AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

SHOULD CONGRESS RAISE THE H-1B CAP?

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

MARCH 30, 2006

Serial No. 109–95

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://judiciary.house.gov

U.S. GOVERNMENT PRINTING OFFICE

26–768 PDF WASHINGTON : 2006

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

F. JAMES SENSENBRENNER, JR., Wisconsin, *Chairman*

HENRY J. HYDE, Illinois
HOWARD COBLE, North Carolina
LAMAR SMITH, Texas
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
STEVE CHABOT, Ohio
DANIEL E. LUNGREN, California
WILLIAM L. JENKINS, Tennessee
CHRIS CANNON, Utah
SPENCER BACHUS, Alabama
BOB INGLIS, South Carolina
JOHN N. HOSTETTLER, Indiana
MARK GREEN, Wisconsin
RIC KELLER, Florida
DARRELL ISSA, California
JEFF FLAKE, Arizona
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TOM FEENEY, Florida
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas

JOHN CONYERS, JR., Michigan
HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
MARTIN T. MEEHAN, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
LINDA T. SÁNCHEZ, California
CHRIS VAN HOLLEN, Maryland
DEBBIE WASSERMAN SCHULTZ, Florida

PHILIP G. KIKO, *General Counsel-Chief of Staff*
PERRY H. APELBAUM, *Minority Chief Counsel*

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

JOHN N. HOSTETTLER, Indiana, *Chairman*

STEVE KING, Iowa
LOUIE GOHMERT, Texas
LAMAR SMITH, Texas
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
DANIEL E. LUNGREN, California
JEFF FLAKE, Arizona
BOB INGLIS, South Carolina
DARRELL ISSA, California

SHEILA JACKSON LEE, Texas
HOWARD L. BERMAN, California
ZOE LOFGREN, California
LINDA T. SÁNCHEZ, California
MAXINE WATERS, California
MARTIN T. MEEHAN, Massachusetts

GEORGE FISHMAN, *Chief Counsel*
ART ARTHUR, *Counsel*
ALLISON BEACH, *Counsel*
CINDY BLACKSTON, *Professional Staff*
NOLAN RAPPAPORT, *Minority Counsel*

CONTENTS

MARCH 30, 2006

OPENING STATEMENT

	Page
The Honorable Steve King, a Representative in Congress from the State of Iowa, and Member, Subcommittee on Immigration, Border Security, and Claims	3
The Honorable Sheila Jackson Lee, a Representative in Congress from the State of Texas, and Ranking Member, Subcommittee on Immigration, Border Security, and Claims	1

WITNESSES

Mr. John M. Miano, Chief Engineer, Colosseum Builders, Inc.	
Oral Testimony	7
Prepared Statement	9
Mr. Stuart Anderson, Executive Director, National Foundation for American Policy	
Oral Testimony	45
Prepared Statement	46
Mr. David Huber, Information Technology Professional, Chicago, IL	
Oral Testimony	54
Prepared Statement	56
Dr. Delbert Baker, President, Oakwood College	
Oral Testimony	58
Prepared Statement	60

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

The Honorable Maxine Waters, a Representative in Congress from the State of California	5

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Prepared Statement of the Honorable Sheila Jackson Lee, a Representative in Congress from the State of Texas, and Ranking Member, Subcommittee on Immigration, Border Security, and Claims	75
Mr. Ralph Hellman, Senior Vice President, Information Technology Industry Council	76
Mr. Dan DeBoer, Information Technology Professional, Lisle, Illinois	78
Mr. John A. Bauman, President, The Organization for the Rights of American Workers	80
Mr. Robert W. Holleyman, III, President and CEO, Business Software Alliance	81
Mr. Darrell L. Rauthburn, Information Technology Professional, Columbus, Ohio	86
Mr. John Palafoutas, Senior Vice President, AeA	89
Ms. Linda Evans, Matthews, North Carolina	91
Mr. Billy Reed, Past President, American Engineering Association	93
Mr. John William Templeton, Coalition for Fair Employment in High Technology	96

Page

Mr. Michael Emmons, Information Technology Professional, Longwood, Florida 97
Ms. Esther Massimini, Principal Engineer, Aerospace Electronics Honeywell .. 98
Mr. Henry G. Huestis, Electrical Engineer, Spokane Valley, Washington 101
Mr. Michael W. Gildea, Executive Director, Department for Professional Employees, AFL-CIO 107
Mr. Mark A. Powell, Information Technology Professional, Westminster, California 111
Ms. Lynn Shotwell, Executive Director, American Council on International Personnel 113
Ms. Sandra J. Boyd, Chair, Compete America 115
The Institute of Electrical & Electronics Engineers - United States of America 117
Ms. Toni L. Chester, Software Developer, Bloomsbury, New Jersey 124
Shahid Sheikh 129
Letter from Mr. Jack Krumholtz, Microsoft Corporation 130

SHOULD CONGRESS RAISE THE H-1B CAP?

THURSDAY, MARCH 30, 2006

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION,
BORDER SECURITY, AND CLAIMS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:05 a.m., in Room 2141, Rayburn House Office Building, the Honorable Steve King (acting Chair of the Subcommittee) presiding.

Mr. KING. Good morning.

I'd like to make an announcement that Chairman Hostettler is not able to be here this morning, and so I'll be chairing this Subcommittee meeting.

And in the interest of expediency, before we move on to the open part of the hearing and the opening statements by the other Members, I'd like to break from established protocol and recognize Ms. Jackson Lee for an opening statement because she has an urgent schedule to meet. And I'm very grateful—very happy to be able to do that.

Ms. Jackson Lee, you are recognized for your opening statement.

Ms. JACKSON LEE. Mr. Chairman, I thank you so very much.

Mr. Chairman, I thank you so very much, and it's an honor and pleasure to serve as the Ranking Member of this Subcommittee and to welcome all of the witnesses for a very important hearing.

Please do not in any way take my absence as an indication of the—of any lack of interest or importance of this hearing. Unfortunately, a scheduled event that required my presence was unavoidable, in essence, in terms of the timing that it had to occur.

But I do want to emphasize the importance of this hearing very quickly and to say that there are several themes that I think are integrated in this particular hearing, Mr. Chairman.

One, this is an affirmation of legal immigration, and we are in the midst of a debate about immigration. The emotions are high. There is a great deal of tenseness. I'd almost call for a timeout.

But this is a hearing about H-1B visas, which tend to focus on needed profiles of employees that American companies represent that they need to the United States. I've lived through this debate for any number of years, writing legislation with Representative Lamar Smith that I thought was very balanced, that had to do with providing visas, but also emphasized American workers. Training American workers, providing American workers with their opportunity.

And so, this morning, I want to, again, emphasize that this program is allowing American employers, if they didn't have this, would not be able to hire enough highly educated professionals for the specialty occupations. And a specialty occupation is employment requiring the theoretical and practical application of a body of highly specialized knowledge. This may include doctors, engineers, professors, researchers in a wide variety of fields, accountants, medical personnel, and computer scientists, and software writers.

Besides using the H-1B program to obtain foreign professionals who have skills and knowledge that are in short supply in this country, U.S. businesses use the program to alleviate temporary shortages of U.S. professionals in specific occupations and to acquire special expertise in overseas trends and issues—with expertise in overseas economic trends and issues. This helps U.S. businesses to compete in global markets.

As an American employer who wants to bring an H-1B employee to the United States, among other requirements, they must attest that he will pay the H-1B employee the greater of the actual compensation paid to other employees in the same job or the prevailing compensation for that occupation. That was in place so that we would not have lower wages for foreign workers, thereby not hiring American workers. That he will provide working conditions for the non-immigrant that will not cause the working conditions of the other employees to adversely be affected, and that there is no applicable strike or lockout.

The employer must provide a copy of the attestation to the representative of the employee bargaining unit. Additional attestation requirements for the recruitment and layoff protections are imposed on firms that are H-1B dependent. A company is considered H-1B dependent if 15 percent or more of its employees are H-1B workers.

These are the hard questions that we need to ask, is whether or not a company that asks for an H-1B truly needs an H-1B? Whether or not there are American workers that could be recruited, American college students that could be trained?

The subject of this hearing is the cap for H-1B visas. The Immigration Act of 1990 set a numerical limit of 65,000 on the number of H-1B visas that can be used annually. In FY 2004, the 65,000 limit was reached in mid February. On October 1, 2004, United States Citizenship and Immigration Services announced that they had already reached the 2005 cap. The FY 2006 cap was reached in 2005, which is even earlier.

The question becomes where are the American workers that could fill these jobs, and as well, how do we assist these companies who are now asking for an increased cap?

I know that the American companies can be more aggressive in recruiting American employees, particularly at the minority college campuses. And I also think that more can be done to retrain American workers who are being phased out of the high-tech industry when new technology is developed.

But these measures themselves are not likely to eliminate, Mr. Chairman, the need for raising the H-1B cap. The cap is preventing

U.S. businesses from meeting their specialty occupation needs, and the needs are likely to increase.

How do we bring together the synergism and need for employment in the United States, the outreach to the Hispanic-serving, the historically Black colleges, and the needs, Mr. Chairman, of the specialty visas? And how do we reaffirm, if you will, legal immigration alongside of the rising debate of addressing the important question of regularizing, if you will—regularizing those who are undocumented?

Again, we cannot leave that debate out of this question—border security and regularizing of 11 and 12 million. But today, we address the question that deals with these particular H-1B visas. And I view an increase in the cap as a short-term solution to a long-term problem.

Foreign students represent half of the U.S. graduate school enrollments in engineering, math, and computer science. It is my commitment, Mr. Chairman, to work with the panelists, to work with our witnesses to be able to address the questions of our specialty visas and our technology industry, but also emphasize American workers, historically Black colleges, Hispanic-serving colleges.

And I'd ask the entirety of my application—excuse me, I'm not applying—my entirety of my statement be put into the record.

And might I just close, Mr. Chairman, by indicating that you will have many outstanding witnesses, but I'm so delighted that the Congress of the United States is wise enough to secure a witness who is president of a college.

Dr. Baker is president of Oakwood College, and I wanted the privilege of just slightly saying that he is a B.A. and Ph.D., but he has been working on what we call a "millennium project," in edifying his university, his college to be more technologically sophisticated, training young people. And he's also a partner with NASA in Huntsville, Alabama.

I'm very delighted. You will, of course, introduce him more extensively. But I'm very delighted of your presence here today, and I think you'll be a vital, an enormously vital component to how we deal with H-1B specialty visas and your testimony, along with your other witnesses.

[The prepared statement of Ms. Jackson Lee follows in the Appendix]

Ms. JACKSON LEE. Mr. Chairman, I would also unanimous consent that a letter from the Information Technology Industry Council, signed by Mr. Ralph Hellman, senior vice president, Information Technology Industry Council, that speaks to the need of H-1B visas, I ask unanimous consent to extend or to submit this into the record.

Mr. KING. Without objection.

Ms. JACKSON LEE. Your courtesies have been most appreciated. Thank you very much.

[The letter from Mr. Hellman follows in the Appendix]

Mr. KING. Thank you, the gentlelady from Texas. And safe travels.

I will now recognize myself for an opening statement.

And good morning. Since 1990, Congress has limited the number of visas granted through the H-1B program to non-immigrants in

specialty occupations. Since then, we have attempted to carefully balance the needs of our labor market for these skilled foreign workers with adequate protections for the jobs and wages of U.S. workers.

Today, we have the opportunity to examine whether the current statutory cap is helping us to achieve this balance.

The H-1B program is available to employers that petition for a temporary employee in a specialty occupation. The visa is valid for an initial period of 3 years. It may be renewed once for an additional 3 years. In recent years, the most frequent use of an H-1B visa is for computer and engineering-related jobs.

Currently, H-1B visas are capped at 65,000 per year. And during the tech boom of the '90's, Congress raised the cap to 195,000, but then allowed the cap to revert back to 65,000, as economic conditions worsened and many high-tech workers were facing layoffs.

As economic conditions have improved, the numerical limit for H-1B visas has been reached very early in the fiscal year. For fiscal year 2005, the limit was reached on the first day of the fiscal year, and that was October 1, 2005. For fiscal year 2006, the U.S. Citizenship and Immigration Services announced that it had received enough applications to hit the cap on August 12, 2005. On April 1st—and that's this week—the U.S. CIS will begin accepting petitions for fiscal year 2007.

Congress provided additional visas in the 2004 omnibus appropriations legislation by exempting 20,000 individuals with a graduate degree from a U.S. university from the H-1B cap. These additional visas were used within the first few months of the fiscal year. And even with a lower cap, we often hear stories of U.S. workers being laid off, replaced by foreign workers on H-1B visas.

Today, we have the opportunity to hear from such a person, David Huber, about his devastating experience being laid off and replaced by a foreign worker on an H-1B visa.

Also distributing—also disturbing are the numerous accounts of experienced computer programmers and engineers who are unable to find good-paying jobs.

As an American, I believe that we must take measures to ensure that employers first look to Americans to fill these positions. This raises serious questions as to whether the H-1B program is working as intended or whether it is, in fact, detrimental to American citizens looking for work in these specialized fields.

Currently, only H-1B dependent employers and those with past labor law violations are required to certify that they have attempted to recruit a U.S. worker and that they have not displaced a U.S. worker. Perhaps Congress should consider requiring all employers to make these certifications. We should not have a visa program that allows an employer to lay off U.S. workers in favor of cheaper foreign labor.

I recognize, however, that there are legitimate uses for the H-1B visa. The high-tech industry frequently hires individuals with advanced degrees in engineering and computer sciences. Many large companies recruit at major U.S. universities, but note that the majority of students in these programs are foreign nationals.

Congress has attempted to address the perceived shortage of U.S. students in math, science, and engineering programs by diverting

a portion of the H-1B fees charged to employers to educational programs for U.S. workers. Nonetheless, the high-tech industry submits that visas are needed to keep these individuals in the U.S. to work.

To remain competitive as a nation, we must continue to encourage younger Americans into entering the math, science, and engineering fields. However, we must also be careful of getting into the unfortunate situation where once these students graduate, they cannot find a job.

When college science and engineering grads complain of hard times landing jobs, enrollment in these college programs drops. That has certainly happened since the enrollment boom of the years of the dot-com bubble. We must not betray American students by encouraging them to enter into a tough major for the good of their country and then offer their job to a foreign student once they graduate.

I look forward to hearing from our witnesses today.

[The prepared statement of Mr. King follows:]

Mr. KING. I'm not recognizing any Members currently present that might want to give an opening statement. We'll accept those statements into the record. And without objection, all Members' statements will be made a part of the record at this time, and I'd like to turn to the introduction of the members of our panel.

[The statements of Members follow:]

THE HONORABLE MAXINE WATERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, Madame Ranking Member, thank you for holding this hearing. The question of whether Congress should raise the cap for this special class of visas is a very timely one, given the current debate in America about how to address the volatile situation within the country and at our borders. The Administration must exercise extreme prudence and judgment in proposing an answer to this question.

When the Government cuts some $12 billion in federal student education aid funds here in America with legislation that the House considers *right now* and *this week*, H.R. 609, the College Access and Opportunity Act of 2005, it raises eyebrows when it then asks the question of whether the limit on the number of specialty occupation visas should be raised. Perhaps if we handled education funding in a consistent and conscientious fashion, we would not be in the current conundrum.

I feel that we need to address our own policies that affect the amount of resources - human and monetary, available to fill our workforce needs before we change our immigration policy relative to allowing additional specialty workers.

Thank you, witnesses, for your time, and thank you to the Chairman and Ranking Member for their efforts. I yield back.

Mr. KING. First member of our panel, Mr. John M. Miano, chief engineer, Colosseum Builders, Inc. John Miano, the founding chairman of the Programmers Guild and currently serves as a director of that organization. He currently operates his own computer consulting firm, Colosseum Builders, Inc., in Summit, New Jersey.

Mr. Miano is an expert in computer science, having 18 years of experience in computer software development. He holds a degree in mathematics from the College of Wooster and a juris doctor from Seton Hall University. He has published numerous articles and two books on computer programming.

Mr. Stuart Anderson, the executive director of the National Foundation for American Policy. In January 2003, Stuart Anderson began his service at the National Foundation for American Policy in Arlington, Virginia, where he is currently the executive director.

Stuart Anderson has extensive experience in immigration policy. He began his work on immigration at the Cato Institute in Washington, D.C., where he was director of the trade and immigration studies.

He then spent 4½ years on the Senate Immigration Subcommittee, serving as staff director of that Subcommittee under Senator Sam Brownback. Upon leaving the Subcommittee in August 2001, Mr. Anderson served as execute associate commissioner for policy and planning and counselor to the commissioner at the Immigration and Naturalization Services. He's published articles in the Wall Street Journal, New York Times, Los Angeles Times, among other publications.

Mr. David Huber, information technology professional. David Huber is currently working on a network architecture team, designing a new computing data center. He has over 15 years of IT experience, focusing on—focusing on complex networking deployments and network management operations.

He has been directly responsible for $1.4 billion in technology investments and business operations. Mr. Huber was the LAN/WAN lead network engineer for NASA's X-33 space shuttle project at Edwards Air Force Base. He holds a bachelor of arts degree from the University of Chicago.

And Dr. Delbert W. Baker, president of Oakwood College. Dr. Delbert Baker became president of his alma mater, Oakwood College, in November 1996, where he remains to this day. Prior to his return to Oakwood College, Dr. Baker served in numerous positions at Loma Linda University in Loma Linda, California. He was a professor, the deputy, the director of diversity, and special assistant to the president of the university.

Dr. Baker is the author of numerous scholarly articles and seven books. He currently serves on many boards nationally and locally in Huntsville, Alabama, and has received awards from numerous organizations, such as the United Negro College Fund and Oakwood College, which named him "Alumnus of the Year."

It is a practice here to swear the witnesses in. Please stand and raise your right hand.

[Witnesses sworn.]

Mr. KING. Let the record show these witnesses responded in the affirmative. Say "I do." The witnesses have been sworn in. Thank you.

We'll now turn to the testimony from our panel. Without objection, your full written testimony will be made as part of the record. And if you can contain your comments to the 5 minutes, we'll be most appreciative so we can get questions from the Members of the Committee.

I'll remind our witnesses that we have a series of lights, and the time for those lights until you see the red light is about a 5-minute period. And we'll be lenient here on the 5-minute period and allow you to complete your thoughts at least. And as long as we don't abuse the privilege, we'll be able to get this message to this panel.

So, at this time, I'd like to recognize Mr. Miano for 5 minutes. Mr. Miano.

TESTIMONY OF JOHN M. MIANO, CHIEF ENGINEER, COLOSSEUM BUILDERS, INC.

Mr. MIANO. Thank you, Mr. Chairman.

Imagine a father saying to his child on a Friday morning, "Son, I know you have a big weekend coming up. So here's 50 bucks. Go out and have a good time."

The next morning, the son comes back to his father and says, "Hey, Dad, I used up all of the money you gave me. Can you give me some more?"

Now what does the irresponsible parent do? He gives the kid another 50 bucks. But what does the responsible parent do? He asks, "Son, what did you do with the 50 bucks I gave you already?"

Now the question before this Committee is, "Should Congress raise the H-1B quota?" But in order to get to that point, Congress really needs to ask, "Where did all the visas go?"

Now, in law school, I started to examine labor condition applications in detail for H-1B workers. And from this research, I can tell you what the available data says about where the visas are going.

First of all, from the LCAs, we get an idea of what types of companies are getting the visas. The spin on the H-1B program is that the beneficiaries are U.S. technology companies, but the LCA data show something entirely different.

According to the LCAs, very few H-1B workers go to United States technology leaders, and instead, the LCA data suggest that the overwhelming majority of H-1B workers are going to body shops—these are companies that specialize in contracting workers out to other companies—and companies, especially foreign companies, that specialize in moving computer work overseas.

From the LCA data, we can also get an idea of the types of workers that are getting H-1B visas. The spin on the H-1B program is that it's for highly skilled labor. The LCA data suggests low skills and low wages.

The LCAs, for example, give us a very good picture of employer prevailing wage claims. For computer programming, the employer prevailing wage claims on LCAs average $18,000 a year below the U.S. median wage for the occupation and location. And the wages listed on LCAs average $13,000 below the median U.S. wages.

These extremely low wages—wage claims suggest most H-1B workers possess low skills. And this year, we have additional evidence of that. In matching prevailing wage claims using the four skill levels mandated by Congress, I found that employers claimed the majority of these workers were entry level, the very lowest skill level in the system.

We are told that employers need H-1B workers because U.S. workers do not have the skills industry needs. Yet employers say most of these workers are in need of training. Again, the question before this Committee is, "Should the H-1B quota be increased?" And quite simply, the answer is no.

The quota is the only thing that stands between the H-1B program and total chaos. Loopholes in the law allow U.S. workers to be replaced with H-1B workers. The prevailing wage system is a complete sham. The law limits enforcement to ensure most violators will not be punished. As meager as it is, the quota is the only real protection for U.S. workers that exists in the H-1B program.

In 1998 and 2000, industry said they only needed a temporary increase in the H-1B quota. If they were given a breather, they said they'd be able to train U.S. workers, they'd be able to hire women for technology jobs, they'd be able to hire minorities for technology jobs. Instead of being temporary, the increased quotas created permanent dependency on the H-1B program, and the H-1B program has become the engine driving the off-shoring of U.S. technology jobs to foreign countries.

And I have to wonder why Congress has felt the need to exercise Stalinist control over the labor market. If a labor shortage really existed, the free market would take care of it.

I have many more details in my written statement and would be happy to answer any of your questions.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Miano follows:]

PREPARED STATEMENT OF JOHN MIANO

Testimony of John Miano Before the Subcommittee on Immigration, Border Security, and Claims House Judiciary Committee

March 23, 2006

Disclosure

Most of the research presented in this testimony was originally published by the Center for Immigration Studies (www.cis.org). I funded this research entirely by myself. I have received no compensation or reimbursement, directly or indirectly, from any third party to produce any of the materials presented here.

Summary

- The annual quota is the only real protection for American workers in the H-1B program.
- Where the skill level can be determined from the disclosure data, employers classify the majority of H-1B computer programming workers as "entry level."
- Employer prevailing wage claims on Labor Condition Applications (LCAs) for programming occupations averaged $18,000 less than the actual median wage for the same job and location.
- Wages for H-1B programming workers listed on LCAs averaged $13,000 below the median wage for occupation and location.
- The vast majority of workers for which LCAs are applied for computer programming are for the "offshoring" and "bodyshopping" industries rather than U.S. technology companies.
- Reasonable limits on the number of H-1B workers a single employer may hire would make sufficient visas available for U.S. technology companies.
- Some employers are making questionable wage claims on LCAs. Allowing employers to use nearly any source to determine the prevailing wage makes it impossible to determine the extent to which such questionable claims are used on LCAs.
- Congress has established the labor certification process as a "rubber stamp" operation that has no value.
- Congress has defined the eligibility for H-1B visas in such vague terms that much of the program's use is outside of its intended purpose.
- The data collection and reporting are not adequate to monitor the H-1B program.
- After eleven years, Congress has yet to close the loophole allowing the direct replacement of U.S. workers by H-1B workers.
- The H-1B program contains bizarre restrictions intended to prevent enforcement.
- The H-1B program is the engine that drives the "offshoring" of U.S. technology jobs to other countries.

Predictions

Should the H-1B program be increased once again, we have the experience of the previous H-1B increases to guide us as to what the effects will be.

- There will be increased unemployment for U.S. technology workers.
- Fewer U.S. students will study technology fields and more foreign students will.
- The number of U.S. jobs lost to "offshore outsourcing" will surge.
- More U.S. workers in science and engineering will leave to take jobs in other fields.
- All net growth in programming jobs will be consumed by H-1B workers.
- Competition from businesses employing low wage H-1B workers will force U.S. businesses to join in the practice to stay in business just as we see in industries with large numbers of illegal aliens.
- The queue for green cards will grow.

The Purpose of the H-1B Program

In this statement I would like to compare the purpose of the H-1B program to its actual operation. In order to do so, one needs a definition of the program's purpose. Since there is no official definition, I am going to refer to this statement of purpose for the H-1B program coming from someone expressing support for the H-1B program.

> The purpose of the H-1B program is to give companies such as Intel access to advanced university level talent in the hard sciences and engineering field. The need for the H-1B program is rooted in the lack of educated U.S. workers, particularly in engineering and other hard sciences, Patrick Duffy, Human Resources Attorney, Intel Corporation, Testimony to the Senate Judiciary Committee, Sep. 16, 2003.

My Experience

I worked professionally as a computer programmer from 1984 until 2002. Most of that time I spent working as a software consultant, including eight years with Digital Equipment Corporation. This allowed me to work with many companies in various industries.

I first became aware of the H-1B program and its abuses in 1994 when two local companies, AIG in Livingston N.J. and SeaLand in Elizabeth N.J., replaced their U.S. programming staffs with lower paid workers imported on H-1B visas. Since both of these mass firings involved hundred of workers, I have several friends and neighbors who became victims of these early cases of H-1B abuse.

At the time, these mass firings were a great shock to people in the industry. How could it possibly be legal for employers to fire U.S. workers and replace them with foreign workers? As we learned, such replacements are perfectly legal and over the years they became commonplace.

At the time of my last visit to this committee, I was working with Dun & Bradstreet. Six months later, that company's CIO sent the following e-mail to her staff:

From: Hessamfar, Elahe

Sent: Monday, March 20, 2000 1:16 PM

To: D&B GTO U.S.

Subject: Offshore development

Dear all,

As the business world around us becomes more and more competitive, large companies such as ours must find new ways to become more nimble and flexible to be able to respond more quickly to the competitive environment. We must sharpen our focus on our core competencies and move to outsource work that can be done more efficiently by others. GTO's strategic value lies in the expertise we offer our business partners in how to effectively use technology to solve business problems.

In the second half of 1999, we began to look seriously at the possibility of off-shoring both software development and application maintenance as a means to reduce the cost structure of GTO. By moving to this type of model, we can become a more flexible organization by adding or reducing resources based on business needs. As we move to a more variable resourcing strategy that includes work being done at off-shore development centers, the skills desired and roles required within GTO will change. Changing our operational model in this way will create new opportunities for individuals within GTO who have the skills to be business analysts, designers, architects, project leaders, quality assurance analysts and other roles with greater business impact.

