipro	2,774	2,587	3%	7%	4%	-4
Larsen & Toubro	2,524	2,532	2%	4%	3%	-2
Salesforce	2,447	1,114	1%	1%	0.3%	+0
Capgemini	2,314	3,894	1%	4%	3%	-3
JPMorgan Chase	2,512	2,029	0.4%	1%	1%	+0
Fidelity Investments	2,122	567	1%	2%	1%	-1
Compunnel	2,095	1,269	2%	4%	1%	-2
Accenture	1,965	3,432	1%	5%	1%	-4
Intel	1,936	2,119	1%	2%	1%	-1
Ernst & Young	1,824	2,887	2%	12%	2%	-10
HCL America	1,780	2,801	3%	15%	2%	-12
IBM	1,775	1,913	5%	6%	1%	-1
Tech Mahindra	1,768	2,028	1%	4%	2%	-3
Oracle	1,735	1,681	1%	2%	3%	-1
Walmart	1,609	1,087	1%	1%	1%	+0
Randstad	1,537	1,087	1%	2%	3%	-1

Source: USCIS, National Foundation for American Policy. Data extracted and analyzed from USCIS H-1B Employer Data Hub. Percentages are rounded off. Note: IBM and IBM Private India were combined, as were Amazon and Amazon Corporate, and Larsen & Toubro and L&T Technology Services.

H-1B Petitions and Denial Rates in FY 2021

The USCIS data on H-1B petitions for continuing employment in Table 5 contain an important caveat—the approvals for continuing employment for some companies are inflated by counting the same employee often multiple times in the same year, according to attorneys. Employers, such as IT services companies, must file an amended petition for every H-1B professional who moves to a new project at a new work location. The policy is due to the 2015 USCIS Administrative Appeals Office decision in *Matter of Simeio Solutions* that requires an employer to file an amended H-1B petition in most instances where an H-1B professional is relocated to a new work location. “The key point to bear in mind is that each of these approvals does not represent a unique individual as an employer could conceivably file several petitions in a year for a professional who works on projects that last just a few months,” said Vic Goel, managing partner of Goel & Anderson.¹⁹ Rates can also be inflated by the need to extend H-1B professionals who have been waiting years in the employment-based green card backlog.

Amazon had the most approved H-1B petitions for continuing employment in FY 2021 with 10,703, followed by Infosys (10,170), TCS (7,460), Cognizant (7,410), Deloitte (6,427), Microsoft (5,203) and Google (5,011). As noted, these numbers do not represent individual employees but can include H-1B visa holders approved multiple times for continuing employment during the same year, particularly if they changed locations.

In FY 2021, when compared to FY 2020, USCIS adjudicators denied H-1B petitions for continuing employment at a much lower rate for several employers, particularly those that provide information technology or other business services. As with denial rates for initial employment, it illustrates the impact of the Trump administration’s court losses and the ITServe Alliance legal settlement. Table 5 shows how similar the denial rates for H-1B petitions for continuing employment were in FY 2021 and FY 2015 (pre-Trump).

A significant reason for the increase in denials for continuing employment during the Trump administration was because in October 2017, the new USCIS director issued a [memo](#) that directed adjudicators to no longer give deference “to the findings of a previously approved petition, as long as the key elements were unchanged and there was no evidence of a material error or fraud related to the prior determination.”²⁰ As a result of the denials for continuing employment, many companies reported being forced to dismiss long-term, experienced employees, including individuals waiting years for an employment-based green card, whose H-1B status ended because USCIS denied an application for an extension. In some cases, companies transferred employees to another location. When that was not possible, employees were released. In 2021, USCIS Director Ur Jaddou rescinded the October 2017 memo, an action supported by employers and existing employees in H-1B status.

¹⁹ Interview with Vic Goel.

²⁰ <https://www.uscis.gov/news/news-releases/uscis-updates-policy-ensure-petitioners-meet-burden-proof-nonimmigrant-worker-extension-petitions>.

CONCLUSION

H-1B visas are essential because they generally represent the only practical way for a high-skilled foreign national, including an international student, to work long-term in the United States and have an opportunity to become an employment-based immigrant and a U.S. citizen. The Trump administration carried out what judges determined to be unlawful policies on high-skilled immigration for nearly four years, and the policies imposed high costs on employers, visa holders and the U.S. economy, likely contributing to more work and talent moving to other countries.

The denial rates discussed in the report are separate from the large number of H-1B registrations rejected each year because of the low numerical limit under U.S. immigration law. In FY 2022, more than 72% of H-1B registrations for high-skilled foreign nationals were rejected even before an adjudicator evaluated the application because of the low annual limit for H-1B petitions. That is one illustration of how restrictive current policies are toward high-skilled foreign nationals in America, particularly compared to other countries with which the United States competes for talent.

H-1B Petitions and Denial Rates in FY 2021

**Appendix: Table 6
NEW H-1B PETITIONS ISSUED AGAINST THE H-1B CAP BY FISCAL 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
2017	65,000	65,000	0
2018	65,000	65,000	0
2019	65,000	65,000	0
2020	65,000	65,000	0
2021	65,000	65,000	0
2022	65,000	65,000	0

Source: Dept. of Homeland Security; National Foundation for American Policy. *Does not include exemptions from cap.

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