We've chosen two organizations to assist us in this endeavor - WIPRO Infotech and Cognizant Technology Solutions (CTS).[1] These vendors have established Off-shore Development Centers (ODCs) in India where they build and support software for many large corporations such as ours. Over the course of the next year, these two organizations will become extensions to the GTO organization. We've asked them to assist us in determining the priority in which systems will be moved off-shore. In order to facilitate this prioritization, representatives of both companies are meeting with application development and support teams to understand our applications. I ask that you consider them as members of our team and give them your full cooperation during this analysis. In the future, project teams will be composed of a mix of D&B resources, on-shore resources from these firms, as well as off-shore resources in India. Within our model, all parties will work under the guidance and direction of the Program Manager as I outlined to you in a recent communication.

Marcia Hopkins has been named the Program Manager for this strategic initiative. She is tasked with creating the overall plan for implementing the off-shore model in GTO. By end of the first quarter, she will set the priority for off-shoring existing application support, maintenance and new software development. In addition, she will define the infrastructure elements (the "factory") required to successfully manage resources in India as part of our development teams and develop the plan for implementing those elements. Finally, the off-shore program plan will address the "people" elements of this transition including:

[1] These companies are among the largest users of H-1B visas. See Table 1 below.

identifying the roles needed to support the new model, inventorying the skills and roles that exist today versus those required in the future and defining the process for transitioning work from employees to off-shore consultants in cases where that makes business sense.

The process of moving work to the ODCs will begin in April and continue throughout the next eighteen months. I know that you must be wondering "what happens if my job gets transferred to the ODC?"

I assure you that these decisions will not be made lightly. Decisions to move work off-shore will be made after careful analysis of the business situation and will only be done in cases that make business sense. If your current role is to be impacted, you will be provided with notice to begin retraining or to interview for other internal positions. Should no suitable alternative exist for you at the time your application/project moves off-shore, severance benefits will be provided to you under the Career Transition Plan.

Your continued commitment and dedication are necessary to ensure a smooth transition to this new model. I thank you in advance for your support & cooperation and we will continue to update you with more specifics of the program as they evolve. In the interim, if you have any questions, please feel free to contact your manager, Marcia Hopkins or Jean Chesterfield.

Elahe

Here we see U.S. Dun & Bradstreet employees being called on to treat their replacements as "members of the team".

Over the next year I had the opportunity to see first hand U.S. workers training their H-1B replacements before they were fired.[2] I even had the opportunity to meet one programmer who had been replaced by H-1B workers at AIG. Afterwards, he went to work at Dun & Bradstreet only to be fired and replaced by H-1B workers there as well.

My observation was that the skill level of the H-1B replacements was generally very poor. A small number of the replacements looked like they would eventually become good programmers. However, even the select few potentially good programmers in the group were beginners who were receiving on-the-job-training. No one seemed to care about skill levels as long as the replacements worked cheaply.

In the computer industry, most H-1B workers are employed by companies that contract these workers out to other companies. The H-1B workers come into the United States with no actual job. Instead, when they come to the United States they directly compete with U.S. workers for jobs. While I was at Dun & Bradstreet, someone, probably as a joke, signed me up for several H-1B "hotlist" subscriptions. Hotlists are lists with resumés of H-1B workers already in the United States who do not have work. Companies exchange hotlists so those with available H-1B workers can subcontract them to other companies that will rent out the workers.

As a result of these subscriptions, I received hundreds of resumés a week for H-1B workers who were in the United States but needed actual jobs. In nearly all cases, they stated the worker was available for work the same week "Anywhere in the U.S." From

[2] Most of the replacements were on H-1B visas. A few of them were on chained B visas. "Offshoring" projects are notorious for having sudden replacements in U.S.-based staff resulting from attempts to chain B visas being rejected.

the nature of these postings I believe that very few employers of record were filing LCAs and verifying they were paying these workers the prevailing wage for their new work location.

The resumés I received from these lists were quite interesting because nearly all had similar attributes. All of these resumes listed a college degree but they never listed the institution that granted the degree. Another quirk was that nearly all of these resumes listed three years of experience with three separate employers before getting a H-1B visa. Certain employers would show up with unusual frequency. From the resumés sent to me, it appeared that the Mumbai Housing Authority hires more programmers than Microsoft. The irony here is that if a U.S. worker submitted a resumé like these (e.g. without listing the university granting a degree), it would go straight to the garbage yet nearly all of these workers had been contracted out to U.S. employers at some point.

In Summary

- I have personally seen Americans being fired and replaced by lower-paid workers on H-1B visas.[3]
- I have personally seen the H-1B program used to import large numbers of workers with limited skills who required extensive on-the-job training.
- I have personally seen resumés for H-1B workers with U.S. experience that would immediately be rejected had they been from Americans.
- I have personally seen resumés for H-1B workers that immediately suggested the education and experience listed were fraudulent.

Some in industry claim that H-1B workers are needed because they cannot find a sufficient number of U.S. workers to fill open jobs. Others in industry claim that H-1B workers are needed because they cannot find Americans who have the advanced skills industry needs. However:

1. If the H-1B program is needed because of a lack of shortage of Americans, why are U.S. workers being replaced by H-1B workers?
2. If the H-1B program is needed because Americans do not have the advanced skills industry needs, whey are Americans training their H-1B replacements?

My Research

From Dun & Bradstreet I moved on to Seton Hall Law School. As part of my independent research at Seton Hall, I began examining data from Labor Condition Applications for H-1B workers. Having been trained in the sciences, I have become appalled at the level of rigor employed in "studies" intended to influence public policy. I decided I would analyze the LCAs and document my results while applying the standards of research that I had been trained to use in physics, mathematics and chemistry.

My study was published by the Center for Immigration Studies and is available at their web site, www.cis.org. It contains a detailed description of how the results were obtained. What I am most proud of in this research, and what I think sets it apart from most, is that I believe it is reproducible. The study explains where the data came from and

[3] As well at L-1 and B visas.

how it was analyzed. I expect that any member of this committee can take the data I worked with, follow my procedures and get similar results

My research in this area continues so I am including some new results based upon the FY 2005 data. This is why you will find some mixture of fiscal years. Here I am only using the FY 2005 data for analyses that I did not make on the FY 2004 data. Also, keep in mind that with the exception of overall LCA approvals and the discussion of the use of H-1B outside of science and engineering, all of the results I present are limited to LCAs for computer programming workers. See the appendix for the details on occupations covered.

The H-1B disclosure data has a number of limitations. The most significant of these is that it does not tell what happens beyond the labor certification process. For example, if one examines the LCA for a Hostess at Mama Tucci's Restaurant (an actual approved LCA in the 2004 data), there is no way to tell if this LCA became an H-1B visa. This analysis is complicated further by the fact that a single LCA can be used for visa applications for multiple H-1B workers. One cannot tell what wage went on the H-1B visa application and there is no way to tell what the employer actually paid the H-1B worker.

The previously mentioned limitations do not affect measuring prevailing wage claims on LCAs. However, the information in the LCA data is not sufficient to verify the correctness of the employer-supplied data.

Despite its limitations, LCA disclosure data is the best data available. This is the data that the government makes available to the public to monitor the state of the H-1B program.

Data collection and reporting for the H-1B program is atrocious. I am not the first to point out the need for better reporting in the H-1B program.[4]

- USCIS/INS have granted more visas than allowed.
- USCIS has not produced the congressionally mandated reports on the H-1B program since FY 2003.
- No data is available on visas actually issued.
- No one knows how many people are in the United States on H-1B visas.
- No one knows how many workers on H-1B visas remain illegally in the United States after their visas expire.[5]
- There has never been a reporting on the number of visas actually issued by employer for an entire year.

[4] See for example United States General Accounting Office, H-1B Foreign Workers: Better Controls Needed to Help Employers and Protect Workers, GAO/HEHS-00-157, Sept. 2000, p. 5.

[5] United States General Accounting Office, H-1B Foreign Workers: Better Controls Needed to Help Employers and Protect Workers, GAO/HEHS-00-157, Sept. 2000, p. 18.

The definition of eligible workers is too vague to have the H-1B program operate rationally.

Under Mr. Duffy's statement of purpose for H-1B, the program is supposed to be for "hard sciences and engineering". The reality is the H-1B program is open to a much broader range of occupations. More precisely, those eligible are "specialty occupations" or "fashion models."[6] (Fashion models make up only a very small number LCAs so I will not consider them further.) The definition of specialty occupation is extremely broad, essentially any occupation requiring a bachelor's degree or higher or work experience equivalent to a bachelor's degree.[7]

Much H-1B usage cannot be explained by a lack of Americans educated in those fields. The H-1B disclosure data contains approved LCAs for virtually any occupation imaginable. Accountants are the most represented profession outside of science and engineering. Newspaper reporters, restaurant hostesses, nannies are represented in approved LCAs. I was surprised to find in the disclosure data that the local gym I go to has three approved LCAs for "Dance Instructors".

One thing I found surprising in examining H-1B data is that fields outside science and engineering benefited most from the past temporary increases in the H-1B program. Prior to FY 2001, H-1B visas for workers in fields outside of science and engineering accounted for about 30% of the new visas issued.[8] After the increase in the H-1B quota, in FY 2001 the percentage of visas issued for occupations outside of science and engineering surged to 52% and remained in the majority through FY 2003.[9] Since the expiration of the temporary quota increases, it appears this figure has returned to its historical level of about 30%.[10] Should the H-1B quota be increased again, we should expect that most of the increased usage will be for workers outside of science and engineering.

Let us assume for argument's sake that that the U.S. educational system is not producing sufficient graduates in science and engineering. If the purpose of the H-1B program be to fill this void, a rational H-1B program would have a clearer, more limited definition of eligibility. As currently defined by Congress, the H-1B program is simply a mechanism for foreign workers in any field that can be packaged as a specialty occupation to come to the United States.

---

[6] 8 U.S.C. § 1101 (a)(15)(H) (West 2004)

[7] 8 U.S.C. § 1182 (i)(2) (LEXIS 2006)

[8] U.S. Immigration and Naturalization Service, Characteristics of Specialty Occupation Workers (H-1B) May 1998 – July 1999, Feb. 2000, U.S. Immigration and Naturalization Service, Characteristics of Specialty Occupation Workers (H-1B) October 1999 – February 2000, June 2000

[9] U.S. Immigration and Naturalization Service, Report on Characteristics of Specialty Occupation Workers (H-1B): Fiscal Year 2001, July 2002, United State Department of Homeland Security, Characteristics of Specialty Occupation Workers (H-1B): Fiscal Year 2002, Sept. 2003, United State Department of Homeland Security, Characteristics of Specialty Occupation Workers (H-1B): Fiscal Year 2003, Sept. 2004

[10] This is my estimate based upon the percentage of LCAs approved. USCIS has been deficient in producing the congressionally mandated annual reports on the H-1B program. The last one issued was for FY 2003.

The problem of poorly defined eligibility for the H-1B program was identified long ago but Congress has allowed it to fester.

> In our opinion, not all types of jobs being filled by H-1B aliens necessarily represent jobs that would enhance U.S. employers' abilities to compete in a global economy. While there is no requirement that there be a labor shortage in the occupation for which employers file LCAs, the H-1B program is being used to staff such positions as: accountants, piano instructors and accompanists, primary school teachers, physicians, and assistant professors and professors. While the aliens who filled these positions may have baccalaureate degrees, or equivalent, we question whether the jobs meet the full definition of specialty occupation.[11]

Close inspection of the LCA suggests a large percentage of applications are for occupations outside the intended purpose of the H-1B program. If Congress were to define eligibility requirements to match its intended purpose of the H-1B program, there would be a significant number of additional visas available to U.S. technology companies.

Few H-1B visas for programmers are going to U.S. technology leaders.

I return again to Mr. Duffy's statement of purpose for the H-1B program. In that he says H-1B's purpose to provide workers to "companies such as Intel". Presumably, by that he means the purpose of the H-1B program is to provide workers to U.S. technology companies.

Once again, this purpose of the H-1B program does not correspond with what is actually going on. Table 1 contains a list of the companies requesting the largest number of H-1B workers in programming occupations. Together they represent over 40% of the workers requested.

1. Wipro Limited
2. Infosys Technologies
3. Syntel
4. HPS America
5. Oracle Corporation
6. IBM Global Service India
7. Tata Consultancy Services
8. Satyam Computer Services
9. Patni Computer Systems
10. Mphasis Corporation
11. Intelligroup

[11] U.S. Department of Labor Office of Inspector General Office of Audit, The Department of Labor's Foreign Labor Certification Programs: The System Is Broken and Needs To Be Fixed, May 22, 1996

12. eBusiness Application Solutions
13. iGate Mastech
14. HCL Technologies America
15. Tata Infotech
16. Enterprise Business Solutions
17. Cognizant Technology Solutions
18. Rapidigm
19. IntelliQuest Systems
20. Jags Software

Table 1 Top Users of H-1B Visas for Programming Workers FY 2004

What is striking is how few U.S. technology powerhouses are among them. In fact, the majority of these companies are not U.S. companies at all. Except for Oracle, all of these companies are in the "H-1B bodyshopping" and "offshoring industries". From the 2005 LCA data I conservatively estimate that more than two-thirds of the workers in computer programming occupations are going to employers in the offshoring and bodyshopping industries.

The U.S. Department of Labor Office of Inspector General Office of Audit stated, "in our opinion, the H-1B program was not intended for an employer to establish a business of H-1B aliens to contract out to U.S. employers." [12] Now this is the predominate use of the H-1B program in the computer industry.

Because of the concentration of visas with a few employers, if Congress were to impose a reasonable limit on the number of H-1B visas a single employer could have, there would be plenty of visas available. Half of one percent of Hewlett-Packard employees are on H-1B visas.[13] Restricting employers to 5% of the U.S. work force would not negatively impact U.S. technology leaders but would make many more visas available to them.

Without such a change, we should be honest and say that the purpose of the H-1B program is to provide a pool of workers for bodyshops to supply to other companies and to expedite the "offshoring" of U.S. technology jobs.

Employer prevailing wages claims on LCAs do not reflect the actual prevailing wage.

One of the areas I investigated was employer prevailing wage claims made on LCAs. The prevailing wage for H-1B workers is supposed to be that of the occupation and geographic location at which the H-1B worker is to be employed.[14] In comparing the prevailing wage claims on LCAs to the OES data, I found that employer prevailing wage claims were not representative of the actual prevailing wage for a given occupation and

[12] U.S. Department of Labor Office of Inspector General Office of Audit, The Department of Labor's Foreign Labor Certification Programs: The System Is Broken and Needs To Be Fixed, May 22, 1996, p. 25.

[13] Mandaro, Laura, "Tech Firms Say H-1B Visa Caps Create Shortage Of Skilled Staff", *Investor's Business Daily*, Mar. 8, 2006.

[14] 20 C.F.R. §655.715

location. Employer prevailing wage claims averaged $18,000 a year less than the median salary given in the OES data for the occupation and state. The distribution suggests employer prevailing wage claims are generally based upon approximately the 25th percentile rather than the median or mean. I refer you to the appendix of my statement for the details on prevailing wage claims.

I am currently investigating why claimed prevailing wages are so low. Under rules Congress has established for making prevailing wage claims, it is probably impossible to make a comprehensive scientific measurement of how prevailing wages have been derived. The problems with making such an analysis include:

- The use of wage sources not publicly available (e.g commercial or employer surveys).
- Job titles in LCAs not matching the job titles used by the wage source.
- The LCAs do not list what measurement from the wage source is being used.
- Wage sources that do not maintain public archives and only give the current data, not what has been reported earlier on LCAs.

To illustrate this problem, in FY 2005, over 10,000 computer programming LCAs used "Watson-Wyatt" as the prevailing wage source. There is no way to determine from the LCAs which Watson-Wyatt product was used as the source or which of their measurements was used for the prevailing wage. All of my requests to Watson-Wyatt for information about specific claims have been ignored.

My hypothesis, based upon examining the LCA data, is that the most significant reason prevailing wage claims are so low is because most employers are using measurements of wages for new graduates and entry level workers, rather than the prevailing wage for the occupation and location. For example, many employers are using the National Association of Colleges and Employers wage survey for the prevailing wage, a source that is exclusively a measurement of wages paid to new graduates.

I have also found a significant amount of misreporting of prevailing wages in the LCA data.

- In examining prevailing wage claims that used salary.com I found many were using the 25th percentile rather than the median as the prevailing wage. However, since very few job titles on LCAs can be matched to job titles used by salary.com and this wage source does not make archives of older data available, it is impossible to measure the true extent of this practice.
- In FY 2005, 65 LCAs used the ComputerWorld salary survey as the prevailing wage source. I provided ComputerWorld with the data for these LCAs and they responded that they could not match any of the prevailing wage claims to their data. ComputerWorld also observed that the wages reported in their survey were "consistently higher" than wage claims made on LCAs.
- I find many LCA using the OES data that I cannot identify the source record for the claim. I also find many LCAs where the employer appears to be using the wage for a lower paying occupation as the prevailing wage (e.g. using the prevailing wage for a programmer when the job title is "Software Engineer").

Because of the poor state of data collection, there may be no scientific way to measure the extent of actual misreporting of wages in LCAs.

The Labor Certification process is ineffective.

If, as shown in the previous section, employer prevailing wage claims really are so low, why is the Department of Labor approving them? For that, blame Congress.

Congress has mandated that Labor Certification process be a "rubber stamp" operation.

> The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies. Unless the Secretary finds that the application is incomplete or obviously inaccurate, the Secretary shall provide the certification described in section 101(a)(15)(H)(i)(b) [8 USCS § 1101(a)(15)(H)(i)(b)] within 7 days of the date of the filing of the application.[15]

Effectively all LCAs are approved. Out of 307,779 LCAs processed in FY 2005, only 848 (0%) were rejected. By limiting the LCA approval process to checking the form is filled out correctly, Congress has ensured employers can abuse it with impunity.

The DoL appears to interpret the term "obvious" very broadly, presumably, because of Congress's restrictions. LCAs that I think most people would find are obviously improper routinely get approved. It only takes a brief inspection of the LCA data to see how little verification of the applications takes place.

- Occupation given as "Specialty Occupation" and contact's job title listed as "retired."
- LCAs with wages taking 5% off the prevailing wage are still being approved even though the practice is now prohibited.[16]
- LCA with wages more than 5% less than the prevailing wage are being approved even though this has always been prohibited.

Since Congress has limited the DoL to checking the form is filled out correctly and nearly all LCAs are being approved, one has to wonder what the point of having the labor certification process is at all. It has no value in protecting U.S. workers and creates more paperwork for employers. The only possible reason I can come up with for having the current LCA system is to allow employers to claim in the press that, "H-1B workers are not underpaid because the law requires they be paid the prevailing wage."

The Department of Labor's Office of Inspector General concurs with my assessment of the process.

> The OIG believes that if DOL is to have a meaningful role in the labor certification process, it should have corresponding statutory authority, not currently available, to ensure the integrity of the process, by verifying the accuracy of the information provided on LCAs. In our opinion, as the H-1B program is currently operated, DOL adds nothing substantial to the process. It would be more

[15] 8 U.S.C. 1182 (n)(ii) (LEXIS 2006).
[16] 8 U.S.C. § 1182 (p)(3) (LEXIS 2006)

> efficient if the employers filed their applications directly to BCIS, for visa approval.[17]

Reported H-1B wages are significantly lower than what U.S. workers earn.

I have also analyzed wages listed on LCAs for computer programming workers. I found:

- That the wages listed for H-1B workers averaged about $13,000 less than the median U.S. wage for the occupation and state.
- The wages for the majority of H-1B workers were in the bottom 25th percentile of U.S. wages for occupation and state.
- Wages for only 16% of H-1B workers were above the median U.S. wage for occupation and state.

The details of this analysis are given in the appendix.

The low wages being paid to H-1B workers negatively affects both U.S. workers and companies.

> Bob McCord, president of NSYST Technologies Inc., a Dallas computer services and Web-hosting company, said … he has seen his business suffer from competition from companies that bring in foreign high-tech workers through the H1-B visa program and then pay them less than U.S. workers…"I would rather them enforce existing laws that say corporations can't use H1-B visas to draw down the wages of American workers – and that's what they are doing. Then at the same time, they train those workers to go and set up in another country."[18]

A different view of the H-1B program.

I scanned the list of employers with LCAs in the FY 2005 data and selected those that stood out to me as recognized names in the computer industry. I then compared their wages to U.S. wages using the 2004 OES data. The results are shown in Table 2. Since the selection of employers here is unscientific and for illustrative purposes, if any member of the committee would like the same analysis done with other employers added or some of these removed, I will provide the information upon request.

Employer	U.S./H-1B Wage Difference
Apple	(Above) $19,507
eBay	$14,493
IBM	$12,681
Sybase	$12,342

[17] Office of Inspector General United States Department of Labor, "Overview and Assessment of Vulnerabilities in the Department of Labor's Alien Labor Certification Programs", Sept. 30, 2003.

[18] Solís, Dianne and Reddy, Supeep, "Keeping eyes on immigration debate, Business owners, workers, families in Texas brace for impact", *Dallas Morning News*, Mar. 24, 2006.

Employer	U.S./H-1B Wage Difference
Google	$11,138
Lucent Technologies	$9,991
Symantec Corporation	$9,937
BEA Systems	$8,970
Automatic Data Processing	$8,603
Texas Instruments	$8,481
Borland	$7,337
Verizon	$6,749
Dell	$6,219
Unisys Corporation	$5,594
Cingular Wireless	$4,676
Computer Associates	$4,228
Hewlett-Packard	$3,961
Adobe Systems	$3,704
Cisco Systems	$3,643
Microsoft	$3,054
Intel	$1,128
Sun Microsystems	$19
Intuit	(Below)($316)
Qualcomm	($565)
NVIDIA Corporation	($3,585)
Yahoo!	($7,949)
Oracle	($10,270)
EMC Corporation	($15,004)
Motorola	($19,584)

Table 2 LCA wages compared to OES wages for "big name" employers – FY 2005.

As you can see in this list, there are high paying H-1B employers, mediocre wage employers and low wage employers with everything in between. However, as a group, the wages in this group are significantly higher than overall H-1B wages and much closure to the actual prevailing wage. I have plotted the distribution of overall H-1B wages and these "big name" wages in Figure 2 to illustrate this point. The y-axis value gives the percentage of workers in the U.S. wage percentile ranges shown on the x-axis.

This example illustrates the LCA shows there are some employers that use the H-1B program for its intended purpose as defined by Mr. Duffy. We have some technology companies, like Apple, that the data indicates are paying their H-1B workers the premium wages one would expect for "highly skilled workers." Even with some low paying H-1B employers thrown in, the "big name" group's H-1B wages are close to U.S. wages. In other words, there is an anecdotal case for the benefits of the H-1B program. It is entirely possible to put together a group of technology leaders that would show a pattern of H-1B workers making high wages. The problem is that the overall use of the H-1B program (including that of many "big name" technology companies) does not fit this pattern.

Most critics of the H-1B program would like to see changes that allow U.S. technology companies to have access to the world's best talent while, at the same time, cuts out the abuse that dominates the program and causes negative effects on U.S. workers.

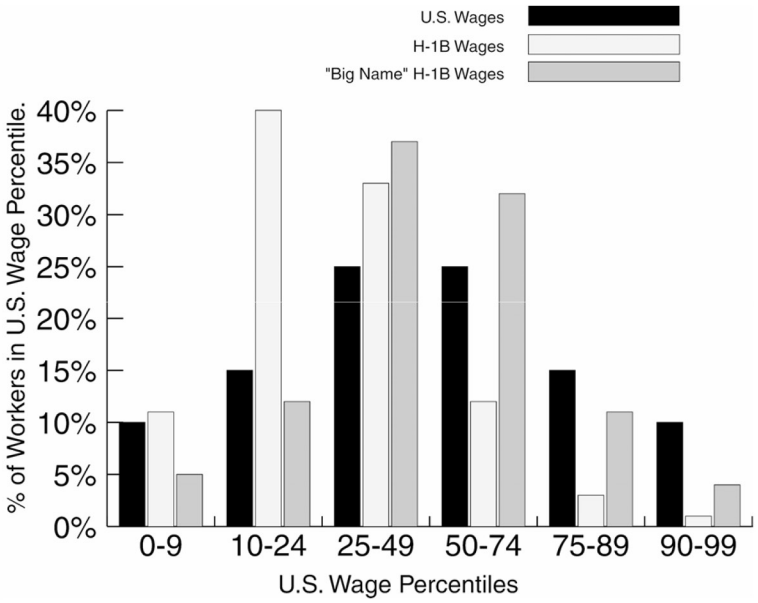


Figure 1 U.S. wages compared to H-1B wages and "Big Name" H-1B wages, FY 2005.

Employers classify most H-1B workers as having low skills.

In my study of the FY 2004 data, I stated that the overwhelming concentration of wages for H-1B workers at the bottom end of the pay scale suggested that the H-1B program was primarily for cheap workers rather than highly skilled workers. The FY 2005 disclosure data confirms that conclusion.

In 2004, Congress modified the prevailing wage requirement. It required the Department of Labor to provide four skill levels when the Department of Labor provides prevailing wages.

> Where the Secretary of Labor uses, or makes available to employers, a governmental survey to determine the prevailing wage, such survey shall provide at least 4 levels of wages commensurate with experience, education, and the level of supervision.[19]

[19] 8 U.S.C. § 1182 (n)(1)(p)(4) (LEXIS 2006)

With the wage level data now available, we have the ability to see how *employers* rate the skills of their H-1B workers. The Department of Labor defines the four skill levels as:

- Level 1 (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation.
- Level 2 (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation.
- Level 3 (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained either through education or experience special skills or knowledge.
- Level 4 (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification and application of standard procedures and techniques.[20]

In general, OES wages for Level 1 and Level 2 are below the median and those for Level 3 and Level 4 are above the median.

Using the prevailing wage claims, state, and occupation, I have been able to match 45,000 LCAs for programming occupations from FY 2005 using OES 2005 as the wage source to the source record used to make the prevailing wage claim. The resulting skill distribution is shown in Figure 2. The employer-claimed skills for H-1B workers are overwhelmingly concentrated at the bottom.

Let me quote the complete definition for a Level 1 worker.

> Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

Since H-1B applies to jobs requiring at least a bachelor's degree and an experience requirement dictates at least a level 3 skill level, I question whether any worker who fits this description should be granted an H-1B visa, let alone the majority.

[20] http://workforcesecurity.doleta.gov/foreign/wages.asp, these are first sentences of the descriptions.

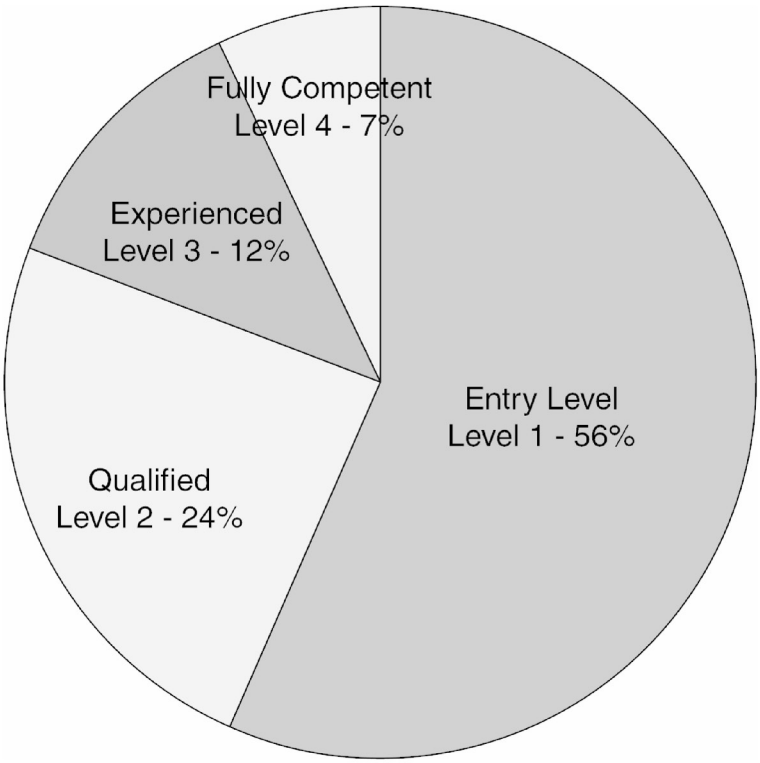


Figure 2 Distribution of H-1B Computer Workers by Skill Level – FY 2005.

Let us return once again to Mr. Duffy from Intel's statement of purpose for the H-1B program. That is, to provide people with "advanced university level talent". Yet employers themselves are classifying the majority of H-1B computer workers as those, "who have only a basic understanding of the occupation". The disclosure data show that either employers are understating the skill level of H-1B workers to get an artificially low prevailing wage or the primary use of the H-1B program is to import low skilled workers.

Issues related to LCAs are only part of the problem with the H-1B program.

My research published by the Center for Immigration Studies dealt exclusively with H-1B issues related to LCAs. These are by no means the only problems with the H-1B program so I would like to briefly raise some of the others.

H-1B allows the direct replacement of Americans with lower-paid guestworkers.

I have mentioned this issue in discussing my personal experience with the H-1B program. Here I will briefly mention some of the details. Technically it is illegal to fire Americans and replace them with H-1B workers. However, the law has a well-known and frequently-used loophole which allows just that. The way it works is an employer uses a third party (known as a "bodyshop" in the computer industry) to supply H-1B replacements.

This was the mechanism used in all the cases I mentioned previously to displace U.S. workers. Even though both parties know exactly what is going on:

- The employer can say it never hired any H-1B workers.
- The bodyshop can say it never fired any Americans.

So the law has not been broken.

Congress has been aware of this problem since 1995 and has refused to close it.

"Bodyshopping" of H-1B workers undermines any protections in the system.

The H-1B program has created the business of "H-1B bodyshopping" where workers on H-1B visas are contracted out to other employers. In the computer industry, bodyshopping appears to be the principal use of the H-1B program. This causes a number of problems:

- Displacement of U.S. workers as described previously.
- Direct competition between H-1B workers and U.S. workers for jobs. One web site targeted towards H-1B workers claimed about 20% of H-1B workers in the bodyshopping industry are seeking work rather than being actively employed.[21]
- The practice of "benching" where employers do not pay H-1B workers or pay them at a reduced rate when they have no actual work. While the practice is illegal, it is clearly a common practice. Descriptions of "benching" and how H-1B workers should cope with it has been documented in the U.S.[22] and foreign press[23] and is openly discussed on web sites and forums targeted towards H-1B workers.[24]
- Prevailing wages get certified for one location while the worker is actually in another.
- The practice makes it impossible to verify where H-1B workers actually are located.
- The LCA data suggest there are bodyshops that are generic importers of workers (e.g. importing programmers and physical therapists[25]).
- It eliminates all protection for U.S. workers who are employed on a contract basis.[26]

---

[21] http://www.assureconsulting.com/articles/limbo.shtml

[22] See for example, Lubman, Sarah, "H-1B Boom: Middlemen thriving in lucrative industry while foreign workers complain of abuse", San Jose Mercury-News, Sept. 17, 2003.

[23] See for example Kumar, V. Rishi, "Portability clause: Consulting firms cautious on H-1B visas", *The Hindu Business Line (India)*, June 1, 2004.

[24] See for example, http://www.h1base.com/page.asp?id=203, http://www.assureconsulting.com/faqs/h1b_bench.shtml

[25] Seeton, Melissa Griffy, "Foreign workers take jobs in Stark", Canton Repository, Mar. 26, 2006.

H-1B is the engine driving the movement of technology jobs overseas.

Developing software is not like making sneakers. If a U.S. sneaker company wants to manufacture overseas, it will come up with the detailed specification for making the sneaker then ship those designs overseas. Workers overseas will use those specifications to create the sneakers. In contrast, for software all the work is in the pre-manufacturing stage. Manufacturing software costs pennies.

In order to provide "offshore" software development services, companies need a strong presence in the United States to provide support and customer contact. For that, "offshoring" companies rely heavily on the H-1B program. It is no coincidence that the largest users of the H-1B program are the companies that specialize in moving software development work to foreign countries. In the "offshoring" model, each H-1B visa represents about three software jobs being lost.[27] While the eventually-approved 2000 H-1B increase was pending, the Indian press predicted (correctly) that is would generate a huge increase in "offshoring".[28]

Congressionally imposed limit on enforcement ensures abuse goes unpunished.

> (G) (i) The Secretary of Labor may initiate an investigation of any employer that employs nonimmigrants described in section 101(a)(15)(H)(i)(b) [8 USCS § 1101(a)(15)(H)(i)(b)] if the Secretary of Labor has reasonable cause to believe that the employer is not in compliance with this subsection. *In the case of an investigation under this clause, the Secretary of Labor (or the acting Secretary in the case of the absence of disability of the Secretary of Labor) shall personally certify that reasonable cause exists and shall approve commencement of the investigation.*[29]

Requiring the personal approval of the Secretary of Labor before an investigation of abuse can begin ensures there will be few, if any, investigations. Enforcement in the H-1B program relies entirely on the H-1B workers themselves filing a complaint.

The fees collected by the H-1B Program are not effective in training U.S. workers.

This is the Department of Labor's assessment.[30]

Program	Assessment	Explanation
H-1B Technical Skills Training Grants	Ineffective	Does not raise skills of U.S. workers in specialty and high-tech jobs so that

[26] e.g. "permatemps" at Microsoft.

[27] Vaas, Lisa. "Face time boosts a project's chance of success". *eWeek*, Aug. 7, 2000.

[28] "US H1-B hike to 600,000 can be big software export boost", *The Hindu Business Line (India)*, Oct. 8, 2000

[29] 8 U.S.C. 1182 (n)(1)(G) (i) (LEXIS 2006) – emphasis mine.

[30] U.S. Department of Labor, Proposed Budget, FY 2003, p. 216.

		employers' demand for temporary alien workers with H-1B visas will decline.

The H-1B Quota

As meager as it is, the H-1B quota is the only protection for Americans that exists in the H-1B program. The quota serves the important purpose of a limit on the damage the program can cause U.S. workers.

Even the protection of the quota is subject to government tinkering or mistakes. For example, in FY 1999 and FY 2004 many more H-1B visas were issued than permitted.

A quota is a limit. The existence of a quota means that Congress intended that this program have some size limit. The fact that employers are reaching the quota does not automatically mean it should be increased. In fact, why should not the quota be reached? If employers can pay H-1B workers based upon prevailing wage claims averaging $18,000 below the actual prevailing wage, it is only natural that there would be huge industry demand for such a supply of cheap labor.

Let me express my frustration. Congress has been aware of the abuses in the H-1B program since 1995 when hearings were held after the AIG and SeaLand abuses. Yet, even after case after case of bulk replacements of U.S. workers and scathing government reports, the only thing Congress has done is to respond to industry demands for bigger visa quotas.

What is it going to take for Congress to make its very first real fix to the H-1B program?

Over my years of following this program, what I have found particularly disturbing is that nearly every piece of H-1B legislation enacted has contained something billed as a worker protection. However, these protections always contain some provision to ensure the "protection" protects nobody. The abuse in the H-1B program is not there by accident. It is there because of deliberate design incorporated into legislation.

Many of us will remember the 1998 H-1B legislation[31] that contained pages upon pages of now expired "H-1B dependent employer" provision designed to protect no one as well as the pages of regulations implementing these "do nothing" provisions.

Even now, the political discussion is not about what fixes should be made to the H-1B program but rather, once again, how much bigger the program should be made.

I point out that the H-1B expansion bill this committee approved in 1998 contained a provision to close the loophole that allows the type of mass firings I described earlier.[32] At the time industry folks said they would rather have no bill than one containing this provision and it disappeared before the legislation was voted on and approved. Industry lobbyists called this version of the bill that gave them everything they wanted and all of the few worker protections stripped out as the "compromise version".

[31] PL 105-277, October 21, 1998, 112 Stat 2681
[32] H.R. 3736, 105th Congress as reported.

The irony is that if Congress simply cleaned up the H-1B program, there would be plenty of visas available for U.S. technology companies under the current quota.

Recommendations

These are my recommendations for change.

The H-1B program needs to be fixed — not made bigger!

The H-1B Quota

1. The current H-1B quota should not be increased
2. The separate system for Australians should be eliminated.
3. The academic exemption should be eliminated and either be placed under the general quota or separate quota.

Public Policy

4. Create a clear definition of eligibility for H-1B visas that reflects the intention of Congress for the program.

Enforcement

5. Eliminate the restrictions on verification of LCAs
6. Eliminate the restriction requiring the personal prior approval of the Secretary of Labor before investigating abuse.
7. Grant Americans negatively affected by H-1B abuse a private cause of action.

H-1B Usage

8. Ban the practice of employers supplying H-1B workers to other businesses on a contract bases ("bodyshopping").
9. Limit employers to a maximum of 5% of their employees on H-1B visas

Labor Certification Process

10. Remove the limitations that restricts the LCA approval process to checking the form is filled out correctly.
11. Restrict prevailing wage claims to U.S. government sources.
12. Set the minimum wage level to a percentile reflecting the "best and brightest" or "highly skilled" (e.g. 70th percentile) rather than one reflecting "mediocre" or "average" (i.e. the prevailing wage).

Reporting

13. Make available the data from USCIS on actual H-1B visas issued.
14. Require annual reports to monitor actual wages paid to H-1B workers and to determine when employment has ended.

Appendix 1. My response to critics of this research

Since the publication of these results there have been surprisingly few criticisms of the research published. However, I would like to respond to some of the issues made either publicly or to me in private.

The results are invalid because they only consider the prevailing wage and not the skill.

The H-1B program requires the employer pay the higher of the prevailing wage or the wage paid to employees with similar experience and qualifications. My study did not take into account requirement to pay based upon skills and qualifications because there was a not practicable way to measure it.[33]

Keep in mind that my intention was to come up with a conservative estimate of the H-1B/U.S. wage difference, not to generate a figure that was as large as possible. Since employers are required to pay the higher of the two values, were it possible to measure what they should be paying based upon skills it would have made the H-1B/U.S. wage larger than what I reported.

I see no harm in using procedures that underreport the H-1B/U.S. wage difference.

Employers actually pay more than what is on LCAs.

As described earlier, because the available data ends at the LCA state, we do not know what happens further on down the line in the H-1B process. One published claim was that an inspection of some H-1B filings from an undisclosed source found the actual H-1B wage was 22% greater than the prevailing wage.[34]

Assume for argument's sake employers are paying on average 22% greater than what they claim as the prevailing wage. Keeping in mind that my measurements of prevailing wage claims were direct measurements, my research found the actual prevailing wage was 36% greater than what employers say it is on LCAs. So even if one concedes H-1B workers are paid 22% more, employers would need to give their H-1B workers another 14% boost in wages to be at the prevailing wage. Even with this assumption, H-1B workers still would be paid less than Americans.

I point out that all of the documented evidence I am aware of suggests employers are paying less than the wage on the LCA. Examples include:

- A government investigation found 19% of H-1B workers were paid less than the wage on LCA.[35]
- Priority I software submitted $58,500 as the prevailing wage for web developers but actually paid between $50 and $100 a week.[36]

---

[33] 8 U.S.C. 1182 (n)(1)(A) (LEXIS 006)

[34] Anderson, Stewart, Letter to the Editor, *Washington Times*, Mar. 15, 2006

[35] U.S. Department of Labor Office of Inspector General Office of Audit, "The Department of Labor's Foreign Labor Certification Programs: The System Is Broken and Needs To Be Fixed", May 22, 1996, p 21.

[36] McHale, Todd, "Software and mortgage companies violate immmigration laws" (sic), *Burlington Times*, Mar. 23, 2006.

- Cybersoftec was not paying H-1B workers at all. Instead, employees paid the company for visas in order to get into the country.[37]
- The problem of "benching" described previously.

The data on the H-1B program that is available is the LCA data. If people want to claim H-1B workers are paid more than reported on LCAs, they need Congress to collect and make additional data on the H-1B program available to support that claim. The LCA data does not support claims H-1B workers are paid anything close to the actual prevailing wage.

The Atlanta Federal Reserve Study

The authority more frequently cited in attempts to rebut my research has been one published by the Federal Reserve Bank of Atlanta.[38] This report has been "spun" to say that its result was the H-1B program has no negative effect on U.S. workers. In at least one case the selective cutting and pasting from the report amounted to "academic fraud".

For completeness, I have cited this report in my previous academic papers on the H-1B program. However, because of its carefully qualified conclusions, I have only mentioned it to acknowledge it exists and have never used it as a source to support an argument. I am going to refrain from putting any "spin" on this report, including highlighting selected points. Instead, for the record I quote the study's conclusions in their entirety and let the readers judge for themselves what it says about the impact of the H-1B program on U.S. workers.

> Using data on labor condition applications—the first step in getting an H-1B visa—in fiscal year 2001, this study examines the relationship between LCAs and earnings, earnings growth, and the unemployment rate in the IT sector at the state level. The results provide little support for claims that the program has a negative impact on wages. However, some results do suggest a positive relationship between the number of LCA applications and the unemployment rate a year later. The failure to find an adverse wage effect does not necessarily indicate that H-1B workers do not depress wages but perhaps that any effect is difficult to find, as concluded by previous studies.
>
> A final caveat to these findings is that employers are increasingly using L-1 visas, which are intracompany transfers of workers from overseas branches or subsidiaries, to bring in foreign workers (Hafner and Preysman 2003). Unlike H-1B visas, L-1 visas are not capped and do not require employers to pay the prevailing wage. The increasing use of L-1 visas instead of H-1B visas may

[37] Martin, John P., "Feds seize millions from man held in illegal immigrant scheme", Newark Star-Ledger, Jan. 14, 2006, p. 1.

[38] See for example Mandaro, Laura, "Tech Firms Say H-1B Visa Caps Create Shortage Of Skilled Staff", *Investor's Business Daily*, Mar. 8, 2006.

reduce the measured impact of H-1Bs on native workers but not the total impact of foreign workers. If data on L-1 visa holders become available, this possibility merits analysis.[39]

Appendix 2. The Bottom of the Pay Scale Wages for H-1B Computer Programmers

December 2005

By John Miano

Published By The Center for Immigration Studies (www.cis.org)

Executive Summary

The temporary visa program known as H-1B enables U.S. employers to hire professional-level foreign workers for a period of up to six years. According to the law (8 U.S.C. § 1182(n)), employers must pay H-1B workers either the same rate as other employees with similar skills and qualifications or the "prevailing wage" for that occupation and location, whichever is higher. This is to prevent the hiring of foreign workers from depressing U.S. wages and to protect foreign workers from exploitation.

This report examines the wage data in Labor Department records for Fiscal Year 2004. It compares wages in approved Labor Condition Applications (LCAs) for H-1B workers in computer programming occupations to wage levels of U.S. workers in the same occupation and location. The analysis demonstrates that, despite the H-1B prevailing-wage requirement, actual pay rates reported by employers of H-1B workers were significantly lower than those of American workers. These findings show that the implementation of the prevailing-wage requirement in the H-1B program does not ensure that H-1B workers are paid comparably to U.S. workers. Moreover, the data suggest that, rather than helping employers meet labor shortages or bring in workers with needed skills, as is often claimed by program users, the H-1B program is instead more often used by employers to import cheaper labor.

Key Findings

- In spite of the requirement that H-1B workers be paid the prevailing wage, H-1B workers earn significantly less than their American counterparts. On average, applications for H-1B workers in computer occupations were for wages $13,000 less than Americans in the same occupation and state.
- Wages for H-1B workers in computer programming occupations are overwhelmingly concentrated at the bottom of the U.S. pay scale. Wages on LCAs for 85 percent of H-1B workers were for less than the median U.S. wage in the same occupations and state.
- Applications for 47 percent of H-1B computer programming workers were for wages below even the prevailing wage claimed by their employers.

[39] Zavodny, Madeline, "The H-1B Program and Its Effects on Information Technology Workers", *Federal Reserve Bank of Atlanta Economic Review*, Q3 2003, p. 10.

- Very few H-1B workers earned high wages by U.S. standards. Applications for only 4 percent of H-1B workers were among the top 25 percent of wages for U.S. workers in the same state and occupation.
- Many employers use their own salary surveys and wage surveys for entry-level workers, rather than more relevant and objective data sources, to make prevailing-wage claims when hiring H-1B workers.
- Employers of large numbers of H-1B workers tend to pay those workers less than those who hire a few. Employers making applications for more than 100 H-1B workers had wages averaging $9,000 less than employers of one to 10 H-1B workers.
- The problem of low wages for H-1B workers could be addressed with a few relatively simple changes to the law.

Purpose

The purpose of this report is to examine the effectiveness of the prevailing wage requirements in the H-1B program and to determine whether there is a difference between wages paid to H-1B workers in computer programming fields and wages for U.S. workers in the same fields. This report uses the Bureau of Labor Statistics Occupational Employment Statistics as the measurement of U.S. wages and the H-1B Labor Condition Application disclosure data as the measurement of H-1B wages.

The H-1B Visa Program

This H-1B visa program was created in 1990 as a guestworker program for specialty occupations. A specialty occupation is one that requires a college degree or equivalent professional experience. There is no specific skill requirement for an H-1B visa.

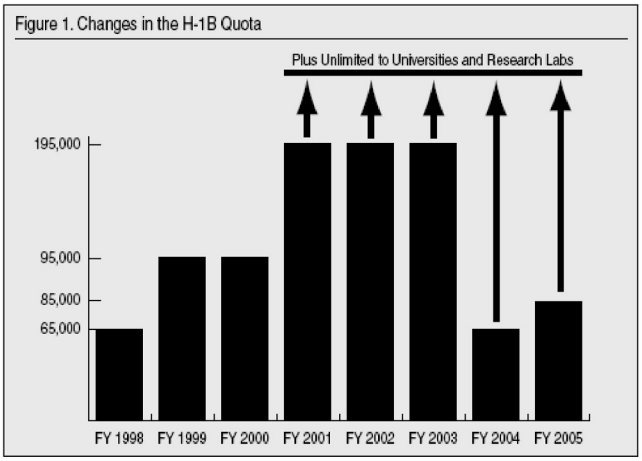
The H-1B program is technically classified as a non-immigrant program. H-1B visas are valid for up to three years and can be renewed once for an additional three years. H-1B visas are also tied to employment so that an H-1B visa becomes invalid if the worker loses his job. While employed, it is relatively easy for a worker on an H-1B visa to transfer the visa to another employer. Transfers do not extend the time limit on the original visa.

While the H-1B is a temporary, non-immigrant visa, the law allows H-1B holders to apply for permanent residency and, since H-1B workers can bring their families with them, any children born during their stay become U.S. citizens. While relatively few H-1B workers obtain permanent residency, anecdotal evidence suggests a significant percentage, perhaps the majority, of workers who come to the United States on H-1B visas come intending to stay permanently.

The challenge for H-1B workers who want to remain in the United States is to get a permanent residency application processed within the six-year maximum term of an H-1B visa. Congress has modified the H-1B program to allow workers in the final stages of a permanent residency application to remain in the United States beyond the six-year time limit. However, an H-1B worker who changes employers is unlikely to be successful in getting permanent residency.

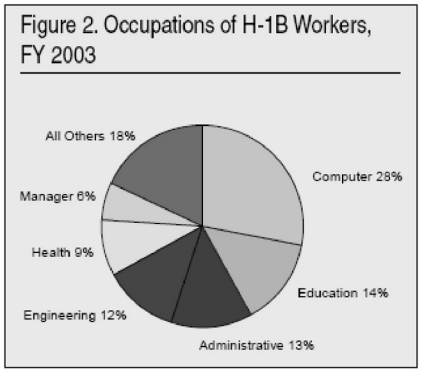
The H-1B program was originally limited to 65,000 visas a year. As the popularity of the H-1B program grew in the late 1990s, employers started to exhaust this quota. In 1998, 2000, and 2004 Congress enacted both temporary increases and permanent increases in the program. Figure 1 shows the quota changes over time. The current limits, effective in FY 2005, divide H-1B visa into four categories with different limits:

- No limit to the number of visas issued to universities and research institutions.
- 20,000 visas reserved for those with graduate degrees from U.S. institutions.
- 6,800 visas reserved for Singapore and Chile under free trade agreements.
- 58,200 visas for all others.

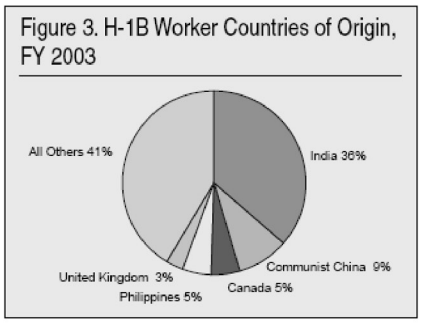


This complicated visa allocation scheme reflects the political struggles that have surrounded the H-1B program since 1994. The general H-1B quota for FY 2005 was exhausted on the first day of the fiscal year and six weeks beforehand in FY 2006. However, only about a third of the quota for U.S-educated workers was used in FY 2005 and it is unlikely to be used up in FY 2006."

H-1B visas are often referred to as "high tech" visas since historically most have been issued to workers in computer programming, engineering, or science disciplines. In recent years, while the H-1B quota was temporarily increased, the percentage of workers in these occupations declined. Figure 2 shows the distribution of H-1B visas issued by occupation.



Workers from India and China dominate the H-1B program. Before the temporary increases in the H-1B visa quota, nearly half of all H-1B visas went to people born in India. During the periods of increased H-1B quotas, the percentage of H-1B visas issued to people born in these countries decreased. Figure 3 shows the distribution of H-1B visas issued by country.



The law requires employers to pay H-1B workers the prevailing wage. In theory, the H-1B program is supposed to prevent employers from bypassing U.S. workers in favor of lower-paid foreign workers.

Labor Condition Application

As part of making an application for an H-1B visa, the employer must submit a Labor Condition Application (LCA). The Labor Department is responsible for ensuring that the hiring of foreign workers will not adversely affect the wages and working conditions of U.S. workers -- or displace U.S. workers -- and the LCA is the principle tool for ascertaining this. In this, the employer certifies:

- It will be paying the H-1B worker the higher of the wages paid to other employees with similar experience and qualifications or the prevailing wage for the occupation in the location of employment.
- There is no current strike or lockout.
- The employer will provide notice to other employees of the application filing.

The federal regulations governing LCAs allow employers to select a prevailing wage from a number of different types of sources:

- Complying with the Davis-Bacon Act or Service Contract Act (SCA) on Federal Contracts.
- Union collective-bargaining agreement.
- A State Employment Security Agency (SESA) prevailing-wage determination.
- Another wage source that "reflects the weighted average wage paid to workers similarly employed in the area of intended employment" and "is reasonable and consistent with recognized standards and principles in producing a prevailing wage."

On computer programmer LCAs, SESA is the wage source for about 10 percent of LCAs and about 90 percent use some other wage source. Davis-Bacon, SCA, and union contracts are rarely encountered as wage sources.

Under the plain text of the law, the prevailing wage is supposed to be the prevailing wage for the occupation and is not supposed to take experience into account. As described in more detail later, until 2004 the Department of Labor's online wage library gave one prevailing wage for experienced workers and one for entry-level workers. The 2004 changes to the H-1B program direct the Department of Labor to make four prevailing wage levels available to employers that take into account "experience, education, and the level of supervision." This is the only authorization for a prevailing wage source to take into account anything other than occupation and location.

Unfortunately, the LCA system has been nothing more than a paper-shuffling process. The Department of Labor does not actually verify the data within an LCA or make approval judgments based upon its contents. Until FY 2006 the law expressly prohibited the Department Labor from evaluating the contents of an LCA other than to ensure the form had been filled out correctly.

The Controversy

Proponents of H-1B often argue that the program is vital to U.S. competitiveness because it allows the world's "best and brightest" to come to America and helps sustain U.S. leadership in the technology sector. Program critics cite a number of problems and apparent abuses of the H-1B program, including:

- The practice of "bodyshopping," or "contracting out" workers on H-1B visas.
- Employers using the H-1B program to replace Americans.
- H-1B's role in "offshoring" work to other countries.
- Use of the H-1B program for back-door immigration.
- The lack of employer monitoring.
- Statutory provisions intended to prevent enforcement of the law.
- Allegations that the H-1B program is used to depress wages.

Appendix G[40] lists the employers who are the largest users of the H-1B program. Most of these companies are known as "bodyshops." This term refers to the practice of sponsoring large numbers of H-1B workers who then perform IT or back-office tasks for U.S. companies on a contract basis. The H-1B worker will get his paycheck from the bodyshop but will work in the contracting company's facility and will have every outward sign of being an employee of the contracting company. Often the contract worker is performing tasks that were once done by a regular U.S. employee.

The increasingly common practice of bodyshopping seems to have emerged as a direct result of the availability of H-1B workers as a low-cost alternative to U.S. workers. Bodyshops may sponsor large numbers of H-1B workers who have no actual assignment when they arrive in the country. The bodyshops circulate lists of available H-1B workers to employers, placing them in direct competition with U.S. workers seeking similar jobs.

Frequently, the employer/employee relationship between the bodyshop and H-1B worker is suspect. Some companies advertise on the Internet for H-1B workers and after sponsoring them keep a percentage of the worker's earnings. In a number of cases, companies obtained H-1B visas for individuals who then disappeared upon arrival ("Ga. Co. Pleads Guilty in INS Case," Associated Press, Nov. 24, 1999). In an extreme case, a man used the H-1B program to import teenage sex slave girls from India (David Ferris & Demian Bulwa, "Berkeley Landlord Faces Sex Charge," Contra County Times, Jan. 20, 2000). In addition to creating direct competition to Americans for jobs, the H-1B program plays a critical role in the offshoring phenomenon. The largest suppliers of offshore programming services are also among the largest users of H-1B visas (See Appendix G). The offshoring companies use the H-1B program to train their employees in U.S. business practices and to provide local support for operations moved overseas.

Methodology

This report takes a conservative approach in comparing H-1B wages to U.S. wages. Initial analyses of the data clearly showed that H-1B wages were significantly less than U.S. wages. As the analysis was refined, each time a choice was identified on how to treat data, the author examined the alternatives then chose the one that minimized the H-1B/U.S. wage difference.

The data for U.S. wages came from the Bureau of Labor Statistics Occupational Employment Statistics (OES) at www.bls.gov/OES. The OES program estimates wages and employment in over 800 occupations. There are estimates for the entire nation, by state, and for metropolitan areas.

This report uses the 2003 statewide estimates for comparison with H-1B wages, the year prior to the H-1B wage data. The reason for using wage data older than the H-1B data is that this is the prevailing wage information that would have been available to the employers when making the LCA. This choice is consistent with the approach of minimizing any U.S./H-1B wage differential.

The OES data define a category of occupations called "Computer and mathematical occupations," into which programming jobs fall. This report compares U.S.

[40] Available online at http://www.cis.org/articles/2005/back1305appendices.pdf

wages to H-1B wages in the OES occupations from this category and its subdivisions listed in Table 1.

Table 1. OES Job Categories Employed in This Report

Standard Occupation Code	Occupation Description
15-0000	Computer and mathematical occupations
15-1011	Computer and information scientists, research
15-1021	Computer programmers
15-1031	Computer software engineers, applications
15-1032	Computer software engineers, systems software
15-1041	Computer support specialists
15-1051	Computer systems analysts
15-1061	Database administrators
15-1071	Network and computer systems administrators
15-1081	Network systems and data communications analysts

The data for H-1B wages came from the H-1B disclosure web site at www.flcdatacenter.com . This contains electronic versions of LCAs filed by employers where each LCA is a single row in a table. The starting point was the data for computer-related occupations. The next step was to delete all the rows for LCAs that had been rejected by the Department of Labor. All wages specified in periods of less than a year were converted to annual wages.

The most difficult process was to match the jobs in LCAs to OES codes. The only encoding of occupations in an electronic LCA row is a job code from U.S. Citizenship and Immigration Services (a bureau within the Department of Homeland Security). LCAs include a job title but these are employer job titles, not OES job titles. In addition, OES data and the USCIS differ as to what jobs are computer occupations. The result of this inconsistent usage of job titles is that there is no simple way to match up LCAs to wage data.

This report used pattern matching to associate LCAs with employer job titles. For the most part this method does not cause significant problems except where employers use unusual job titles or in a few cases where common employer titles tend to create ambiguities.

The most significant of these ambiguities is the common employer job title "Programmer/Analyst." Is this a "Programmer" or a "Systems Analyst" in the OES occupation classification system? After examining a sample of "Programmer/Analyst" LCAs that used OES as the prevailing wage source, all of those that could be traced back to the OES prevailing wage were found to be using "System Analyst" as the OES occupation. This would have justified classifying "Programmer/Analyst" as "Systems Analysts." However, this association increased the national H-1B/U.S. wage difference by about $4,000 greater than classifying these LCAs as "Programmers." So, in keeping with the conservative goals of this report, "Programmer/Analysts" are treated as "Programmers."

A similar example is variations on the job title "Software Engineer." The OES data has two such classifications, "systems software" and "applications." In some cases, it was clear which of these categories a particular job title fell into. In the end, this report classified "Software Engineer" on LCAs as OES "Computer software engineers, applications" because this creates the smaller H-1B/U.S. wage difference.

The most lengthy preparation step was cleaning up the data. The number of obvious errors in the LCA disclosure data is staggering. For example, employer names and job titles are frequently misspelled. Many wages are multiplied by a factor of 10, 100, or 1,000. This report assumed programmer salaries over $300,000 contained such an error.

Once the data are cleaned up, analysis becomes a straightforward, though often time consuming, process of querying the data.

In this report the term "H-1B workers" always means "H-1B workers in Computer Programming Professions." Likewise, "H-1B wages" always means "Employer claims of wages to be paid to H-1B workers according to Approved Labor Condition Applications." Only approved LCAs were used in this report.

Limitations

The most significant limitation in this report is that it is based on Labor Condition Applications rather than actual H-1B visas issued. The number of LCAs filed is much greater than the number of H-1B visas issued. When taking into account multiple workers on many LCAs, the disparity is even greater.

There are three major reasons for this disparity. An LCA may be approved and one or more H-1B applications based on that LCA may be rejected by USCIS; an employer may not submit an H-1B application for an LCA; or the employer may not submit H-1B applications for as many workers specified on an LCA.

While the Department of Labor makes detailed LCA information available, USCIS does not provide the analogous data for H-1B visas. Therefore, this report assumes that the salary distribution in LCAs is closely related to the distribution in approved H-1B visas. In short, it is based on what employers are asking for in H-1B visas rather than what they are necessarily getting.

The lack of standardization or encoding of occupations within the LCA data creates the other significant limitation in this report. The precision of the results here is limited by the need to match employer job titles to OES occupations. But since that the disparity between H-1B wages and U.S. wages is so great, this limitation does not affect the conclusion that significant wage difference exists. However, it does make a difference in the precision by which that size of difference can be measured. Since this report is consistent in taking the path that minimizes the H-1B/U.S. wage difference, the wage differences reported here represents the lower bound for that wage difference.

Results

This report finds the wages paid to H-1B workers in computer programming occupations for FY 2004 were significantly lower than wages paid to U.S. workers in the

same occupation and state. Table 2 shows the H-1B salary ranges and the average differences between the OES Mean and OES Median.

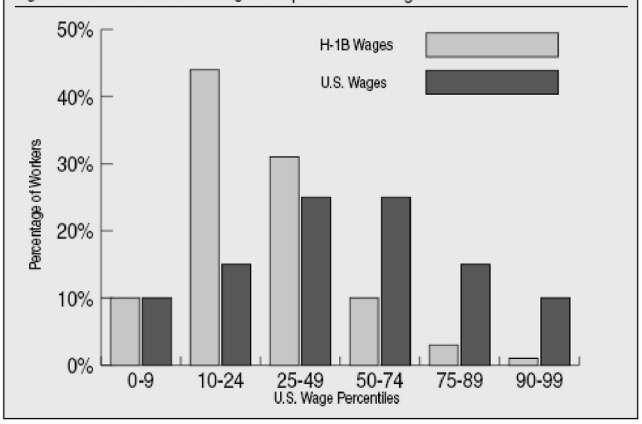
Table 2. H-1B Salary Ranges and Differences from OES Wages

Min	Max	Mean	OES Mean	Difference	OES Median	Difference
$16,796	$260,000	$52,312	$67,700	($15,388)	$65,003	($12,691)

In addition to the average salaries for H-1B workers being much lower than those of corresponding U.S. workers, the distribution of H-1B wages are overwhelmingly concentrated at the bottom end of the wage scale.

Figure 4 graphically illustrates the relationship between H-1B wages to U.S. wages. The horizontal axis shows U.S. percentile ranges and the vertical axis shows the percentage of workers with salaries falling within those ranges. H-1B salaries are concentrated in the bottom end of the scale with the largest concentration in the 10-24 percentile range. That means the largest concentration of H-1B workers make less than highest 75 percent of U.S. wage earners.

Figure 4. Distribution of H-1B Wages Compared to U.S. Wages



The appendices to this report[41] contain additional breakdowns of H-1B wage data comparing them to U.S. wages:

Appendix A: H-1B Wages Compared to U.S. Wages by Occupation
Appendix B: H-1B Wages Compared to U.S. Wages by State
Appendix C: H-1B Wages Compared to U.S. Wages by State and Occupation
Appendix D: H-1B Wages Compared to U.S. Wages by Employer

The LCA disclosure data clearly show that prevailing wage provisions in the H-1B program do not result in H-1B workers actually being paid the prevailing wage. In

[41] Available online at http://www.cis.org/articles/2005/back1305appendices.pdf

spite of these provisions, the overwhelming majority of H-1B computer workers are actually paid wages substantially lower than Americans in equivalent positions. This finding suggests that in most cases the motivations behind employers' use of the H-1B program is for low-wage workers rather than highly skilled workers.

Prevailing-Wage Claims

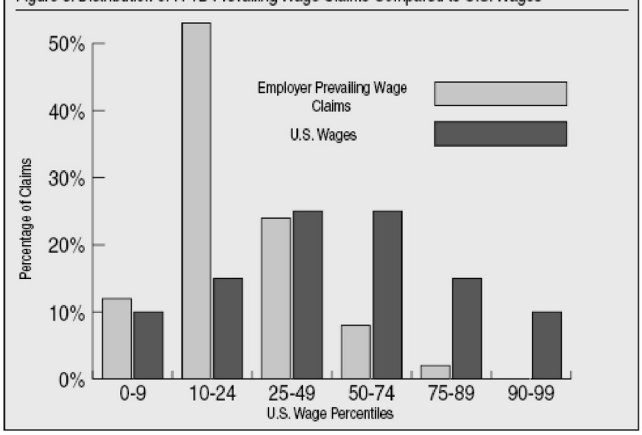
Employer prevailing wage claims tended to be even lower and more concentrated at the low end of the wage scale than H-1B wages. Table 3 shows the range of prevailing-wage claims and their average difference from U.S. wages.

Table 3. H-1B Prevailing Wage Claims and Differences from OES Wages

Min	Max	Mean	OES Mean	Difference	OES Median	Difference
$10,900	$198,826	$49,618	$67,689	($18,070)	$64,994	($15,376)

The distribution of H-1B prevailing-wage claims compared to U.S. wages is shown graphically in Figure 5. This figure was created in the same manner as Figure 4 except that it compares U.S. wages to employer-claimed prevailing wages. The low prevailing-wage claims on LCAs show that most employers are understating the prevailing wage on LCAs. Clearly, employer prevailing-wage claims are in no way representative of actual wages paid to U.S. workers.

Figure 5. Distribution of H-1B Prevailing Wage Claims Compared to U.S. Wages



It should also be noted that the wages reported for 47 percent of H-1B workers were for less than the prevailing wage claimed by the employer on the LCA (See Appendix H[42]). Prior to FY 2006, the law allowed employers to pay H-1B workers 95 percent of the claimed prevailing wage. A substantial number of employers took

[42] Available online at http://www.cis.org/articles/2005/back1305appendices.pdf

advantage of this explicitly permitted method to pay H-1B workers less than Americans, some even taking the discount to a fraction of a percent more than the law allowed.

It is also important to note that the low wages paid to H-1B workers and the low prevailing wages submitted by employers do not in themselves imply the employers are violating the law. Instead, the data illustrate how ineffective the law is at ensuring H-1B workers are paid the prevailing wage.

However, some prevailing-wage claims are so out-of-line with industry norms that they suggest violations or fraud are occurring. One key flaw in the system is that employers are allowed to use almost any source to determine the prevailing wage.

Some Specific Wage Sources

In FY 2004, employers used over 75 different sources to make approved prevailing wage claims for H-1B computer workers. Most LCAs use government wage sources with Watson Wyatt being by far the most frequently used non-government wage source. A common theme among prevailing wage sources is the use of entry-level wage surveys to determine the prevailing wage for H-1B applications. The following sections contain observations about a few of the most commonly used wage sources and wage sources employers used to produce extremely low prevailing wages.

National Association of Colleges and Employers. The wage source employers used to report the lowest prevailing wage claims is the National Association of Colleges and Employers (NACE) wage survey with wages about $27,000 less a year than the OES median. The NACE wage survey measures the wages of recent college graduates so it is a source of entry-level wages only. Of employers that used NACE as a prevailing wage source, 75 percent used no other wage source on LCAs. For these employers, either all of their H-1B hires came directly out of school or their prevailing wage claims were entirely bogus. In any case, this report asserts that a private survey of wages paid to new graduates is not a legitimate prevailing wage source under the plain meaning of the law.

Employer Wage Surveys. The H-1B program allows employers to use their own wage surveys as a prevailing wage source. The second lowest prevailing wage source was employer salary surveys. When H-1B employers used their own surveys, the prevailing wage claims were about $22,000 a year less than the OES median. The size of this difference suggests that employer wage surveys are of questionable use in measuring the prevailing wage for LCAs. Through this mechanism, employers paying low wages are simply re-affirming their own low standards, rather than providing a real comparison to industry or wider labor market standards.

MIT Wage Survey. The third lowest wage source, and one of the most puzzling encountered in the LCA data, is the 2002 "MIT Wage Survey," used by only two employers but for over 300 H-1B workers. What was unusual about these LCAs is that every one claimed the exact same prevailing wage of $45,000.

The only "MIT Wage Survey" this report could locate is MIT's survey of wages for recent graduates. The 2002 edition contains only one value of $45,000: the lowest salary offered to an MIT graduate with a bachelor's degree in electrical engineering & computer science. Should this be the case, this report questions the legitimacy of the lowest salary offer made to MIT graduates as a prevailing wage.

Table 4. 2002 Wage Summary: MIT Course 6-2
Electrical Engineering & Computer Science

	Base Yearly Salary			
Degree	Low	Average	High	Reports
Bachelors	$45,000	$57,343	$68,000	16
Masters	$67,500	$67,500	$67,500	1
M. Eng.	$65,000	$81,058	$110,000	17
Doctoral	$80,000	$99,875	$112,000	8

Occupational Employment Statistics. OES is by far the most frequently-cited prevailing wage source, used for about half of all H-1B workers. Yet LCAs using OES as the wage source claimed a prevailing wage of about $17,000 less than the median OES wage for the same state and occupation.

For those unfamiliar with the LCA system, this difference might appear incongruous. How could employers and this report be looking at the same data and coming to such different results?

The answer is in how the on-line wage library for LCA applications presents the OES data. The wage data available directly from OES provide the mean and median wages as well as the wages at various percentiles. Though based on the OES data, the on-line wage library for LCAs at www.flcdatacenter.com provides two prevailing wages based upon the OES data: the Level 1 (or entry level) prevailing wage and the Level 2 (or experienced) prevailing wage. Apparently most employers who use the on-line wage library select the entry-level wage as the prevailing wage.

It would be interesting to compare prevailing wage claims using the entry-level wage to the experienced level wage. Unfortunately, the Level 1/Level 2 wage data for 2004 are not publicly available. They will be available for the new wage levels for FY 2006, so a future report may be able to determine how the new wage levels are being used.

As mentioned previously, the recent changes to the H-1B program require the Department of Labor to make four prevailing-wage levels available to employers. This could result in employers making ever lower prevailing-wage claims.

A real-world example illustrates how this system allows employers to make lower prevailing-wage claims. The employer claims the prevailing wage for a Systems Analyst in Charlotte, N.C., according to OES in FY 2002 was $42,246. This wage is the Level 1, or entry level, wage. The Level 2 wage was $69,618. The mean OES wage was $60,150. By selecting the entry-level wage as the prevailing wage, the employer realizes about $18,000 in wage savings. As described previously, employers were allowed to pay 95 percent of the claimed prevailing wage, as this employer has done. So here, the employer is paying the H-1B workers the absolute lowest wage it can get away with. This example demonstrates how the current prevailing wage requirements of the H-1B program serve as a low-wage target for employers rather than as protection for U.S. workers.

Number of H-1B Workers Requested

There is an interesting trend in the wage data with regard to the number of H-1B workers an employer seeks. Employers of large numbers of H-1B visas pay significantly less than employers with a small number of H-1B visas. Employers making applications for one to 10 H-1B workers paid an average of $9,000 a year more than employers making applications for more than 100 H-1B workers (See Appendix F[43]).

Observations

The preparation of this report involved many weeks of examining LCAs data. While outside the scope of this report, a number of patterns emerged that raise suspicions of abuse. Some of those patterns involving computer occupations are listed here in the hope that some other researchers might investigate them.

- Applications made for computer programmers by businesses that do not normally employ programmers (e.g. stores and restaurants).
- Employers with absurdly low salaries for programmers, especially those with all of their H-1B workers being paid below the 10th percentile.
- Small companies whose number of H-1B visas requests appear to be more than they could possibly employ. This might suggest H-1B workers are not actually performing work for their employer or where employers have workers idle and not being paid (illegal "benching").
- Employers requesting large numbers of H-1B workers in locations not likely to have significant numbers of programming jobs, suggesting the employer is using one location for wage certification and other locations for the actual job site.
- The grossly disproportionate number of applications for H-1B workers in New Jersey (Appendix E) suggests that many of these H-1B workers are not actually working in New Jersey.
- The LCAs for many companies show a disregard for the formalities of business associations. For example, one can find limited partnerships doing business as "corporations" and entities that have submitted LCAs under different forms of organization.

Recommendations[44]

If there is any correlation between wages and skills, it is clear the H-1B program is rarely being used to import "highly skilled" workers. While the wage data do suggest a few employers use the H-1B program to import a small number of highly skilled workers, these are clearly exceptional cases.

Overwhelmingly, the H-1B program is used to import workers at the very bottom of the wage scale. The wide gap between wages for U.S. workers and H-1B workers helps explain why industry demand for H-1B workers is so high and why the annual visa quotas are being exhausted.

---

[43] Available online at http://www.cis.org/articles/2005/back1305appendices.pdf

[44] These recommendations are limited to remedying problems reflected in the LCA data. There are additional problems in the H-1B program that are outside the bounds of this study.

Many in industry have called for an increase in the number of H-1B visas, citing the early exhaustion of the cap as reflective of widespread need for skilled workers. However, the fact that very few H-1B workers are earning salaries as high as U.S. workers in the same profession would seem to refute that claim, and should make lawmakers wary of increasing the H-1B quota. The exhaustion of the H-1B quota may reflect employers' interest in lowering labor costs or widespread fraud rather than an insufficient number of visas.

Specifics

This report makes the following specific recommendations to correct the prevailing wage provisions of the H-1B program:

- Retain the current 65,000 cap on regular H-1B visas. With the majority of applications for H1-B computer programmers at salaries below the prevailing wage, the cap is the only real safeguard in the H-1B system.
- Limit the number of H-1B visas that an employer can obtain each year based on the number of U.S. employees the company has.
- Employers should be required to use a standard wage source produced by the federal government when making prevailing wage claims for LCAs. Allowing employers to pick from nearly any wage source is not a valid measure of the prevailing wage.
- Employers should be required to pay H-1B workers at a level higher than the mean wage, such as the 75th percentile, rather than at the prevailing wage, to prevent widespread use of H-1B workers from depressing U.S. salary levels. Lessening the H-1B salary differential may reduce pressure on the visa quota, as employers will use the program only for true industry needs and for the most highly-skilled workers, rather than the cheapest workers.
- In order to better monitor the H-1B program, employers should be required to enter a Standard Occupation Code (SOC) for each employee on the application. Most employers are looking this information up already in order to get OES prevailing wages. It would require little effort for employers to put this information on the LCA.
- In order to better monitor the H-1B program, USCIS should make wage and employer information available on H-1B visas actually issued. Researchers now must rely on Labor Department data from the LCA, which may or may not result in an actual visa issuance.

***

Mr. KING. Thank you, Mr. Miano.

And now the Chair will recognize Mr. Anderson for 5 minutes.

TESTIMONY OF STUART ANDERSON, EXECUTIVE DIRECTOR, NATIONAL FOUNDATION FOR AMERICAN POLICY

Mr. ANDERSON. Thank you, Mr. Chairman.

Despite the tremendous changes—excuse me—in the world economy, with modest exceptions, the U.S. immigration system for highly skilled professionals has not changed since 1990, except that it has become worse. Companies now pay hefty fees, endure longer waits, and submit to more regulation than in the past.

American companies and their competitors are waging a global battle for talent, a battle complicated by the 65,000 limit on H-1B visas that annually leaves companies waiting months to hire key personnel while they risk losing top people to foreign competitors.

Processing delays and a 5-year backlog because of inadequate employment-based immigration quotas make it impossible to hire an individual directly on a green card. Therefore, without sufficient H-1B visas, skilled foreign nationals and international students simply could not work or remain in the United States.

The stakes are high. Nearly half of all engineers, physicists, and computer scientists with Ph.D.'s in the U.S. today are foreign born. As we know, many talented people in this world were not born in the United States. Whether it is the father of modern computing John von Neumann, founder of Intel Andrew Grove, Internet godfather Tim Berners-Lee, or many others, America's openness to talented individuals, regardless of their place of birth, has been our great strength.

Here's what companies find when they recruit on college campuses. In 2005, U.S. universities awarded 55 percent of master's degrees and 67 percent of Ph.D.'s in electrical engineering to foreign nationals. At Iowa State, University of Texas at Austin, and other schools listed in the testimony, one-half to one-third of all graduate students in computer science and electrical engineering are foreign nationals.

Do we want to educate these individuals and send them out of the country to compete against U.S. firms? Or wouldn't it be better to allow these talented people to stay and create jobs and innovation here in America?

The use of H-1B visas has been determined by the market. As the table in the testimony illustrates, when Congress raised the limit to 195,000 in 2002 and 2003, in both years, fewer than 80,000 visas were issued against the cap, leaving more than 230,000 unused.

To avoid creating backlogs and long hiring delays, we should return to the 195,000 cap and have expanded exemptions for international graduate students, as in the pending Senate bill, which also includes necessary increases in employment-based immigration quotas.

In 1998, Congress sought a balance by increasing the H-1B cap and imposing new enforcement measures and a new $500 training and scholarship fee, later raised to $1,500. Since then, employers have paid more than $1 billion in these fees, which have funded math and science scholarships for 40,000 U.S. students, hands-on

science programs for 75,000 middle and high school students, and job training for more than 82,000 U.S. workers.

Here's a quick response to criticisms of H-1B visas. First, the National Science Foundation and other sources show foreign-born scientists and engineers are paid as much or more as their native counterparts.

Second, H-1B professionals change jobs all the time and simply don't stay if they can gain higher pay elsewhere.

Third, if U.S. companies hire based only on wages, then they would move all of their work outside of the United States since it costs $60,000 for a software engineer in Boston and only $7,200 for one in Bangalore.

Fourth, foreign-born individuals are hired in addition to, not instead of native-born workers. They represent no more than 5 to 10 percent at most large high-tech firms.

Finally, one cannot conclude employers underpay H-1B visa holders based on prevailing wage data, since what an employer pays is actually contained on the I-129 form filed with the Immigration Service, and research shows the actual wages that firms pay, as required under the law, is much higher than the prevailing wage.

The costs of Congress failing to increase both the H-1B cap and employment-based immigrant quotas, unfortunately, will be measured by the job creation, innovation, and research that do not take place in the United States. And these costs will be felt beyond the immediate future.

At the 2004 Intel Science Talent Search competition, the Nation's premier science competition for top high school students, I conducted interviews to determine the immigration background of the 40 finalists. Listen to what I found.

Two-thirds of the Intel Science Talent Search finalists were the children of immigrants. And even though new H-1B professionals each year represent only 0.03 percent of the U.S. population, more of the children have parents who entered the country on H-1B visas than had parents born in the United States.

In other words, if critics had their way, most of the coming generation's top scientists would not be here in the United States today because we never would have allowed in their parents.

Thank you.

[The prepared statement of Mr. Anderson follows:]

PREPARED STATEMENT OF STUART ANDERSON

Mr. Chairman, thank you for the opportunity to testify today.

U.S. companies and their competitors are waging a global battle for talent. American companies hire and recruit globally. In some cases, this means hiring foreign-born individuals on H-1B temporary visas, many times off U.S. college campuses as part of the normal recruitment process. Some assert the only reason U.S. employers would hire H-1B professionals is because they would work more cheaply than Americans. But this fails to grasp that international students form a majority of graduate students in science and engineering on many college campuses. Moreover, as Members of the Committee know well, there are many talented people in this world who were not fortunate enough to be born in the United States.

Whether it is the father of modern computing John von Neumann, founder of Intel Andrew Grove, Internet godfather Tim Berners-Lee or countless others, America's openness to talented individuals—regardless of their place of birth—has been our great strength.

In 2005, U.S. universities awarded 55 percent of Masters degrees and 67 percent of PhDs in electrical engineering to foreign nationals, according to the American Association of Engineering Societies.

Below is the percentage of foreign nationals enrolled among full-time students in graduate programs at universities of interest to Members of the subcommittee:

Indiana University: computer science (63% foreign); electrical engineering (71%).

University of Texas at Austin: computer science (67%); electrical engineering (76%).

Iowa State: computer science (73%); electrical engineering (72%).

Rice University: computer science (67%); electrical engineering (56%).

University of Virginia: computer science (55%); electrical engineering (64%).

University of Southern California: computer science (80%); electrical engineering (78%).

Stanford University: computer science (41%); electrical engineering (63%).

University of Arizona: computer science (57%); electrical engineering (86%).

University of Massachusetts: computer science (50%); electrical engineering (68%). (Source: National Science Foundation)

Do we want to educate these individuals and send them out of the country to compete against U.S. firms, or wouldn't it be better to assimilate this talent and allow them to create jobs and innovations here in America?

Since long regulatory delays and inadequate employment-based immigration quotas make it virtually impossible to hire an individual directly on a green card (permanent residence), the availability of H-1B visas is crucial, otherwise skilled foreign nationals, particularly graduates of U.S. universities, could not work or remain in the United States. It can take often four years or more for a U.S. employer to complete the process for sponsoring a skilled foreigner for permanent residence due to U.S. government processing times and numerical limitations. No employer or employee can wait four years for the start of a job. It is worth noting that America also gains considerably from foreign nationals educated outside the United States. Such individuals bring with them substantial human capital that America essentially receives without cost.

The annual cap on H-1B professionals, first established in 1990, is inadequate. Since 1996, the 65,000 annual limit on H-1B visas has been reached in almost every year. This shortfall compels employers either to wait several months for the next fiscal year to employ prospective employees in the United States, to hire new people outside the country, or to lose them to foreign competitors. Many companies concede that the uncertainty created by Congress' inability to provide a reliable mechanism to promptly hire skilled professionals has led to placing more human resources outside the United States. In this respect, the H-1B limitations imposed by Congress are most damaging to young, fast-growing companies that do not possess the option of placing personnel overseas.

One such company is MagiQ Technologies in New York, selected by *Scientific American* as one of the nation's most innovative companies for its breakthroughs in quantum cryptography. Four H-1B visa holders work on products that help support the 20-person firm but international competition for top talent is brutal. "We've lost the chance to hire top people in the field because of the H-1B cap being reached. That made it easier for our foreign competitors," said company CEO Robert Gelfond. He also notes that even when new hires are not lost, waiting several months for key personnel is expensive and can cost firms dearly in the marketplace.

THE IMMIGRATION SYSTEM HAS GROWN WORSE FOR EMPLOYERS

Despite the increased competition for talent and the tremendous changes in the U.S. and world economy over the past 16 years, with modest exceptions, the U.S. immigration system for high-skilled professionals has not changed since 1990—except that it has become worse. Companies now pay hefty fees, endure longer waits, and submit to more restrictive regulations than in the past.

Prior to 1990, Congress placed no numerical limitation on the number of skilled foreign nationals employers could hire in H-1 temporary status. In the Immigration Act of 1990, Congress arbitrarily chose an annual cap of 65,000 and introduced several requirements in establishing a new H-1B category.

It is clear that nobody considers the 65,000 annual limit on H-1Bs a sacrosanct number, as Congress has changed this limit at least three times in the past 8 years. In FY 2006, the immigration service stopped taking new H-1B applications in August 2005. Even the recently added 20,000 exemption from the H-1B cap for those who graduated with an advanced degree from a U.S. university was exhausted by January 2006.

THE MARKET HAS DETERMINED H-1B VISA USE

As the table below shows, the market has determined the use of H-1B visas. When Congress raised the limit to 195,000 a year in FY 2002 and 2003, in both years fewer than 80,000 visas were issued against the cap, leaving 230,000 H-1B visas unused in those two years. Firms did not hire more H-1Bs just because the cap was higher.

Any cap should be set high enough to avoid creating backlogs and long hiring delays. Returning to the 195,000 annual limit, with an uncapped exemption for graduates with an advanced degree from a U.S. university, would be a sensible policy. If the limit is lower than 195,000, the law should provide for increasing the ceiling by 20 percent following any year the annual cap is reached, as proposed in the Senate. Past legislation increased enforcement and taxed U.S. employers for each new H-1B professional hired, funding scholarships, science programs, job training, and anti-fraud activities. Having established this framework, the goal of new legislation should be to provide certainty for employers and prevent the nearly annual scramble in Congress to address H-1B visas.

H-1B VISAS ISSUED AGAINST THE CAP BY YEAR

Year	CAP*	#Issued	#Unused
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

Source: Department of Homeland Security. *Does not include exemptions from the cap.

SCHOLARSHIPS, K-12 PROGRAMS AND JOB TRAINING FOR U.S. STUDENTS AND WORKERS

In 1998, Congress wanted to balance increased access to skilled H-1B professionals with greater educational and training opportunities for U.S. students and workers in science and engineering. The American Competitiveness and Workforce Improvement Act of 1998 (Public Law 105–277) established the H-1B Nonimmigrant Petitioner Account funded by a $500 fee (now $1,500) on each new petition (and the first renewal of H-1B status) for H-1Bs sponsored by U.S. companies.

Since 1999, employers have paid more than $1 billion in such fees. The money has provided National Science Foundation (NSF) scholarships for approximately 40,000 students. The amount of the scholarship has risen from $3,125 to $10,000. An early evaluation of the NSF scholarships conducted by the General Accounting

Office (GAO) concluded: "The program is attracting a higher proportion of women and minorities than are included among computer science, engineering, and mathematics degree awardees." The GAO also interviewed student recipients. "One student told us that even though she excelled in math in high school, she only considered becoming a math major after she learned about the scholarship opportunity."

H-1B fees paid by employers also have funded hands-on science programs for middle and high school students, most notably Information Technology Experiences for Students and Teachers (ITEST) through the National Science Foundation. "The ITEST portfolio consists of 53 local projects that allow students and teachers to work hand-in-hand with scientists and engineers on extended research projects, ranging from biotechnology to environmental resource management to programming and problem-solving." According to the National Science Foundation, "ITEST impacts 75,000 students (grades 6–12), 3,000 teachers and 1,300 parent/caregivers."

More than 82,000 U.S. workers and professionals have completed training through programs funded by the H-1B fees as of December 31, 2005, according to the Department of Labor Employment and Training Administration. In addition, the Bush Administration recently has used the H-1B fees to provide multi-year grants to communities for training and economic revitalization. Through the WIRED (Workforce Innovation in Regional Economic Development) initiative, the U.S. Department of Labor is providing $195 million in grants to thirteen regional economies.

These totals do not include the impact of property taxes paid by U.S. companies, which are a key source of public school funding, nor do they include the individual efforts and donations made by American firms and entrepreneurs. For example, the Intel Corporation spends $100 million annually on math and science education in the United States. The Oracle Corporation donated $8.5 million in cash and $151 million worth of software to schools around the country in 2004. The Bill and Melinda Gates Foundation, funded from the sale of Microsoft stock by founder Bill Gates, has spent more than $2.6 billion since its inception on grants to improve education in the United States.

In an important respect, Congress has not upheld its part of the deal made in 1998. At the time, employers received more than 100,000 H-1B visas a year for three years, while enduring new enforcement measures and the imposition of a $500 fee. Today, the enforcement measures have been made permanent and the fee has tripled to $1,500, plus a new $500 "anti-fraud" fee. Meanwhile, the H-1B cap has dropped back to 65,000, albeit with some exemptions.

BLACK AND FEMALE REPRESENTATION IN SCIENCE AND ENGINEERING JOBS HAS MORE THAN DOUBLED SINCE 1980

One argument made in the past against raising the H-1B cap is that foreign-born scientists and engineers may "crowd out" women and minorities seeking to enter these fields. Data from the National Science Foundation show this is not the case. Between 1980 and 2000, the share of black Americans in science and engineering occupations more than doubled from 2.6 percent to 6.9 percent, as did the share of women, from 11.6 percent to 24.7 percent. This happened at the same time that "the percentage of foreign-born college graduates (including both U.S. and foreign degreed) in S&E jobs increased from 11.2 percent in 1980 to 19.3 percent in 2000," according to the National Science Foundation.

ADDRESSING CONCERNS ABOUT H-1BS

Some argue that the entry of H-1B visa holders harms some U.S. workers. This is a questionable assertion. Yet even if this were true, it would not justify preventing all American employers from gaining access to skilled foreign-born professionals in the United States or denying opportunity to these highly educated individuals, particularly international students who graduate from American universities. Leaving immigration aside for one moment, we know that the competition created by new businesses, new college graduates, new high school graduates, and imports of goods and services all may affect someone. But we do not try to block all of these because we have learned the cost of trying to prevent competition invariably far outweighs the benefit.

It is a dim view of humanity to assume that opportunity for some must mean misery for others. I'll summarize responses to some of the criticisms of H-1B visas.

First, the National Science Foundation and other sources show foreign-born scientists and engineers are paid as much or more as their native counterparts.

Second, H-1B professionals change jobs all the time. This is confirmed by government data, employers, and attorneys. In fact, generally speaking, the majority of H-1B hires by large companies these days first worked for other employers.

Third, the back wages owed to H-1B employees among the small number of employers whose actions warranted investigation and government-imposed penalties average less than $6,000 per employee, no more than the typical government and legal fees paid by most employers to hire H-1B visa holders. And among those employers, few if any are well-known companies. Generally, of the small number of violations no more than 10 to 15 percent of H-1B violations in a year are found to be "willful" by the Department of Labor, indicating the extent of abuse is limited.

Fourth, if companies simply wanted to obtain services based only on wages, then U.S. companies would move all of their work outside the United States, since the median salary for a computer software engineer is $7,273 in Bangalore and $5,244 in Bombay, compared to $60,000 in Boston and $65,000 in New York, according to the Seattle-based market research firm PayScale.

Fifth, foreign-born individuals are hired in addition to—not instead of—native-born workers. The evidence indicates that native-born and foreign-born work together in companies all across America. In the nation's largest technology companies, typically no more than 5 to 10 percent of the employees work on H-1B visas at any one time. There are very few businesses with even a majority of workers in H-1B status and, indeed, any firm with more than 15 percent of its workforce made up of H-1Bs is subjected to more stringent labor rules under U.S. law.

Finally, it is not possible to conclude employers underpay H-1B visa holders based on prevailing wage data filed with the Department of Labor. Under Section 212(n)(1) of the Immigration and Nationality Act, an employer hiring an individual in H-1B status must pay at least "the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question" or "the prevailing wage level for the occupational classification in the area of employment, *whichever is greater . . .*" Therefore, any analysis that relies solely on prevailing wage data is inherently flawed.

The wage data maintained by the Department of Labor are simply listings of the minimum an employer can pay an H-1B professional for a particular job. The data showing what an employer actually pays an H-1B visa holder are contained on the I-129 forms filed with U.S. Citizenship and Immigration Services (USCIS). Unlike the prevailing wage data at DOL, the forms filed with USCIS are not normally available to the public. To examine this issue, the National Foundation for American Policy asked a respected law firm to select a random sample of H-1B cases from among its client base. They represented different occupations but the vast majority of the H-1Bs were in high technology fields. Among the 100 randomly selected cases, *the average actual wage was more than 22 percent higher than the prevailing wage*. This is not meant to be definitive proof that actual wages are always, on average, 22 percent higher than prevailing wages. However, it does show, along with the other evidence, that any analysis utilizing prevailing wage data to claim H-1B professionals are underpaid is not reliable.

RESEARCH SHOWS NO NEGATIVE IMPACT ON NATIVE PROFESSIONALS

Critics make assertions about the wages of H-1B professionals not out of concern for the H-1B visa holders but because the critics believe the competition harms native workers. As noted, it is possible that a policy that results in increased competition can affect some people but remain good policy nonetheless. For example, a moratorium on opening new restaurants in an area would help existing restaurant owners and their employees but would be bad for consumers and entrepreneurs who live nearby, as well as workers seeking opportunity. For that reason such protectionist policies are rare in America and their rarity is a primary reason for America's economic success relative to other nations. (See William W. Lewis, *The Power of Productivity*, University of Chicago Press, 2004.)

Still, there is little evidence that native information technology (IT) workers are harmed by an openness towards H-1B professionals. A study by Madeline Zavodny, a research economist at the Federal Reserve Bank of Atlanta, found, "H-1B workers [also] do not appear to depress contemporaneous earnings growth." As to unemployment, the study concluded that the entry of H-1B computer programmers "do not appear to have an adverse impact on contemporaneous unemployment rates." The study also noted that some results "do suggest a positive relationship between the number of LCA [Labor Condition] applications and the unemployment rate a year later." Zavodny concluded: "None of the results suggest that an influx of H-1Bs as proxied by Labor Condition Applications filed relative to total IT employment, lower contemporaneous average earnings. Indeed, many of the results indicate a positive, statistically significant relationship." This would mean H-1B employment is actually associated with better job conditions for natives, according to the study, which could be because H-1B professionals are complementary to native professionals.

RESEARCH ON THE WAGES OF FOREIGN-BORN PROFESSIONALS

Under the law, employers hiring H-1B professionals must pay the greater of the prevailing wage or "the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question." Employers sponsoring individuals for an employment-based immigrant visa must also pay employees at least the market wage.

Research by Paul E. Harrington, associate director of the Center for Labor Market Studies at Northeastern University, shows foreign-born and native professionals earn virtually identical salaries in math and science fields. Salaries in computer or math sciences were actually higher for the foreign-born among bachelor degree holders and doctoral degree holders and the same for recipients of master's degrees. He found similar salaries for natives and foreign-born at all three levels in life sciences, as well as at the doctoral level in engineering, and a greater edge for natives at the bachelor and master's level for engineering.

National Science Foundation data indicate that foreign-born professionals actually earn more than their native counterparts when controlled for age and the year a science or engineering undergraduate, master's, or doctorate degree is earned. The National Science Foundation reports: "Because foreign-born individuals in the labor force who have S&E (science and engineering) degrees are somewhat younger on average than natives, controlling for age and years since degree moves their salary differentials in a positive direction—in this case, making an initial earnings advantage over natives even larger—to 6.7 percent for foreign-born individuals with S&E bachelor's degrees and to 7.8 percent for those with S&E PhDs."

ENFORCEMENT AND FINES SHOW LITTLE EVIDENCE OF UNDERPAYMENT OF H-1BS

One way to obtain an upper-bound estimate of possible underpayment of wages to H-1B professionals is to examine Department of Labor (DOL) enforcement actions against employers. The evidence indicates that even among the highly stratified sample of the relatively small number of employers whose actions warranted investigation and government-imposed penalties (136 nationwide in 2004), the amount of back wages owed by even those employers is small. In fact, on average, it is no more than the typical government and legal fees paid by most employers to hire H-1B visa holders.

Between 1992 and 2004, in all DOL investigations, the average amount of back wages owed to an H-1B employee was $5,919. While it is true that the Department of Labor's enforcement of H-1Bs is primarily complaint-driven (though Congress has provided a mechanism for self-initiated DOL investigations), it is telling that among the cases investigated relatively few violations have been found to be labeled "willful" and/or result in debarment. DOL found employers either committed paperwork violations or misread employer obligations in a non-willful manner in the vast majority of the investigations conducted. In FY 2004, DOL found willful violations in only 11 percent (15 of 136) of its investigations that became final.

The violations typically found over the past dozen years rarely seem to be committed by any well-known companies. Of the $4.8 million owed in back wages in 2004, more than half (53 percent) came from findings against just 7 companies, none of whom are household names.

EMPLOYER LEGAL AND PROCESSING FEES FOR H-1BS

Under the law, U.S. employers are obligated to pay H-1B professionals the same wage as "all other individuals with similar experience and qualifications for the specific employment in question." But unlike with a native-born worker, the hiring costs to an employer do not end with the acceptance of a job offer. To hire a foreign national on an H-1B visa a U.S. employer must incur the following costs: approximately $2,500 in legal fees; $1,500 training/scholarship fee; $1,000 "premium processing" fee (not required but routinely used to overcome long processing times); a new $500 antifraud fee; a $190 immigration service fee; around $125 in additional incidental costs (Federal Express, etc.), and a $100 visa fee. These combined costs total $5,915.

While legal fees could be higher or lower depending on the law firm and the relationship with the employer, these figures do not include relocation costs, tax equalization, or additional in-house human resources costs associated with the extra work involved in employing foreign nationals. Nor do the costs include the expense of approximately $10,000 that can be incurred by sponsoring a foreign national for permanent residence (a green card), which many large technology companies, in particular, will do. Critics rarely take into account that companies incur many additional expenses beyond simply the wages paid to H-1B visa holders.

H-1B VISA HOLDERS POSSESS LABOR MOBILITY

While the Department of Labor is unlikely to catch all underpayment of wages, the greater protection for both H-1B professionals and other workers is the freedom to change employers and the competition for their services. A myth has been perpetuated that H-1B visa holders are "indentured servants." This is far from the truth. A sampling of U.S. employers and immigration lawyers found that individuals on H-1B visas change companies frequently. A number of S&P 500 companies related that the majority of their H-1B hires first worked for other employers. Independent immigration attorneys confirmed this. H-1B visa holders are individuals who understand the marketplace, exchange information with others in the field, and are highly sought by employers. In fact, Congress made it easier for those in H-1B status to change jobs by allowing movement to another employer before all paperwork is completed.

Data from the Department of Homeland Security show that in FY 2003 more H-1B applications were approved for "continuing" employment than for initial employment. While continuing employment also includes H-1B professionals receiving an "extension" to stay at the same employer for an additional three years, anecdotal evidence indicates most "continuing" employment involves an H-1B visa holder changing to a new employer.

Critics do not explain why H-1B professionals who are said to be underpaid would remain en masse with their employers when they could seek higher wages with competing firms. Some argue that H-1B visa holders sponsored for green cards are reluctant to change employers because they will lose their place in the queue for labor certification and permanent residence. To the extent this problem persists the solution is to:

1) Streamline the labor certification process (progress has been made via DOL's new PERM system).
2) Eliminate the labor certification backlog.
3) Allow premium processing (employers paying an extra fee) to speed green card processing at the immigration service.
4) Reduce the employment categories that require labor certification.
5) Expand the annual allotment of employment-based immigrant visas.

Major U.S. employers have supported such reforms, some of which were included in last year's Senate-passed budget bill, though the measures failed to become law by not surviving the reconciliation process with the House of Representatives.

NOT A FIXED NUMBER OF JOBS

Two misconceptions about immigration and labor markets affect people's understanding of high-skilled migration. First, is the "lump of labor" fallacy, or the belief only a fixed number of jobs exist in an economy, which would mean that any new entrant to the labor market would compete with existing workers for the same limited number of jobs. As the *Wall Street Journal* (February 4, 2006) noted recently about the U.S. economy, since "May of 2003, just under five million jobs have materialized. That is the equivalent of a new job for every worker in New Jersey." The number of jobs available in America is not a static number, nor is the amount of compensation paid to workers fixed. Both grow based on several factors, including labor force growth, technology, education, entrepreneurship, and research and development.

Within sectors, jobs increase or decrease from year to year based on product demand and other factors. However, it is easy to ignore that people work today in companies and industries that did not even exist in the early 1990s. "When I was involved in creating the first Internet browser in 1993, I can tell you how many Internet jobs there were, there were 200. I can tell you how many there are now, there's two million now," said Marc Andreessen, a founder of Netscape.

Job creation is also worth considering. Indian and Chinese entrepreneurs have founded nearly one-third of Silicon Valley's technology companies, according to research by University of California, Berkeley professor Annalee Saxenian. Given our immigration system, one can surmise a majority entered on H-1B visas. She writes, "Silicon Valley's new foreign-born entrepreneurs are highly educated professionals in dynamic and technologically sophisticated industries. And they have been extremely successful . . . By 2000, these companies collectively accounted for more than $19.5 billion in sales and 72,839 jobs."

While nobody wishes anyone to lose a job, it is a common phenomenon in America, and one that cannot be blamed on H-1Bs, L-1s, or any other visa category. As Dallas Federal Reserve Bank economist W. Michael Cox and his colleague Richard

Alm have explained, "New Bureau of Labor Statistics data covering the past decade show that job losses seem as common as sport utility vehicles on the highways. Annual job loss ranged from a low of 27 million in 1993 to a high of 35.4 million in 2001. Even in 2000, when the unemployment rate hit its lowest point of the 1990's expansion, 33 million jobs were eliminated." Cox and Alm further note, "The flip side is that, according to the labor bureau's figures, annual job gains ranged from 29.6 million in 1993 to 35.6 million in 1999. Day in and day out, workers quit their jobs or get fired, then move on to new positions. Companies start up, fail, downsize, upsize and fill the vacancies of those who left . . ." (*The New York Times*, November 7, 2003) While it is understandable why individuals come before Congress and plead to prevent competition for their company or employment category, attempts to limit competition do far more harm than good, as we have seen in countries with highly regulated labor markets.

REFORM OF EMPLOYMENT-BASED IMMIGRATION

Regardless of what action Congress takes on the H-1B visa cap, there will remain a glaring deficiency in U.S. immigration policy if no changes are made to the employment-based immigration quotas. Simply put, the current 140,000 annual quota for employment-based immigration is inadequate. The State Department's Visa Bulletin for April 2006 shows that an employer would have needed to submit an immigration application five years ago to obtain a green card today for a professional in the employment-based third-preference category. Visa numbers are current only for those who submitted their paperwork by May 2001 (and that wait is even longer for nationals of India). If Congress fails to address this issue, then the situation will grow worse each year.

To help ensure that outstanding international graduate students and other highly skilled individuals can stay to work in America, legislation in the Senate would increase the annual allotment of employment-based immigrant visas (green cards) and provide exemptions from the immigration quota for those with advanced degrees in science and engineering from U.S. universities who work three years in the United States prior to their application for adjustment of status. It also would provide greater flexibility for international graduate students in science and engineering seeking employment after graduation and would eliminate the requirement that such individuals must prove they will not stay or work in the United States when first applying for their student visa. This last provision would be a logical extension of the law Congress passed in 2004 to exempt up to 20,000 international graduate students from being counted against the annual limit on H-1B visas.

If the annual depletion of H-1B visas or the lack of green cards in the employment categories cause international students to believe they will not be able to work in the United States, then many will stop coming and will seek opportunities elsewhere. That would be a significant blow to U.S. companies and innovation in science and technical fields.

It is my understanding that some critics of H-1B visas favor at least some reforms aimed at increasing access to green cards for skilled professionals. Necessary reforms would include speeding or eliminating where possible labor certification. The Bush Administration can begin offering employers the option to pay an extra fee for quicker immigration processing—30 days, rather than the current long delays. Combined with quicker processing times for labor certification at the Department of Labor, this would allow U.S. employers to hire highly sought after individuals directly on green cards—something impossible to do today. The ability to hire high skilled personnel directly on green cards would provide U.S. companies with a significant competitive advantage over their foreign competitors. But Congress must increase the quota for employment-based immigrant visas for American firms to gain this competitive edge.

CONCLUSION

The costs of Congress failing to increase both the H-1B cap and employment-based immigrant quotas, unfortunately, will be measured by the job creation, innovation, and research that do not take place in the United States. And these costs will be felt beyond the immediate future.

At the 2004 Intel Science Talent Search, the nation's premier science competition for top high school students, I conducted interviews to determine the immigration background of the 40 finalists. The results were astounding. Two-thirds of the Intel Science Talent Search finalists were the children of immigrants. And even though new H-1B visa holders each year represent only 0.03 percent of the U.S. population, it turns out more of the children (18) had parents who entered the country on H-1B visas than had parents born in the United States (16). In other words, if critics

had their way, most of the coming generation's top scientists would not be here in the United States today—because we never would have allowed in their parents.

Mr. KING. Thank you, Mr. Anderson.

Now we'll recognize Mr. Huber for 5 minutes.

TESTIMONY OF DAVID HUBER, INFORMATION TECHNOLOGY PROFESSIONAL, CHICAGO, IL

Mr. HUBER. Mr. Chairman, Members of the Committee, I am David Huber, an IT professional whose life has been devastated by the H-1B program.

I am a University of Chicago graduate with more than 15 years of experience specializing in high-end complex networking deployments and network management operations. I have been directly responsible for about $1.4 billion in technology investments and/or related business operations.

My professional training includes Ameritech carrier broadband technologies, Cisco networking, Sun UNIX server technologies, Microsoft server networking, Novell networking, and Cisco Voice over Internet training.

I'm now working with a network architecture team on a new computing data center buildout project. When I graduated, savvy people told us that America needed a limitless supply of talented, innovative engineers for the emerging high-tech world. And for a while, it did.

During the 1990's, I held a series of increasingly important and difficult jobs. In 1999, I was hired as a consultant to work as a lead LAN/WAN network engineer for NASA's X-33 space shuttle project at Edwards Air Force Base. These credentials show that I'm a highly qualified network engineer. When you discuss America's need for highly trained, innovative workers and thinkers, I am one of them. Or at least I was, until 2002.

In mid 2002, I approached Bank One, now JPMorgan Chase, about working in network operations in Chicago. After receiving assurances I was within salary range for experienced technologists, a director told me that the job I was interested in paid about $30,000 less than what I had discussed with his colleague. I was totally perplexed by this sudden and unexpected reduction in wages.

I know now, by looking at their Labor Conditions Applications, that Bank One was hiring in mid 2002, just not hiring Americans. In 2002, Bank One received permission from the Department of Labor to hire 33 H-1B workers, 14 of whom were to work in Chicago, where I would have worked. These included jobs—these included jobs I was qualified to do.

At about the same time I was offered a job for $30,000 less than market rates, Bank One was telling the U.S. Government that they could not find qualified Americans to do the type of work I was already doing. One year later, Bank One got the go-ahead from the DOL to hire 120 H-1B workers, again in jobs that I'm qualified to do.

In May 2003, I was hired as a network consultant at ComEd, Chicago's utility company, to manage their communications network. This was not an entry-level position, but a senior-level net-

work management position. Three months after being hired, I was replaced. My job and new positions were filled by visa workers.

I met my replacement and helped train him. From talking to them, I learned that none of them were U.S. citizens, nor were they employed by ComEd. Two were from InSource Partners, a job shop located in Houston that specializes in placing foreign technical workers at American firms, including Bank One, where I had previously applied. One of the men confirmed that he had been hired for about one-third less than my salary.

At both Bank One and ComEd, those hired were less qualified than I was. They had less experience and had never managed a project before. They also barely spoke English and lacked the business demeanor necessary for that level of responsibility.

The ability to communicate is an essential part of the work I did, and my replacements could not communicate. This does not disparage them as individuals. After all, my Mandarin is sort of lousy. But it does call into question the decision to replace me with them.

When I hear companies complain that they can't find qualified Americans to fill high-tech jobs, I think of my replacements and wonder exactly what qualifications they are looking for.

There is another, more troubling aspect to my experience at ComEd. Two of the three individuals who replaced me were from China. As part of my job, I had access to all the data communication switches that control the electrical grid for the Chicago area. Anyone with this access could shut down the entre telecom operations for the power company and possibly the power grid itself.

It is very likely that my replacements will return to China, taking with them detailed knowledge about the inner workings of our electrical grid system. After the recent controversy over our ports, I can't believe that Congress thinks this is a good idea.

I'm a highly qualified network administrator with decades of professional experience and skills that are as current as anyone in the country. Yet between the summer of 2002 and January 2006, I worked for about 6½ months. After depleting my savings, I had to declare bankruptcy and was almost homeless.

During the same time, Congress allowed companies to hire over 300,000 foreign workers on H-1B visas because companies claimed they could not find qualified Americans. I am here today to tell you that this claim is not true.

There are thousands of unemployed Americans with the skills, drive, and creativity needed to thrive in the current marketplace. I know because I was one. Yet too many of us cannot find jobs because companies are turning to H-1B workers as a first choice before even advertising positions to Americans.

I would like to close by pointing out that the signers of the Declaration of Independence said that they would mutually pledge to each other their lives, their fortunes, and their sacred honor. The citizens of these United States are asking that the political and business leadership in this country live up to that pledge and not allow the lives and fortunes of their fellow American citizens to be compromised by these worker visa programs.

Thank you for giving me an opportunity to be heard today and to share my story with you. I hope it will help you better understand the real H-1B program.

[The prepared statement of Mr. Huber follows:]

PREPARED STATEMENT OF DAVID HUBER

Mr. Chairman and distinguished members of the House Judiciary Committee's Subcommittee on Immigration, Border Security and Claims, my name is David Huber and I am an Information Technology Network Professional who has first-hand experience with the H-1B visa program. I am here, not as an expert on how the H-1B program is supposed to work. I am not an economist who can recite all of the benefits the H-1B program is supposed to be bringing to our country. Rather, I am here today as an American citizen and an engineer whose life has been devastated by that program.

Before I get to my experiences with the H-1B program, I want to give you some background about myself. I am a University of Chicago-educated IT professional with more than fifteen years of experience, specializing in high-end, complex networking deployments, and network management/operations. I have been hands-on, directly responsible for about $1.4 Billion in technology investments and business operations. Currently, I am working with a network architecture team on a new computing data center build-out project.

In order to rise to this level in my chosen profession, I had to make tremendous short-term financial and time-intensive sacrifices to educate myself and prepare myself for the jobs of the future in our American economy that was changing into a knowledge-intensive, high-tech service economy. We all read about these changes and predictions throughout the 1970s and 1980s. I knew that if I wanted to be able to participate in such an economy, I would have to be college-educated, and be prepared to do a lifetime of constant learning.

So, when I knew my parents didn't have the money to pay for my college, worked many jobs to put myself through college, including working as an UPS dockworker for six years. I went back to college at the University of Chicago, earning a BA in 1988. I worked one to three jobs while pursuing my degree, including several computing jobs at the University. I also worked extensively with pre-Web electronic publishing before moving into networking technologies. My professional training has included Ameritech carrier broadband technologies; Cisco networking; Sun UNIX server technologies; Microsoft server networking; Novell networking; EMC SAN/NAS training; Cisco Voice over Internet Protocol training.

When I graduated, savvy people thought that working in high tech would be a certain ticket to prosperity. We were told that America needed a limitless supply of talented, innovative high-tech engineers for the emerging high-tech world. And for a while, it did.

During the 1990's I held several increasingly difficult and important jobs. In 1999 I was hired as a consultant to work as the lead LAN/WAN network engineer for NASA's X-33 space shuttle project (ground launch network) at Edwards Air Force Base. This was a joint $1 billion Skunkworks/NASA project which I took over and managed, successfully implementing a new IP addressing system to integrate the launch network with NASA's intranet. I am highlighting this to demonstrate that I was, and still am, among the top network engineers in the country. When you discuss America's need for highly-trained, highly-skilled innovative workers and thinkers, I am one of them. Or, at least I was until 2002.

In early 2002, I approached Bank One (now JP Morgan Chase) about working in Network Operations or Planning in Chicago. After receiving assurances that I was within the salary range for experienced technologists, an HR director in Delaware told me that the job I was interested in paid about 30K less than what I had discussed with his colleague in Ohio. I was totally perplexed by this sudden and unexpected reduction in wages.

It took me a year to find out why the Bank One job didn't work out. It turns out that the company had filled the position with a non-American worker, hired through a job-shop.

I have since learned more about Bank One. The Labor Conditions Applications (LCAs) filed by the bank show that they were hiring in mid-2002, just not hiring American citizens. In 2002 Bank One received permission from the Department of Labor to hire 33 H-1B workers, 14 of whom were to work in Chicago where I would have worked. These included Technology Project Managers and Applications Development Analysts—jobs that I was, and am, qualified to do. At about the same time I was offered a job for $30,000 less than market rates, Bank One was telling the U.S. government that they could not find qualified Americans to do the type of work I was already doing.

One year later, Bank One got the go ahead from the Department of Labor to hire another 120 H-1B workers, most in technology positions, again in jobs that I am qualified to do. They still had my resume on file.

In May 2003 I was hired as a network consultant at Commonwealth Edison, the power utility company responsible for the electrical grid covering most of the Chicago metropolitan area. I was hired to manage their communications network, including the systems in their headquarters in downtown Chicago. This was not an entry-level position, but a senior-level systems network management position.

Three months after being hired, I was replaced. Com Ed brought in three new employees to run their network, replacing myself. I met my replacements and helped train one of them. I do not blame them for what happened.

From talking to them, I learned that none of them were U.S. citizens. Nor were they employed by Com Ed. Two were from InSource Partners, a job shop located in Houston that specializes in placing foreign technical workers at American firms. One of them confirmed that the three had been hired for about one-third less than my salary.

In both instances at Bank One and Com Ed those hired were less qualified than I was. They had less experience and had never managed a project before. They also barely spoke English and lacked the temperament and business demeanor necessary for that level of responsibility—not the sort of employees you would expect for jobs demanding creative problem solving and excellent communication skills.

Now, I want to be clear here—I do not think their lack of English skills made them bad people. In fact, I feel no ill-will towards any of them. Each just wanted to earn a living and build a life for himself and his family in America—something I understand completely.

Nevertheless the ability to communicate is an essential part of the work I did—and my replacements could not communicate. This does not disparage them as individuals—after all, my Mandarin is lousy—but it does call into question the decision to replace me with them. When I hear companies complain that they can't find "qualified" Americans to fill high-tech jobs, I think of my replacements and wonder exactly what qualifications they are looking for. Mr. John Miano, who is also testifying here today, may have an answer to that question.

There is another, more troubling aspect to my experience at Com Ed. Two of the three individuals who replaced me were from China. I do not care about their ethnicity. But I do think that it is noteworthy that two of these men were foreign nationals from a country that our military views as a threat.

This is important because, as a part of my job, I had access to all of the data communication switches that control the electrical grid for the entire Chicago metropolitan area. This access gives one the ability to shut down the entire telecomm/data comm. operations for the power company, and possibly the power grid itself. I have to wonder about the wisdom of replacing American citizens with foreign nations in highly sensitive positions like this. It is very likely that my replacements returned to China after six years, taking with them detailed knowledge about the inner workings of our electrical grid system.

Why does Congress think this is a good idea?

Between the summer of 2002 and January 2006, I had only worked for a total of about 6.5 months. I fully depleted my savings, and was nearly homeless on two or three occasions. On Thanksgiving 2004, I had an apple, baked beans and water for dinner. Since I could no longer afford my Cobra premiums, I am very fortunate I had no medical emergencies to contend with. Otherwise, I truly would have ended up being indigent.

I am a highly-qualified network administrator with decades of professional experience and skills that are as current as anyone in the country. Yet for nearly three years, I was unemployable. During this period, Congress allowed companies to hire over 300,000 foreign workers on H-1B visas because companies claimed they could not find qualified Americans.

I am here before you today to tell you that this claim is not true.

There are thousands of unemployed Americans with the skills, drive and creativity to needed to thrive in the current marketplace. I know, because I was one. Yet too many of us cannot find jobs because companies are turning to H-1B workers as a first choice, before even advertising open positions to American workers. The H-1B program allows companies to hire 85,000 cheap, disposable workers each year before even looking for Americans.

Companies can do this because current law does not require most H-1B employers to prove they can't find an American before using an H-1B. In fact, the law doesn't even require companies to look. Without a labor market test, companies can, and do, use the program to bypass local labor markets entirely and replace qualified Americans with less qualified foreign workers.

H-1B workers are allowed to stay in the United States for up to 6 years—but only if their employers permit them. Since the visas themselves are owned by the sponsoring companies, H-1B workers are often treated as indentured servant, dependent upon their employers' good graces to stay in our country.

This is not just bad policy, it is also wrong. It is wrong for the Untied States to encourage talented people to come to the U.S. and then deny them access to the freedoms the rest of us enjoy. And it is wrong to force American workers to compete against such a program. The H-1B program tilts the playing field against workers, both American and foreign, in favor of companies.

As the program functions now, companies have strong incentives to favor H-1B workers over American workers. They can and they do give hiring preference to non-Americans, and even replace qualified American workers with H-1B workers. I know because it happened to me twice.

I urge Congress to take a hard look at how the H-1B program actually functions. I urge you to look at the types of jobs that are actually being filled with the visas. I urge you to look at the wage levels the Department of Labor routinely approves for H-1B positions. And I urge you to listen to workers like myself who have suffered economically as a result of H-1Bs.

If you do, you will learn that the visa program is far different than the one described by its supporters. The real H-1B program has more to do with providing companies with cheap labor, and little to do with making America more competitive.

I would like to close by pointing out that the signers of the Declaration of Independence said that they would mutually pledge to each other, their lives, their fortunes, and their sacred honor.

The Citizens of these United States are asking that the political and business leadership in this great country live up to that pledge, and not allow the lives and the fortunes of American Citizens to be compromised by these worker visa programs.

Thank you for giving me an opportunity to be heard today and to share my story with you. I hope it will help you better understand the real H-1B program.

Mr. KING. Thank you for your testimony, Mr. Huber.

And now recognize Dr. Baker for 5 minutes.

TESTIMONY OF DELBERT BAKER, PRESIDENT, OAKWOOD COLLEGE

Mr. BAKER. Thank you.

It is my privilege this morning to make some remarks concerning this very important topic. I was reflecting that last evening, I stayed at the Hilton, and our Vice President was there. And he—I saw his remarks on Fox News, and he spoke about a very humorous situation about some of the sensitive issues we're dealing with in Government.

I thought it was an interesting approach because even though this subject is fraught with so many heavy overtures, as was brought out earlier, there is an aspect to it that I think that we must look at in terms of dealing with young people and dealing with students and dealing with those who are disadvantaged. And that is the aspect of how can we get more people in the pipeline? The Congresswoman spoke about this. I want to reiterate this point.

I am president of a historically Black college in Huntsville, Alabama. We're about 10 miles from Redstone Arsenal and Marshall Space Flight Center-NASA. We have a variety of collaborations with these institutions, these organizations.

And I have noted that the word "globalization" and the whole issue of diversity is often misunderstood, and people have the wrong perception in many circles. It's not a four-letter word. It's a 13-letter word, if one counts the letters in it. And in fact, you will find that it can work to our advantage in so many different ways.

I'm not speaking specifically to the issue of H-1B, being for it or against it. What I'm doing is bringing another component in, saying that there needs to be a complementary program that goes along with this particular program that is in operation.

And that is the program is one that deliberately does a number of factors. Number one, without question, society needs to have understanding of not to fear the H-1B. Many people believe that all of our jobs and our well-being is threatened by this program.

There needs to be a very clear, deliberate plan to educate the public through a variety of ways that this can help us when there is a shortage of jobs. At the same time, there must be controls put in place, as has been brought out earlier.

But beside that, there's also the aspect of not simply awareness, but there needs to be some training of our faculty, our staffs, business persons, community persons on how to facilitate the process of getting the underrepresented, those who are disadvantaged into the pipeline so we, in fact, can have people, Americans to fill these positions that right now, in many cases, we're having to go outside for.

So there is the awareness, the training. There's also the recruiting. We have a number of—a variety of programs in effect right now with the National Science Foundation, with the Department of Defense, NASA, UNCF, SAIC. A variety of corporations and organizations have programs that are attracting students. They're not enough.

As Mr. Anderson brought out earlier, we have so many of our students who are not choosing the science, technology, math, engineering area, and we need to redirect this workforce—these people toward the workforce needs in that area. So we've got to recruit creative programs that offer scholarships, that offer incentives for students to be a part of this would be a great asset I know from the perspective of an educator.

And then there is the aspect of accountability. Any program that's started must have clear factors that make people accountable. And of course, that would have to do that as well.

And finally, I would say that somehow in the message we have, it's got to be communicated that with the H-1B and the other programs, that we're not competing against foreigners or immigrants. At my school, we have a variety of our faculty and staff are from other countries, and our student body, we have more than 40 countries represented on our campus. And so, we celebrate the diversity. We celebrate the globalization there.

But yet, at the same time, we have to understand the needs of people in our own home country and how we have to develop workers to be ready to fill these positions. So there's got to be this message of collaboration and cooperation that's sent out as well.

In conclusion, I believe that this program, these elements I have just described—this Committee supporting it, this Committee backing something like this, putting the word out—that we need to do more in terms of preparing our young people, directing them to these important areas.

I end by simply sharing a story I heard some time ago. It was about a man who lived in Nigeria, West Africa. His name was Modupe. He lived on a high mountain, and in the valley below

Modupe, there was a village of people who he loved very deeply. He once had been a part of them, but he moved by himself after his wife had died, and he lived there.

Through this valley, they had a river flowing. And this river would flow there, and the people supported themselves by this river. They farmed from it. They washed their clothes in it. They drank from it.

One day, Modupe, when he was on this mountain, he looked down, and he saw that the dam that was holding, controlling this river was about to burst. It had been a heavy rain. And he realized that I've got to do something to help these people, but he didn't know how. He didn't have time to communicate with them.

Then an idea came to him, and he rushed quickly, and he went and he set his house on fire. And when Modupe set his house on fire, the people in the village, they looked up there. And they saw him, and they said, "There our friend is. We must help our friend."

And they set the alarm, and all of the women, boys and girls, and men rushed to the top of the mountain to help their friend Modupe, whose house was burning. When they got there, they realized what had happened. They looked down. They saw the damn had burst, and the whole village was destroyed. And they began to cry, and they felt so bad about it.

And then they realized that something marvelous had happened. Modupe said to them, "Don't worry. Because what has happened is by helping someone else, you have, in fact, saved your friend."

I believe that if we can direct workers and move people in this area, we will, in fact, strengthen, help, and even help to save our country and its workforce.

Thank you very much.

[The prepared statement of Mr. Baker follows:]

PREPARED STATEMENT OF DELBERT W. BAKER

Good Morning, my name is Delbert W. Baker. Thank you to Congresswoman Sheila Jackson Lee for the opportunity to speak to this committee.

OAKWOOD COLLEGE, A 110-YEAR-OLD HISTORICALLY BLACK COLLEGE

I am the President of Oakwood College, an Historically Black liberal arts College, located approximately ten miles from NASA-Marshall Space Flight Center and the Redstone Arsenal in Huntsville, Alabama. Established in 1896, Oakwood College has the distinction of being one of the top ten institutions in the country that sends minority students to graduate from medical school. Enrolling approximately 1,800 students, Oakwood College is one of the thirty-nine colleges in The College Fund/UNCF and one of the 120 member colleges of NAFEO—the National Association for Equal Opportunity in Higher Education.

Oakwood College has a history of success with a student population that matriculates and persists to graduation. The College has been able to accomplish this due to a variety of factors, one of which has been the support that it has received from programs that are designed to increase student participation in fields that have minority under-representation. These programs have been supported by organizations like CSEMS, the Computer Science, Engineering and Mathematics Scholarships programs sponsored through the National Science Foundation (NSF) and Department of Labor (DOL).

COMPLIMENTARY H-1B PROGRAM NEEDED

Today I am appearing to give testimony from a unique perspective. My objective is to make comments about the H-1B program, and how support of H-1B *should not obviate* efforts to adequately prepare U.S. students and particularly under-represented minorities, women, persons who are physically challenged and those who are economically and socially disadvantaged to successfully take their place in the

American workforce. More specifically, the intent of my comments is to reason that *because of the reality of H-1B program*, government and businesses should redouble efforts to assist those under-represented U.S. citizens who are seeking to, or potentially can, rise to fill positions currently targeted by the H-1B program. This objective can best be facilitated by establishing a complementary empowering program.

Research supports the fact that despite gains made in past years, under-represented Americans, referred to earlier, remain seriously disadvantaged in their pursuit of careers in the areas of science, math, engineering, and technology. These groups still remain conspicuously absent in businesses, and corporate settings where science, engineering, and mathematical skills are required. With vision and the proper support, this reality can be reversed.

THE OBJECTIVES OF THE H-1B PROGRAM

I am an educator. My role is to prepare students for the workplace, to prepare an educated workforce to meet the demands of a technologically complex and knowledge-based economy. However, I am also acutely aware of the immediate need that the U.S. has for highly trained, specialized workers that the H-1B Visa program was established to meet. The objectives of the program have been widely articulated: the need to supply educated, specialized guest workers, while protecting American jobs; the need to protect the rights of guest workers, while utilizing them on a short-term and limited basis; the need to get necessary jobs done, while not displacing or adversely affecting the wages or working conditions of U.S. workers.

SAFEGUARDING PRINCIPLES FOR THE H-1B PROGRAM

There is an equal rationale for prevailing principles to govern and safeguard the U.S. approach to the H-1B program. These principles encompass, but are not limited to:

1) *A deliberate communication to the American worker that H-1B legislation does not lessen concern for the American worker.* The government should avoid the perception that all government and industry want to do is fill jobs and produce goods and services in order to keep a competitive economic edge. H-1B legislation and enactments must communicate to all Americans that America will diligently invest in the development, maintenance, and enhancement of all sectors of the American workforce.

2) *Protections for H-1B workers that ensure their dignity and civil rights will be preserved.* These protections must certainly include measures to prevent exploitation, hiring H-1B workers at prevailing wage standards, whistle-blower protection for those who expose illegal or immoral practices, and measures to detect and avoid visa fraud.

3) *A unifying operating principle that views H-1B workers and permanent American workers as partners and not competitive enemies.*

A JANUSIAN APPROACH TO THE H-1B DILEMMA

With that said, I move to the major reason for my testimony. The perspective that I bring is Janusian—a term that has become popular in educational circles. In Roman mythology, Janus was the god of gates, doors, beginnings, and endings. He was depicted with two faces looking in opposite directions. Thus, Janusian thinking says one can simultaneously keep in mind that which may seem like opposing perspectives. We are Janusian in our thinking when we can, function in the context of and use paradoxical conditions to solve vexing problems and construct important paradigms and innovative solutions.

The H-1B dilemma requires Janusian thinking. While there is a need for a viable, reasoned H-1B program, our government leaders must equally ensure that everything possible is being done to adequately prepare American citizens to be strategic and productive workers for the future. These balancing concerns must be assiduously pursued by legislators, educators, government and public servants, and the American public in order to ensure a prepared U.S. workforce for the future, so that American labor will not continue to be dependent on essential professionals by necessity or lack of preparation.

One of the best ways to ensure that we are prepared for future labor demands and complexities of a global economy is through proper attention to education. I support educational initiatives for all students, but we must assiduously promote and protect programs that prepare minority students in technology, science, math, and engineering.

Fortunately, there are models and precedence for this approach. As I stated in my introduction, the programs that have been implemented at Oakwood College have

helped us prepare minority students. Programs sponsored by the Government can and do work.

WORKING MODELS OF EMPOWERMENT PROGRAMS

This is borne out by programs, grants, and contracts with federal agencies such as: the *Department of Defense* (Enhancing Math and Science Education; Expanding Research Opportunities for Undergraduate Students), the *National Institutes of Health* (RISE-I-CARE = Research Initiative for Scientific Enhancement-Improving Curriculum by Academic and Research); *National Science Foundation* (ACER = Active Chemical Education through Research); MGE = Minority Graduate Education Program and Title III Funds, and in collaboration with *NASA* (MISE = Minorities in Science and Engineering; PAIR = Partnership Award for the Integration of Research); *UNCF Special Programs* (SEEDS = Strategies for Ecology Development and Sustainability). More than 100 students in the STEM (science, technology, engineering, and math) programs have benefited from these entities; and our graduates in the natural sciences are pursuing and obtaining non-medical M.S. and Ph.D. degrees. These programs are complimented by private industries like *SAIC* (Cost Plus Award Fee Subcontract to NASA).

These programs work. Many of the successes and positive outcomes can be directly linked to Congressional programs and presidential actions, like the one taken by President Bush in 2002 when he signed the Presidents' Executive Order 13256 . . . "regarding the needs of Historically Black Colleges and Universities in the areas of infrastructure, academic programs, and faculty and institutional development . . . , strengthening fiscal stability and financial management, and improving institutional infrastructure, including the use of technology, to ensure the long-term viability and enhancement of these institutions."

POTENTIAL OF THE ATRAC APPROACH

Here is a specific recommendation for your consideration. This recommendation provides a foundation, a platform for broader, more creative and comprehensive initiatives.

The recommendation is that the government earmark funds to establish a pilot program to compliment the H-1B program. This foundational program would include but not be limited to the following five components: AWARENESS, TRAINING, RECRUITMENT, ACCOUNTABILITY, COOPERATION (ATRAC):

1) AWARENESS: That a plan be developed and implemented to educate the general public, our K-12 system, and our institutions of higher learning on the need to aggressively prepare students to assume careers in science, math, engineering and technology. These programs must be laser-focused and insistent. Special efforts must be well-placed to encourage women, under- represented ethnic minorities, persons who are physically challenged and Americans who are socially and economically disadvantaged.

- We are missing the valuable contributions that these groups can make to our national economy and landscape by allowing their numbers to continue to be miniscule in professional graduate education, research, and in business management.

I have no doubt that such a public awareness campaign for education can be effective if it is undertaken with persistence. Through public relations efforts in America we have begun to see changes in the way our citizens eat, exercise, and watch their weight. We have initiated the Amber alert system that mobilizes communities when a child is lost or abducted. We have the Homeland Security Advisory System, color-coded to inform society of the potential threat conditions. The public has become aware of a vast, and heretofore unrecognized, need for ethics in business and politics through a public, informal education received at the hand of legal interventions and court trials. Equally, we must develop strategies that educate the public about the benefits and necessity of preparing students in vital areas where current preparation is lacking.

2) TRAINING: That oversight organizations begin and/or continue to provide or increase funding for programs that train educators and institutions which actively prepare students for targeted professions. Many HBCUs and other minority-serving institutions are struggling to attract, recruit, and retain students with uncultivated skill and talent. Professors, administrators, staff, and institutional researchers must have on-going training in best practices, benchmarking strategies and future trends if they are to be expected to meet current issues and address new challenges.

Programs like the ones that are currently in place in the National Science Foundation and Department of Labor must be expanded and include "train the trainer"

components. These programs must be accessible to all institutions, particularly minority-serving institutions. While programs to train faculty in colleges and universities are vital, we must not fail to adopt the forward thinking that includes training for K-12 teachers so that the seeds for career possibilities in technical areas can be planted in students' minds as early as possible.

3) RECRUIT: Well constructed, intentional programs should be developed in all appropriate agencies to attract and recruit under-represented students. As referenced above, the Presidents' Executive Order as implemented through the White House's initiative for Historically Black Colleges and Universities is a good model on how this might be implemented. Conventional wisdom most certainly includes scholarship and grant opportunities to promising students. Scholarship programs provide a compelling incentive to students and their value cannot be minimized.

However, the challenge, in our education partnership, is to devise new ways to motivate students in critical areas. The programs of the last 30 years—Youth Motivation Task Force (YMTF), Black Executive Exchange Program (BEEP), INROADS (that emphasizes Selection, Education and Training, and Performance)—have recently been complimented by the US Dream Academy and MiFuturo to be more representative of the full diversity of the under-represented segments of our society in a highly technological global village. The goals of the above initiatives and what I am advocating in relation to H-1Bcan share in common some of the same content objectives:

1. Practical experiences in self-esteem and character building.
2. Integrating culturally diverse mentors and role models into the education equation.
3. Peer tutoring.
4. Increased technology literacy.
5. Career coaching and access to post undergraduate providers offering internships, entry level positions, and graduate education.
6. Community Assistance and Service Learning.
7. Leadership.

Of course, the best educational culture provides learning that can be applied and in real time. Hence, modern techniques, ranging from interactive web portals to mentors to onsite learning centers will make it possible to fill the gap, develop competency, and respond to student needs more selectively.

I advocate that we evolve learning communities which collaborate in the delivery of relevant, innovative cutting-edge curricula and community partnership. We must deploy intrusive strategy that seeks to customize educational offering to meet the unique needs of a diverse student population, high tech society, and future workforce.

4) ACCOUNTABILITY: The programs and plans, to be effective, must be specific, measurable, and have accountability imbedded. With intentional oversight and with the appropriate bodies to insure that they are accomplishing their intended objectives, this complementing program could also serve to deflect criticism of the H-1B program. More importantly it would intentionally be investing in the future potential of our citizens, be a deterrent to crime and "drop-outism," and develop workers for the targeted areas.

5) COOPERATION AND COLLABORATION: The final point of this proposed H-1B program is a values-based PR component. The H-1B program will be best served if it operates in a context of cooperation and collaboration. The current H-1B program need not be surrounded with suspicion and whispers of conspiracy. Establishing a ATRAC pilot program would help to allay suspicion by assisting U.S. citizens who will be impacted by the H-1B program. It would allow the H-1B platform to move from a reactive position to a proactive one.

CONCLUSION: A WIN-WIN OUTCOME

All aspects of the ATRAC program would send the message that historically disadvantaged and under-represented groups are in cooperation and collaboration rather than in competition with the benefactors of the H-1B program. Everyone benefits. It provides a firm foundation for citizens and immigrants to work together for a stronger America and a stronger global community.

In conclusion, this ATRAC approach could facilitate a win-win situation. I appeal to this Committee to seriously consider endorsing this type of programmatic approach that will ensure the future of under-represented American workers while simultaneously utilizing the H-1B Program to meet current needs.

Thank you for the opportunity to testify and for your consideration of this approach. I trust these ideals will be useable.

Mr. KING. Thank you, Dr. Baker.

And I will recognize myself for 5 minutes and start with you on that—on that subject.

I just look back in about 1959, when Sputnik went up and America went into a panic. And most of us students that were sitting in a classroom at that time—and I was in about sixth grade—whether we knew it or not, we were going down the path of science and math and physics and chemistry.

And today, it'd be computer technology and some of the other IT if this happened. We went into a national mobilization because we realized that we were maybe behind in the science and technology.

And you talked about educating foreign students as well as American students and trying to find a balance between that.

Mr. BAKER. That's correct.

Mr. KING. That's the most difficult question that we have to address here. In fact, it is the central question for this hearing and for this Committee and for the Congress as a whole.

But I—I'd pose this question to you, and that is, you're educating foreign students as well.

Mr. BAKER. That's correct.

Mr. KING. Some of them will stay in this country. Some of them will go back to their home country. What happens to the second generation of those engineers and those scientists and those technology majors when they go back to their home country? Do they become educators and professors there?

Mr. BAKER. Well, that's an excellent question, Mr. Chairman.

We actually encourage the foreign students who come to Oakwood to, in fact, return to their home country. We're concerned about the "brain drain" and the fact that they're leaving, in many cases, the Caribbean, Africa, South America. So we encourage them to go back.

We have very little control over that. America is very appealing. Too many of them, often they don't want to go back. But at least this is something we stress.

And I put in the record this Janusian concept, the idea that the god Janus looked two directions at one time. This is a real dilemma, and it's something that we all struggle with. That they are appealed—they see so much in the U.S. that they want to come here for, but yet, at the same time, we encourage them to go back and help. And that, ultimately, it becomes a personal decision.

Mr. KING. But as this number of students, foreign students that we're educating on H-1B visas and as those numbers increase and those percentages go up from half to two-thirds and maybe higher than that, as Mr. Anderson testified as well, and if they go back to their home country and they become educators, don't they establish universities there, and they educate that there?

The next generation of those students won't have a need to come to the United States to pick up that education. It will be there in their home country. Now that's a good thing for that country because it projects American values and technology and lifts their economy.

But what do we do if we're left here, and we're not educating our American workers? I guess I'd submit this, that using your analogy and your story, we may be building our village in a flood plain here by educating foreign workers, sending them back to their home country, and not educating American citizens that are here in their place instead.

And that's my concern. Would you comment on that?

Mr. BAKER. Well, I think that's a very good point. I think that there's no question about it. We've got to educate our own people as well. I don't think we should be exclusive.

And like, when someone knew I was coming here, they knew that I was coming to this hearing, and one of our faculty approached me and said, you know, "Dr. Baker, we're really concerned that"—they asked me to make a simple message. I didn't put this in the record. But they said, "Would you help them to make it so that it's not so bureaucratic?"

It's so difficult. They say we, in fact, can help to train workers, train your people, Americans, as well as people who go back to their country. So there is a need for us to stay here as well.

I do believe, though, that there is a need, Mr. Chairman, for them to go back and to help their own people, to build and to establish and move on from there.

Mr. KING. At the time, find a balance.

Mr. Anderson, how would you answer that question? You've asked for 195,000 H-1B visas. Is that—is that number something that's been empirically arrived at by a study across America here, or is it a political number? And would you be willing to support a higher number or a lower number in subsequent years?

Mr. ANDERSON. I mean, that's a good question. I mean, basically, as Congressman Smith knows—he's been very involved in this issue—I mean, a lot of these numbers that have been picked have been basically political compromise numbers.

The reason I mention 195,000 is that's something that was shown to be acceptable not very long ago, and it basically worked for its purpose because it was able to pass the Congress, but also there were plenty—there were enough visas there that you didn't see these long hiring delays. And so, you didn't have the situation where, literally—as I point out in the testimony—people cannot be hired unless they're on—hired on an H-1B visa.

And so, you have the situation where if someone is graduating from a college campus, except in some circumstances, they basically are not going to be hired—be able to be hired—in the United States.

Mr. KING. But Mr. Anderson, how would you answer the question of if the United States has moved our numbers of our—in our science and technology educational fields up to where, as your testimony, 50 percent to two-thirds of these students are foreign students, and if a significant percentage of those leave—we were able to educate American students here to meet the technology demands in 1959. And we went to the Moon 10 years later.

Now, what's the reason why we can't educate American students to fill these roles now? And this supply and demand question that's out there that Mr. Miano testified to and also Mr. Huber testified

to, a $30,000 reduction in those wages, wouldn't you hire an engineer for a third less if you can?

And those kind of questions, how does supply and demand work into this equation if we're going to continue to bring in cheap labor? And I'll let you answer the question, and then we're out of time.

Mr. ANDERSON. Sure. Well, I think that the basic issue is we really don't have a fixed number of jobs. I mean, I think that one of the reasons why we aren't finding enough Americans in these fields is that you've seen an expanding economy, particularly in these fields.

I mean, Marc Andreessen, the founder of Netscape, talks about how in 1993, he could tell you that there were about 200 people working on jobs related to the Internet. And about 10 years later, there are about 2 million. So some of this concern about having enough Americans to fill these jobs is, in some cases, a story of that we've had an expanding economy and expanding in these fields.

Mr. KING. Thank you, Mr. Anderson.

And I yield back the balance of my time and recognize Mr. Berman for 5 minutes.

Mr. BERMAN. It seems like there's sort of three separate strains here. One is, Mr. Anderson, a lot of impressive leaders in different kinds of technology industries. Others are saying we are getting strangled by the cap on H-1B. We are being forced to outsource and look elsewhere and lose in the competition for creative and innovative people because of the cap on H-1B.

Dr. Baker is saying why don't we fix part of this problem by incentivizing more people to go into the sciences and math and the computer sciences so we can provide these wonderful opportunities for people who are in this country, growing in this country, being educated in this country? There are—there is opportunities out there, and we don't do enough to drive, through policies at the local and Federal level, people into that area.

And then you have, in a sense, Mr. Miano and Mr. Huber, from personal experience, saying there are people out there. These people you're hearing from, Stuart Anderson, the business leaders clamoring for the increase in the cap, they are really imitating what has gone on in the context of employers of relatively low-skilled workers.

They're looking for ways to cut their costs and maximize their profits by treating this as a—as a wage-cutting, benefit-limiting method of getting the same kind of help they could otherwise get through the normal marketplace by sort of creating this force channel of imported labor, who will allow them to do what they want to do cheaper and thereby sort of alter the market in that context.

I'd like to hear Stuart Anderson respond sort of to—to that point of Mr. Miano's and Mr. Huber's testimony.

Mr. ANDERSON. Sure. Well, I mean, as was pointed out in the opening statements that, you know, the law requires that an employer has to pay the higher of the prevailing wage or the actual wage paid to other individuals.

There was a compromise struck in 1998——

Mr. BERMAN. But Mr. Miano says that ain't happening.

Mr. ANDERSON. Right. Well, let me—I can talk about it, his study. I mean, I think there's basically two problems with Mr. Miano's study, and I'm sure he did the study in good faith.

But first of all, he looked at prevailing wage data, which was publicly available at the Department of Labor, but that's not necessarily what companies pay. Companies pay the higher of that or the actual wage paid to other people with the same qualifications and education at their workplace. And that information is filed with the immigration service.

And we looked at—we asked a law firm to do—just to test this proposition and to do a sample of 100 cases and found that it was about 22 percent higher.

Mr. BERMAN. So you mean the Department of Labor statistics don't actually reflect——

Mr. ANDERSON. No, they don't reflect what someone pays. That's the bare minimum. You have to pay the higher of the prevailing wage or the actual wage.

And then what Mr. Miano does is compare computer programmers——

Mr. BERMAN. Wait, wait, wait, wait. The prevailing wage or actual wage?

Mr. ANDERSON. Or the actual wage that you paid other people like at your firm who have a similar education. For example, if you have a lawyer with 10 years experience that you're hiring, you have to—you have to also, you know, pay them the same as you're paying a lawyer that has 10 years at your firm.

And so, that's the second problem on the study is he compares the computer programmers that are newly hired to the average wage of all computer programmers in the United States, and the statistic actually includes bonuses, for example. And you know, to compare it to all new hires, it would be no more fair than, say, comparing—I mean, I look at the congressional staff. A lot of friendly faces. Been here a long time.

If you were to compare newly hired congressional staff to the average wage of all congressional legislative staff in the Congress, you would basically come to the conclusion that Members of Congress are somehow exploiting all their workers because the salary for newly hired people on legislative staff is much less than the average wage for all congressional staff.

Now I know none of the workers here feel they are exploited, but—but the point is, you know, it's no more fair to blame Members of Congress that they don't pay as much for every single new hire as they pay—you know, as it would be to blame all technology companies that every new hire doesn't get paid.

Again, the main point is, is that you cannot hire anyone today directly on a green card. You know, it takes—it's 5 years.

Mr. BERMAN. Although let me—can I just interject one thought here? In a weird way, this whole fight about H-1B is a funny kind of fight. Isn't the real answer to fix the underlying regular immigration system, the distribution of visas and all of that, rather than continue to rely on these temporary programs for essentially permanent positions?

Mr. ANDERSON. I mean, I think you would still—even if you completely fixed the green card thing, you'd still want to have some

number of H-1Bs, you know, for people who come in for projects and people who may not be a good fit for staying here.

But I completely agree and I know that there's others who agree that it would be a good idea if you had enough employment-based green cards and a process where someone could get hired in, say, 30 to 60 days. They get hired on a green card. It would be an incredible competitive advantage for U.S. companies that they could hire people directly on a green card.

But the reality is that, you know, no one can start—you know, it's a 5-year wait, and no one can, you know, get hired today. And they say, you know, "Come back on March 30, 2011, and Mary will show you around the office." It just doesn't work that way. So, in reality, companies have to face with what they're faced with.

Mr. KING. The gentleman's time is expired.

I recognize the gentleman from Texas, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman.

It seems to me that it's pretty obvious that all of our witnesses today either oppose the H-1B program as it's currently configured or support a cap, in the case of Mr. Anderson.

What I'd like to get at is that it seems to me that no one supports unlimited H-1Bs. There is more than a tacit recognition, there's actually an overt recognition that we, at some point, would do a disservice to our—to American students and others whom we would try to encourage to become experts and skilled and technically proficient workers.

And therefore, it seems to me that the goal, if we have an H-1B program—and obviously, at some level we do as well—whether it's 65,000 or 195,000—we would want to have a program that did not adversely impact the future of American workers.

And my question goes—and this—my questions goes or is really based upon a conversation I had in my office recently with someone from a high-tech company who is a very, very strong advocate of H-1B workers. And this individual was willing to say that because I feel both that we need H-1B workers currently, but because in the future I hope we will have more homegrown technically skilled workers, that if we had a program, I'd be willing to accept the premise that we ought to have a temporary program in hopes that we would have our homegrown talent and perhaps even have a sliding cap that would decrease over time, again, so that we would not shut out homegrown American workers.

If you do have a permanent program with a relatively high level, you're basically never providing the incentive for American students to become those highly skilled workers.

And so, maybe, Mr. Anderson, I'll start with you. Would you support that kind of a concept? And I realize by stipulating that we have an H-1B program, that might not be something that's supported by some of the other witnesses.

But if we did have an H-1B program and in order to provide an incentive, increase the demand for homegrown talent, wouldn't it make sense to have an H-1B program that is temporary for a certain number of years, and that perhaps went down after a certain number of years so that we wouldn't eliminate the incentive for American workers?

Mr. ANDERSON. Sure. I think—you know, and something that you've tried to do is try to achieve the balance, and I think we had the increased regulation that took place in the '98 bill and the increased—the money for scholarships that was pointed out in the testimony about, 40,000 scholarships have been created.

I mean, the only problem with trying to pick a number and then have it go down over the years is that's somewhat what we've seen in the most recent years, and the problem is that it's turned out because of demand and the economy, it's turned out to not—you know, to not be enough.

I do think there is adequate incentive for people to go into some of these exciting fields now. I mean, I do think there are a lot of Americans going into these fields. I just think the demand, because of the——

Mr. SMITH. But if you had, say, a high permanent level, then you—it seems to me—are building in sort of a built-in subsidy or a built-in disincentive if you have that for the foreseeable future, then you're alleviating the demand to that extent. And I don't know under a free market system whether that is really providing an incentive for American students to take up the sciences or the computer sciences and so forth.

So I do think that there's a case to be made that if you have an H-1B program, it maybe should come down over a number of years or it would not be permanent so that we continue to provide the economic incentive for students to focus on those particular types of professions and also to let the wages increase so that we do attract students in those particular categories.

Did you want to respond, Dr. Baker?

Mr. BAKER. Yes. Yes. I do want to make it very clear that I don't oppose H-1B. And I even would go as far as to say that your sliding approach to the cap has much merit to it.

I think the concern is the safeguards with it. Is it being abused, and how can it be safeguarded so it's not taken advantage of?

Mr. SMITH. Yes.

Mr. BAKER. So those two points are clear.

The other point, though, you mention about homegrown. That's absolutely true. That's what we really need to do. This program should support our efforts to develop people to fill these positions.

And that's why I brought up, the item perhaps was before you came in, and that is the issue of having a complementary program to help develop the people, especially the underrepresented, those who are disadvantaged, who badly need to be prepared for these positions.

Mr. SMITH. I did read that in your testimony.

Mr. Chairman, let me just make a final point—our new Chairman, let me make a final point.

Mr. GOHMERT [presiding]. The Chair yields an additional minute. Without objection.

Mr. SMITH. Thank you.

And that is that the attestations that we have in some of our immigration laws, including attestations that apply to H-1B dependent companies, and those two attestations are typically that you have to advertise for an American worker first and that you cannot fire an American worker and replace the American worker with a

foreign worker. My concern about those is it's—they are both unenforced and perhaps unenforceable and do not work.

So we will have to come up with better types of safeguards for American workers as we proceed to discuss either this type of immigration, the H-1B, or other forms of immigration visas as well.

Thank you, Mr. Chairman.

Mr. GOHMERT. Thank you, Mr. Smith.

The Chair will yield to the gentleman from California.

Mr. BERMAN. Mr. Chairman, can I just in a regular order ask unanimous consent to put into the record a letter to Chairman Hostettler and Ranking Member Sheila Jackson Lee from Microsoft, Jack Krumholtz, regarding this issue?

As you might imagine, he thinks the 65,000 H-1B cap is—is arbitrarily low and hurtful to both his company and to the overall technology economy.

Mr. GOHMERT. Without objection, the letter will be entered as part of the record.

[The letter from Mr. Krumholtz follows in the Appendix]

Mr. GOHMERT. The Chair recognizes the gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Well, thank you, Mr. Chairman. And I'd like to thank you and Chairman Hostettler for holding this hearing on this important subject.

It's important to note that this hearing is about legal immigration, not illegal immigration. And I have concerns about many of our Nation's legal immigration laws.

In fact, I have introduced legislation to eliminate the visa lottery program through which 50,000 aliens are chosen at random to come and live permanently in the United States based on pure luck. The visa lottery program threatens national security, results in the unfair administration of our Nation's immigration laws, and encourages a cottage industry for fraudulent opportunists.

Traditionally, our laws dealing with immigration and foreign workers entering the U.S. have focused on ensuring that those who come into our country have existing connections with family members lawfully residing in the United States or with U.S. employers.

These types of relationships help ensure that immigrants entering our country have a stake in continuing America's success and have needed skills to contribute to our Nation's economy. Programs such as the visa lottery program ignore these types of connections and, thus, present unnecessary risks to our Nation.

On the other hand, the H-1B visas bring workers into our country who businesses believe will better our workforce and economy. In addition, these workers have a stake in America's success.

I believe that U.S. businesses should have access to the best and brightest workers in the world. U.S. workers have consistently been the best and brightest, and we are working to ensure that U.S. policies continue to encourage top-notch graduate and post graduate degrees in math and science so that the U.S. continues to produce the most talented graduates in the world.

However, highly skilled talent is not limited to the U.S. Many students from around the globe come to the U.S. to get advanced degrees in math, science, and other specialty occupations. Our Nation's businesses should be able to choose from the very best.

While we should ensure that the most talented, high-skilled workers are available to U.S. businesses, it's equally important that we ensure that businesses do not abuse the process to artificially reduce wage rates or to displace talented American workers.

Another issue that Congress must grapple with is the amount of H-1B visas we should allow. When contemplating the cap issue, we must consider the demand for these workers in the U.S., the effect on the U.S. high-skilled workforce, the competition from other countries to bring the most talented workers within their borders, and many other factors.

If there is a demand for highly skilled workers that cannot be met by the U.S. workforce, I would be supportive of efforts to ensure that U.S. businesses have access to the most talented pool of workers from around the world.

Earlier this week, the Senate Judiciary Committee voted to increase the H-1B visa cap from 65,000 to 115,000, beginning in 2007. The provision would also raise the cap in any fiscal year when the limit is reached.

This hearing today is both timely and appropriate. I would welcome my comments being reviewed and commented upon by any members of the panel, and I'll open it up for anybody who wants to respond.

Mr. MIANO. I'd like to respond.

Mr. GOODLATTE. Mr. Miano?

Mr. MIANO. I'd just like to—if the state of the H-1B program is such that employer, as in my local area, could summon all its IT workers to an offsite meeting, tell them you're fired, and be replaced by H-1B workers. That's the sort of thing that we're seeing in the industry. It happened in a number of companies just in my area with hundreds of people being involved.

And we don't have even the basic—basic level of protection where an employer can't just openly fire Americans and bring in replacements through a third party. I mean, that's where we—you know, we want to start at that high level first——

Mr. GOODLATTE. Anyone want to respond to that? Mr. Anderson?

Mr. ANDERSON. Yes. It's just completely untrue. Basically, the law—the law on if someone has what's called, you know, an H-1B dependent company that it's going to replace Americans, basically, specifically prevents that. There's a whole—there's a whole body of—let me give you an example.

This is—this is the reg that the Department of Labor sent up, just from the 1998 law, and these are the books that the various companies have to use just to try to comply with the law. It's a very highly regulated system.

In addition, for companies that aren't H-1B dependent, there's a provision that if you—you cannot lay off an American and then—and then hire an H-1B worker that is—you know, that is underpaid. You get—I think it's about a $35,000 fine per violation, and you also end up getting debarred from——

Mr. GOODLATTE. Let me ask Mr. Miano, have you had any experience with workers being displaced, as you describe them, and going through this process?

Mr. MIANO. Absolutely. And under oath, I say I've seen it firsthand, personally.

Mr. GOODLATTE. Would you submit to the Committee the information so that we can have the benefit of that as we——

Mr. MIANO. It's in my written statement, sir.

Mr. GOODLATTE. Okay. Specific?

Mr. MIANO. Specific.

Mr. GOODLATTE. All right. Let me ask you this question to all of the members of the panel. Is there evidence of a high rate of unemployment amongst highly skilled American workers as a result of what Mr. Miano describes? Dr. Baker?

Mr. BAKER. I would say in the underrepresented areas and with minorities, I wouldn't say that they're unemployed, but they're not trained. And there's very little effort in so many circles to get them to a point where they can be qualified to fill these positions you're referring to.

Mr. ANDERSON. I mean, the overall unemployment rate is pretty low, as you know, in the country, 4.8 percent. I believe the unemployment rate for professionals generally is about a little over 2 percent. It may vary from different occupations.

But keep in mind, we haven't had—no one has been allowed to be hired on a new H-1B visa for most of the last 3 years, except for—the last 3 fiscal years, except for these open windows, when the Government has been accepting applications and some of the exemptions.

So for large—I mean, you know, for large months at a time, no one has been able to be hired on a new H-1B, you know, a new person coming and working on——

Mr. GOODLATTE. Mr. Anderson, let me ask you conversely, if I might—I need to ask one more question.

Mr. GOHMERT. The Chair will yield an additional minute.

Mr. GOODLATTE. I thank you, Mr. Chairman.

Is there evidence of significant out-migration of high-tech businesses in the country because of the inability to hire the type of workers that they need to sustain those businesses in the United States?

Mr. ANDERSON. Well, I think you are seeing more—more resources placed outside the country, and I think you've seen a number of companies have—they've basically said that they, you know, would like to be able to hire more in the U.S.

And if you don't give people a choice on some of the key people they identify that they want—I mean, I know a company that's doing network—network security, and they couldn't get the person in under the timeframe when the cap got hit. And so they hired the person in the UK, and he was heading a team. And so the other people who were going to work with him that would have worked with him in the U.S., instead are working with him in the UK.

Mr. GOODLATTE. Thank you very much.

I apologize, Mr. Chairman.

Mr. GOHMERT. The Chair recognizes the gentlelady from California for 5 minutes. Ms. Waters?

Ms. WATERS. Thank you very much, Mr. Chairman.

I guess I really don't need 5 minutes. I just wanted to get in here and hear what's being said about the need to increase or to have additional H-1B visas.

I am not supportive of in any way expanding or increasing these visas. I am only about getting the unemployed in America hired. I am about filling jobs with people who are overlooked.

I am about asking industries that are importing workers and going abroad to do it to just look to the neighboring State oftentimes or across the country. They can find workers. I have a lot of statistics about African-American workers that are twice as likely to be unemployed in the computer and technology industries that have been given to me.

And so, I don't have a lot to add. I'm—I'm not going to support any increase for anybody anytime, any place, anywhere, anytime soon.

Thank you very much.

Mr. GOHMERT. All right. The gentlelady yields back.

Ms. WATERS. I yield back the balance of my time.

Mr. GOHMERT. Thank you, Ms. Waters.

Gentlemen, we certainly appreciate your testimony. I'd just like to echo the initial comments of Mr. Goodlatte. I think the Diversity Visa Lottery Program is something that has got to go. It's an abdication of Federal responsibility that we let people get a visa by drawing at a lottery.

So I've appreciated Mr. Goodlatte's efforts in that regard, and hopefully, they will come to fruition so that we can get rid of that program, and your testimony here today will assist in taking a hard look at what we do with H-1B.

At this time, anybody to my right have any additional questions?

[No response.]

Mr. GOHMERT. Hearing none, at this time, the Chair wishes once again to thank all the participants today, and I remind the Members of the Committee that all Members have 5 legislative days to make additions to the record.

Hearing nothing further, at this time, we are adjourned.

[Whereupon, at 10:09 a.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS AND RANKING MEMBER, SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

I will start by saying that I support the H-1B program. Without it, American employers would not be able to hire enough highly educated professionals for the "specialty occupations." A "specialty occupation" is employment requiring the theoretical and practical application of a body of highly specialized knowledge. This includes doctors, engineers, professors and researchers in a wide variety of fields, accountants, medical personnel, and computer scientists.

Besides using the H-1B program to obtain foreign professionals who have skills and knowledge that are in short supply in this country, U.S. businesses use the program to alleviate temporary shortages of U.S. professionals in specific occupations and to acquire special expertise in overseas economic trends and issues. This helps U.S. businesses to compete in global markets.

An American employer who wants to bring an H-1B employee to the United States must, among other requirements, attest that he will pay the H-1B employee the greater of the actual compensation paid to other employees in the same job, or the prevailing compensation for that occupation; that he will provide working conditions for the nonimmigrant that will not cause the working conditions of the other employees to adversely be affected; and that there is no applicable strike or lockout.

The employer also must provide a copy of the attestation to the representative of the employee bargaining unit or, if there is no bargaining representative, must post the attestation in conspicuous locations at the work site. Additional attestation requirements for recruitment and layoff protections are imposed on firms that are "H-1B dependent." A company is considered "H-1B dependent" if 15% or more of its employees are H-1B workers.

The subject of this hearing is the cap for H-1B visas. The Immigration Act of 1990 set a numerical limit of 65,000 on the number of H-1B visas that can be issued annually. In FY2004, the 65,000 limit was reached in mid-February. On October 1, 2004, the United States Citizenship and Immigration Services (USCIS) Bureau announced that it had already reached the FY2005 cap. The FY2006 cap was reached in August 2005, which was even earlier.

I know that the American companies can be more aggressive in recruiting American employees, particularly at the minority college campuses. I also think that more can be done to retrain American workers who are being phased out of the high-tech industry when new technology is developed. But these measures in themselves are not likely to eliminate the need for raising the H-1B cap.

The cap is preventing U.S. businesses from meeting their speciality occupation needs, and their needs are likely to increase. The Department of Labor has estimated that between 2002 and 2012 there will be two million job openings in the U.S. in the fields of computer science, mathematics, engineering, and the physical sciences.

I view an increase in the cap as a short-term solution to a long- term problem, which is to find a way to produce enough American workers for these occupations. A good first step towards a long- term solution would be to develop a coordinated strategy to expand the education pipeline for American students who are preparing for careers in speciality occupations.

Foreign students represent half of the U.S. graduate school enrollments in engineering, math, and computer science. It is not surprising, therefore, that U.S. employers frequently turn to H-1B professionals when they recruit post-graduates from U.S. universities.

I would like to double the number of American students who earn baccalaureate and advanced degrees in the fields of science, technology, engineering, and math through increased investment in America's math and science education programs.

While we are working on a long-term solution, the availability of a sufficient number of H-1B visas is necessary to keep American companies competitive in the world market. If we fail to meet that need, American companies may lose out to foreign competition, which could have devastating consequences for the U.S. economy.

MR. RALPH HELLMAN, SENIOR VICE PRESIDENT, INFORMATION TECHNOLOGY INDUSTRY COUNCIL

1250 Eye Street, NW Suite 200
Washington, DC 20005
(202) 737-8888 www.itic.org

CHAIR
James Stoffel
Eastman Kodak

VICE CHAIR
Laura Ipsen
Cisco

PAST CHAIR
Nancy Heinen
Apple

OFFICERS
Rhett Dawson
President

Ralph Hellmann
Senior Vice President

Josh Ackil
Vice President

Ann Rollins
Vice President

Helga Sayadian
Vice President

March 28, 2006

The Honorable Sheila Jackson Lee
2435 Rayburn House Office Building
Washington, DC 20515-4318

Dear Congresswoman Jackson Lee:

The ingenuity and productivity of the American workforce is fundamental to the competitiveness of the United States in today's global economy. American companies must have access to the highly skilled workers, who will create jobs, increase productivity, strengthen research capabilities, and develop innovative products today and in the future. Every day, American businesses compete with their global competitors for the world's best and brightest employees.

U.S. policy should provide both long- and short- term solutions to help strengthen the U.S. workforce. In the long-term, the U.S. needs a coordinated strategy to expand the education pipeline for American students studying science, technology, engineering and math (STEM). In the short-term, we need a commonsense approach to immigration policy that creates incentives for both U.S. and foreign workers to develop valuable skill sets that can be used to permanently contribute to U.S. economic growth.

As we take steps to cultivate more American engineers and scientists here at home, we must also acknowledge that nearly half of today's students graduating with advance degrees in STEM fields are foreign nationals. These highly educated individuals should be welcomed to the U.S. with a streamlined path to permanent resident status and an exemption from the caps on H-1B non-immigrant visas. The U.S. benefits from these students working in the U.S. rather than going home to work for our competitors.

The U.S. also benefits from attracting today's best and the brightest scientists and engineers from around the world who are already working in these fields. The U.S. immigration system should use market-based tools rather than artificial quotas to determine the number of available H-1B non-immigration visas and employment-based greencards for highly educated workers. Trusted employers who maintain solid occupational requirements should also be allowed to be "pre-certified" for the approval of an H-1B or employment-based greencard as long as the individual foreign national passes credentials and background

checks. Also, it is critical that the Departments of State and Homeland Security work together with adequate resources to meet the congressionally mandated application processing times of 30 days for non-immigrant status and 6 months for permanent status.

This year, the Congress has the opportunity to make significant improvements to the legal immigration system for highly skilled workers. We urge both the House and Senate to pass common-sense legislation that strengthens the U.S. workforce and America's competitiveness.

If we may be of any assistance as the debate on immigration reform continues, please do not hesitate to contact ITI.

Sincerely,

Ralph Hellmann

Ralph Hellmann
Senior Vice President
Information Technology Industry Council

MR. DAN DEBOER, INFORMATION TECHNOLOGY PROFESSIONAL, LISLE, ILLINOIS

Dan DeBoer
2703 Longview Dr.
Lisle, Il 60532

Dear Honorable John N. Hostettler,

Thank you for the courtesy of allowing me to send a letter in regards to the H1B program.

I have worked in the IT industry since 1993. Last week, a fellow US citizen IT person was asked to leave Chase (formerly Bank One). He was told that with his salary, he can be replaced with a person from India on an H1B visa at less than half his salary. So, they can hire two H1B visa holders for the price of the US Citizen and still save money.

I have personally witnessed a number of situations like the one I described above. If any company tells you that they can not find skilled IT workers, that is a lie. They simply want to replace average wages with cheap labor.

I had 13 years of IT experience and I was laid off of a job. I am 46 years old with a wife and a child. When I collected unemployment, I talked to advisor at the Unemployement Office on Meyers Rd in Addison. I asked her if she sees IT people in her. She said it is one of the biggest areas of people who are unemployed.

I have a number of my coworkers who were not able to find jobs in the IT industry. Many have given up and decided to leave for other industries. They can not compete against the salaries of the people on the H1B. I have not yet left, but feel that I may have to soon.

Please vote against any increase in H1B for the following reasons:

1. Give our US students a reason to choose Computer as their major. Students know about the H1B and outsourcing and do not want to spend $100,000 on an education that our government has targeted to be replaced by people on an H1B visa.
2. The IT talent pool exists for business. Do not be fooled that businesses can not find skilled labor. The truth is, they want cheap labor.
3. There is NO agency that ensures that a US Citizen will not get laid off in replacement with a H1B. In addition, there is no assurance that the H1B will be paid prevailing wages.
4. Giving a job to a person on a H1B does not nearly cover the costs of unemployment for the US Citizen who was replaced. It is a net loss to business and to government.

Please, it is unfair that the H1B program takes jobs away from US Citizens. In addition, it has nothing to do with border control with Mexico. So this portion of the bill should be stripped out of the discussions. Lets have a separate bill to discuss the H1B in its entirety so that it is not just added without much discussion.

Sincerely,

Dan DeBoer

Cc: Senator Dick Durbin
Senator Obama

MR. JOHN A. BAUMAN, PRESIDENT, THE ORGANIZATION FOR THE RIGHTS OF AMERICAN WORKERS

Keatley, Benton

From: John A. Bauman - TORAW President [john.bauman@toraw.org]
Sent: Friday, March 31, 2006 5:20 PM
To: Keatley, Benton
Subject: Judiciary Subcommitte Oversoght hearing 3-30-06

Benton,

I would like to submit comments to the Judiciary Subcommittee regarding Thursday's hearing on H-1B visas.

As president of the Organization for the Rights of American Workers, better known as TORAW, I've seen many of our members lose their jobs to H-1B visa workers and in many cases they have had to train their replacement in order to get a severance package. One such worker had worked at CIGNA Insurance in Bloomfield, CT for 22 years and was wheelchair bound. He wasn't our member, but our heart goes out to his family. He passed away due to aneurysm less than a year after losing his job.

This is not an isolated incident as companies across the country are all doing the same thing.

As for the job market, when a high-tech worker has to work at jobs such as selling insurance, cars and mortgages or work as a handyman doing home repairs, and delivering packages for Fedex for $10 and hour, these jobs do not pay the bills. Our members have had to file bankruptcy and have lost everything. Those that do find employment are working for much less than their previous job(s). Here in CT, according to the Hartford Courant, we have lost 25% of our IT jobs and article appear in the papers frequently stating the the workers who have lost their jobs had to train their foreign replacement. Yes, we do have the skills but employers just want to hire cheap labor.

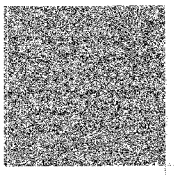
I thank you for taking the time to review these comments and would ask this committee to review my facts with all seven of our Connecticut members of Congress who I have met with. They have either sponsored of co-sponsored bills to change the current H-1B and/or L-1 visa laws. We don't need more H-1B visa workers, what we need is an opportunity to compete.

Respectfully,

John A. Bauman
President
TORAW
203-440-1750
www.toraw.org

4/3/2006

MR. ROBERT W. HOLLEYMAN, III, PRESIDENT AND CEO, BUSINESS SOFTWARE ALLIANCE



Robert W. Holleyman, II
President and Chief Executive Officer

March 29, 2006

Honorable John N. Hostettler
Chairman
Subcommittee on Immigration, Border Security and Claims
2138 Rayburn Building
Washington, DC 20515

Honorable Sheila Jackson Lee
Ranking Member
Subcommittee on Immigration, Border Security and Claims
B-351-C Rayburn Building
Washington, DC 20515

Dear Chairman Hostettler and Ranking Member Jackson Lee:

Thank you for scheduling Thursday's hearing to discuss raising the H1B visa caps. As CEO of the Business Software Alliance (BSA)*, I represent a number of America's most successful high-tech companies. These companies are all struggling with the arbitrary limit set on the number of highly-skilled foreigners allowed to work in the United States. This issue has united the high-tech industry. On March 24th, I joined my counterparts at nine other technology associations and sent the attached letter to President Bush urging him to address the weaknesses in our current immigration system.

The BSA supports efforts to ensure that American employers have access to a larger pool of highly-skilled workers by reforming immigration policies, specifically raising the H1B visa caps. The immigration of highly-skilled workers to the United States is in a state of crisis. Nationals of India and China now often have to wait five years or longer for employment-based green cards. Without reform, American competitiveness will suffer. Other countries will benefit by allowing companies to hire the talented foreigners that our employers cannot hire or retain. American companies may be forced to relocate operations to places outside the United States where they can find skilled workers.

WWW.BSA.ORG

Again, BSA appreciates your efforts in holding this hearing. There is a rich opportunity before us today to reform our policies regarding immigration of highly-skilled workers with the same level of innovation that we strive for in the high-tech industry. Please contact me if I can provide you with any further information.

Sincerely,

Robert W. Holleyman, II
President and CEO

Enclosure

*The Business Software Alliance (www.bsa.org) is the foremost organization dedicated to promoting a safe and legal digital world. BSA is the voice of the world's commercial software industry and its hardware partners before governments and in the international marketplace. Its members represent one of the fastest growing industries in the world. BSA programs foster technology innovation through education and policy initiatives that promote copyright protection, cyber security, trade and e-commerce. BSA members include Adobe, Apple, Autodesk, Avid, Bentley Systems, Borland, Cadence Design Systems, Cisco Systems, CNC Software/Mastercam, Dell, Entrust, HP, IBM, Intel, Internet Security Systems, McAfee, Microsoft, PTC, RSA Security, SAP, SolidWorks, Sybase, Symantec, Synopsys, The MathWorks, and UGS.

American Electronics Association (AeA)
Business Software Alliance (BSA)
Computer and Communications Industry Association (CCIA)
Consumer Electronics Association (CEA)
Electronic Industries Alliance (EIA)
Information Technology Association of America (ITAA)
Semiconductor Industry Association (SIA)
Software and Information Industry Association (SIIA)
Technology CEO Council
Telecommunications Industry Association (TIA)

March 24, 2006

The President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

As the Presidents of the nation's leading technology associations, we would like to take this opportunity to thank you for your recognition that it is in the vital national interest of the United States to remain a welcoming nation, even as we strengthen our security measures in the fight against terrorism. Our member companies understand that our government has had to take determined steps to secure America from unprecedented new threats and to that end we welcome the three-pronged plan outlined by Secretaries Chertoff and Rice on January 18, 2006. At the same time it strengthens security, this joint initiative has great promise to reduce unnecessary obstacles facing students, business visitors, and professionals whose travel to this country will benefit our nation's growth. You and your administration are to be commended for this progress.

However, we need to do much more if our nation is to remain competitive. There are four key areas where we need progress. We urge you to take action in those where you have executive authority, and to work with the Congress in those where legislation is required.

First, in order for the United States economy to continue to grow and prosper, foreign employees of our companies must be able to enter our country more quickly and efficiently. The current process is overly burdensome, slow, and costly and can result in apparently arbitrary denials.

Second, customers and potential customers of American businesses must be able to travel to the U.S. without long delays and unnecessary burdens. Our current visa policies give competitors in Europe and Asia an advantage, one which costs American jobs and profits. Foreign visitors are often forced to go through an unnecessarily time consuming and burdensome process for obtaining visas. Many prominent potential customers choose not to visit the United States because of this, costing our workers jobs, and our economy growth. Moreover, international conferences are now often being held outside of the United States, once the preferred location. Our visa policies and processing are undermining our thought leadership in the world.

Third, we should continue to enhance our ability to welcome more students, professors, and researchers from overseas into the United States. These talented people, when permitted to stay, help make our companies successful. If they choose to return home, they are more likely to do business with the United States, and to be advocates for our country abroad. Actively encouraging

students, researchers, and scientists to pursue their studies in the United States once again will benefit our nation's growth.

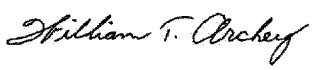
Fourth, we must also work to ensure that American employers have access to highly skilled workers by thorough reform of our nation's high-skilled immigration policies. High-skilled immigration to the United States is in a state of crisis. Wait times for employment-based green cards reach five years and longer for nationals of India and China. Without reform, American competitiveness will suffer. Other countries will gain from the international talent that our employers cannot hire or retain, and American employers will be forced to move their functions to places where they can find the workers.

We applaud your forceful recognition on February 2, 2006 that inappropriate limits -- like the cramped annual limit on H-1B visas -- inhibit American competitiveness. Your call for reform emphasized the need to attract the world's most talented people, whether they studied in our schools or abroad.

Mr. President, there is rich opportunity before us today to reform our immigration policy. We can modernize both the processes and the supply of visas so that we can better compete in the global marketplace. We can streamline the process for highly-valued professionals whom our employers seek to hire permanently, or who choose to visit the United States. We can shape policies to attract into our workforce those with advanced degrees in critical subjects, and those who have received their education in our schools. And of course, we can do much more to boost the level of American talent in needed specialties, and to invest in the education of American students so that they become tomorrow's innovators.

We urge you to act on these proposed reforms, and look forward to working with you and your administration to bring about effective change.

Sincerely,



William T. Archey
President and CEO
American Electronics Association (AeA)

Robert W. Holleyman, II
President and CEO
Business Software Alliance (BSA)

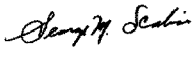
Edward J. Black
President and CEO
Computer and Communications Industry Association (CCIA)

Gary Shapiro
President and CEO
Consumer Electronics Association (CEA)

The President
March 24, 2006
Page 3

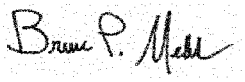
Dave McCurdy
President & CEO
Electronic Industries Alliance (EIA)

Robert B. Laurence
President
Information Technology Association of America (ITAA)

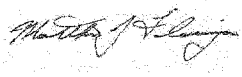


George M. Scalise,
President
Semiconductor Industry Association (SIA)

Ken Wasch
President
Software and Information Industry Association (SIIA)



Bruce Mehlman
Executive Director
Technology CEO Council



Matthew J. Flanigan
President
Telecommunications Industry Association (TIA)

MR. DARRELL L. RAUTHBURN, INFORMATION TECHNOLOGY PROFESSIONAL, COLUMBUS, OHIO

March 30, 2006
277 Meditation Lane
Columbus, Ohio 43235
614-436-8757
drathburn@columbus.rr.com

The Honorable John N. Hostettler
Chairman, House Judiciary Subcommittee on Immigration
B-370B Rayburn House Office Building
U.S. House of Representatives
Washington D.C. 20515-6217

The Honorable John N Hostettler:

I appreciate the opportunity to submit comments on your hearings on the H1B visa program held March 31, 2006 by your subcommittee. Herein are my pertinent remarks for the hearing record.

I am an experienced and well-educated U.S. software worker, with a Bachelors Degree in math and a Masters Degree in computer science from The Ohio State University and almost 35 years experience in computer programming, system design, data processing, and Information Technology (IT). I am also a Vietnam-era veteran, having proudly served four years as an Air Force officer.

In early 2002, I voluntarily left an IT job at The Limited, headquartered here in Columbus, because of my manager (who was subsequently demoted to a none-management position). I looked for employment and continued to hone my technical schools for the next two years but never worked again, even after I reduced my salary requirement by almost 40% from my high-watermark and said I didn't need benefits. Because no hiring manager would consider me as a direct employee (because of my age), I focused my job search efforts on consulting companies.

In the spring of 2003 I attended a job fair sponsored by the Columbus Chamber of Commerce. The fair provided a number of speakers, followed by a session with prospective employers, mostly consulting companies. One of the speakers said his firm did not "discriminate" against H1B visa holders,

meaning H1B candidates received the same consideration as a U.S. citizen, presumably when both were equally qualified.

I had brief conversation with a senior recruiter from Odyssey Consulting here in Columbus. She asked for a résumé, and I said I had already provided one via regular mail in response to one of their recent ads. Then she went on to tell me that Odyssey only publishes an ad when they already have selected an H1B candidate. In fact, she said, they write the job requirements based on the H1B's qualifications. All résumés sent in response to their ad go to their attorneys, who filter them and insure that only their pre-selected H1B qualifies for the advertised position. In sum, their job ads are a ruse that give them "cover" for pre-selecting H1B candidates.

Although they are *not* technically superior, H1B's seeking IT employment here have many advantages over U.S. candidates, including:

- Employers and US government officials don't seem to be interested in protecting American workers. If an H1B employee displaces an American worker, who goes on unemployment, no one seems to care.
- They will work for entry-level salaries, thereby suppressing all U.S. IT salaries in the process.
- Since they are not free to seek other employment, they will stay with their initial employer for up to 6 years and tolerate a higher level of employee abuse than their American counterparts.
- They will often "pad" their résumés and overstate their qualifications, often without negative consequences from their employers. America workers are routinely terminated for résumé fraud.
- Many employers seem to feel hiring foreign workers is somehow related to this country's Affirmative Action polices.

During my two years without work -- I never went on unemployment – I was a member of an informal 20-member job search group. We tried to schedule a meeting with our Congressional representative, but he wouldn't meet with us, although Debra Pryce, in an adjacent Congressional district, did meet with a similar group. We did meet twice with his assistant, who said that we'd all be employed again once the economy improved. The national economy is raging, but prosperity and jobs have never returned to Ohio. The job search group has long disbanded, with most remaining unemployed or underemployed.

Most in the group did not share what was going on in their personal lives, but here are some of the snippets I heard: consuming life savings, falling into deep credit card debt, selling their houses and otherwise stepping down in terms of quality of life, and going into depression.

I have seen no figures on how many Americans have been displaced by foreign labor in the IT sector, but I estimate it to be upwards of 2 million (20% of the national IT workforce), meaning 6 to 8 million are affected if family members are considered.

One of my recruiters told me local employers would *not* hire someone after s/he had been out of work for over 6 months. I eventually accepted my fate: early, involuntary retirement.

Darrell L Rathburn

MR. JOHN PALAFOUTAS, SENIOR VICE PRESIDENT, AEA

March 29, 2006

The Honorable John N. Hostettler
Chairman, Immigration, Border Security and Claims Subcommittee
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Hostettler:

As the House Judiciary Subcommittee on Immigration, Border Security, and Claims discusses the very important issue of whether the annual cap on H-1B visas should be raised or not, AeA (American Electronics Association) would like to comment on why it is critical for the U.S. to increase the H-1B cap.

Current immigration regulations have stifled the ability of talented individuals to come into our country and fill important positions in American companies. The high-tech community relies heavily on this talent pool because of the shortage of high-skilled workers in the U.S.(unemployment for electrical engineers is 1.5%); unfortunately, the current H-1B cap falls short of providing the numbers needed to fill important positions in the high-tech industry that are not being filled by American workers.

As you know the cap on H-1B visas for fiscal year 2006 was reached well before the year even began. This is the seventh time since 1997 that the cap has been reached before the end of the fiscal year, and the second year in a row that it has been reached on or before the start of the fiscal year. This negatively impacts not only the high-tech sector, but also medical facilities and educational institutions around the country, as they are all unable to hire these much needed workers. If the best talent in the world finds it too difficult to get into our country, they will turn to our overseas competitors, creating a true threat to our economic and national security.

Our competitors around the world have woken up to this demand for high-skilled workers and are actively competing for them. For example, Japan, with half the population of the U.S., issued 268,000 high-skilled visas in 2003. This is significantly more high-skilled visas than we offer in our country.

Mr. Chairman, it is critical to America's competitive advantage that we are able to attract and retain the best and brightest minds from around the world. We therefore urge that any immigration policies adopted by the Congress include a raised cap on H-1B visas.

AeA is the nation's largest high-tech trade association and represents over 1.8 million high-tech workers in more than 2,500 IT sector companies which span the high-technology spectrum, from

5201 Great America Parkway, Suite 520 / Santa Clara, CA 95054 / P 408.987.4200 / F 408.970.8565
Mailing Address: P.O. Box 54990 / Santa Clara, CA 95056-0990
601 Pennsylvania Ave., NW, North Building, Suite 600 / Washington, DC 20004 / P 202.682.9110 / F 202.682.9111
www.aeanet.org

software, semiconductors, medical devices and computers to Internet technology, advanced electronics and telecommunications systems and services. Complete information on AeA and its mission is available on our website at www.aeanet.org.

We look forward to continuing to work with the Congress to make sure that the right immigration policies are adopted to protect our national security and economic interests. Should you have any questions, please do not hesitate to reach me at 202-682-4451.

Sincerely,

John Palafoutas
Senior Vice President

cc: Members of the Immigration, Border Security and Claims Subcommittee

MS. LINDA EVANS, MATTHEWS, NORTH CAROLINA

The Honorable John N. Hostettler
Chairman
House Judiciary Subcommittee on Immigration
B-370B Rayburn House Office Building
U.S. House of Representatives
Washington D.C. 20515-6217

April 2, 2006

Mr. Chairman,

Thank you for sponsoring the hearing on the H-1B visa program and for allowing me to submit my statement.

I have heard and read so many times that the law requires that "American workers must be considered first for the jobs" or that "the prevailing wage must be paid." So like the majority of Americans I used to believe it was illegal to import cheaper labor on work visas to take American jobs—until it happened to my husband. In fact, I have it in writing from the U.S. Department of Labor that a loophole in the law allows the employer to set the prevailing wage to be anything the employer says it is. But there are no provisions for enforcement anyway. And I have firsthand experience with exactly how the H-1B visa works to replace Americans.

My husband was a computer programmer with more than 20 years experience and he worked for Bank of America in Charlotte, NC. In February 2001, the bank announced that they were outsourcing several departments to a new company called Exult, Inc. My husband's department was among them. The employees then became Exult employees, even though they did the same work at the same desks and Exult agreed to carry over years on the job. In November 2001, Exult announced they were "partnering with" a company called Hexaware in order to increase profits. This was reported in the Charlotte Observer.

The employees were told how many months they would be expected to stay and train their replacements. Some were let go immediately and a few, my husband among them, were required to stay for six months or more. Employees who didn't agree would be let go without severance packages. Since my husband stood to receive about 48 weeks pay as severance due to his years with the bank, we couldn't afford to tell them where to shove it. At the time, our two youngest daughters were in college.

The replacement programmers were brought in from India on H-1B visas. We learned from forms posted by the company that the H-1B programmers were earning about half what the Americans had been earning.

My husband met with some of his co-workers during lunch (off company premises) and shared with them some information about H-1B that I had printed at home. Later he was called into his supervisor's office and confronted by several company higher ups. He was told that he was not allowed to speak out against the H-1B or to use company resources to speak against it or that would be a mistake that would prove very costly to him.

My husband was unemployed for four months before he was fortunate enough to find another job. It was not a good job and he heard that the company was looking into replacing the Americans with Indians. He then found a better job with a contracting firm and is now working a contract that is set to end by December. If the new increase in H-1B visas passes, we believe he will be unlikely to get another programming job, let alone a job that pays well enough for us to maintain our standard of living. Also, because of the job change, we had to leave our home and move to another state. We are now back in Charlotte, but have moved 3 times in eleven months. This is very stressful, and we are now living in a small rentad home instead of the beautiful home that we love.

During the time of unemployment, we lost our health insurance and lived under constant stress. We were in fear that we would lose our home and everything we'd ever worked for. My husband spent hours every day looking for work. It became an obsession for both of us. He sent out literally hundreds of resumes before he

got the first interview (didn't get the job). We spent many sleepless nights worrying and trying to cope. We dropped as much expense as possible and considered the possibility that we would have to take our girls out of college. Although one of our daughters is a graduate of the NC School of Science and Math, we advised her not to study engineering or programming in college because of the horrible job prospects due to Americans being replaced by cheaper foreign labor.

When my husband first lost his job, I naively believed that our elected officials cared about this country and the American workers who made it great. After numerous calls and letters to Washington, D.C., all I got in response to my contacts were a few glib statements that amounted to: Americans need training and education.

My husband has training and education. He still lost his job to cheaper imported labor.

Mr. Chairman, I confess to being a person of a certain innocence, a person with a solid faith that right and justice will prevail and that somehow each person in power in the United States will daily look inside himself or herself and say, "I stand for what is right. I stand for the best interests of the people who elected me--my fellow Americans--as well as my nation and everything she represents. I will not be compromised by those who wish to further enrich themselves while their fellow Americans suffer."

And now I am sick at heart. I see little evidence that the best interests of this country and her working people are being considered. I am appalled at the outrageous bills being considered, bills which would greatly raise the number of H-1B visas issued to foreign workers who come to this country and take jobs from taxpaying Americans. Meanwhile, all we get in response to our contacts with our elected government is a have a nice day attitude.

It makes no sense to me to undermine the tax base by putting Americans out of work in favor of cheaper imported labor.

As a result of the "job loss incident" my husband and I have developed a deep distrust in our government. We never feel secure, we never feel it is okay to spend extra money. We look around us and see rising numbers of foreclosures and more tech jobs lost and we know it could happen to us. And we're sick of being told that if only Americans were smarter or better educated or had more training then we, too, could have tech jobs.

By the way, I happen to believe it is unconscionable for American corporations to expect Americans to fight and die in the U.S. military to protect their interests when they won't hire Americans to work for them.

Sincerely,

Linda Evans

Linda Evans
8033 Hunley Ridge Road
Matthews, NC 28104
704-644-0072
lindaevans101@yahoo.com

cc: Senator Richard Burr; Senator Elizabeth Dole; The Honorable Sue Myrick

MR. BILLY REED, PAST PRESIDENT, AMERICAN ENGINEERING ASSOCIATION

H-1b Hearings
House Judiciary Subcommittee on Immigration
Thursday March 30, 2006
Comments of the American Engineering Association
Billy E. Reed, Past President
www.aea.org

I want to thank the Chairman and Members of the committee for the opportunity to present the views of the American Engineering Association on this very important issue to our technical community.

The American Engineering Association is opposed to any increase in foreign workers of any category. There is not now and has never been a shortage of qualified workers in the United States with the possible exception of a few very minor local problems. **It's time for Congress to quit distorting the labor market with foreign workers. Industry's appetite is insatiable for cheap labor. It is industry's "drug of choice".**

There is not a job in the United States, except for elected officials, that is not subject to being destroyed by either offshoring, trade agreements or importing foreign workers. I guess that is why many elected officials are willing to vote to destroy the American middle class. As with many things they do not have to live with the results of their actions.

There is not a job in the United States that would not be done by citizens given a living wage.

You do not have a single item in your home or office that has not been engineered at some stage of the concept to production cycle. Many of America's most innovative citizens will be cast aside if you vote to increase the H-1b, L-1 or other work visas by including any guest worker provisions in the current senate immigration proposals. American jobs should not be given away, traded or sold in the name of "free trade". One only has to look at the ever increasing trade deficit to see the damage this is doing to our middle class.

In an effort to support an increase in H-1b visas, former **Speaker of the House Dick Armey** stated (paraphrased) **"Each H-1b visa holder will create five or six jobs for Americans"**. He seems to imply that an American would not create the same five or six jobs so it is better to have the H-1b foreign workers. That is absurd!

The current and equally absurd contention is that China and India graduate many more engineers than the United States, therefore we must spend billions of dollars to increase the numbers of engineers and scientist to gain parity.

Edward S. Rubenstein "National Data" publication 2/14/2006 gives the following statistics: "China has roughly four times the population of the U.S., and India is about three times as large. **If you adjust the official engineering degree numbers—overstatements and all—for population size, this is what you get:**"

- U.S.: 750 engineering degrees awarded per 1 million citizens.
- China: 500 engineering degrees awarded per 1 million citizens.
- India: 200 engineering degrees awarded per 1 million citizens.

Mr Rubenstein continues "These widely circulated figures rely on data from the education ministries of the various foreign countries. But much of what qualifies as engineering programs in Asia would not make the cut in the U.S. **"As a result, any bachelor's or short-cycle [2-3 year] degree with 'engineering' in its title is included in these numbers, regardless of the degree's field or the academic rigor associated with it. This means that the reported number of engineers produced by China in 2004 may very well include the equivalent of motor mechanics and industrial technicians." http://www.vdare.com/rubenstein/060314_nd.htm**

The following is from a Michael S. Teitelbaum of the Alfred P. Sloan Foundation presentation to the Congressional Caucus on Science and Technology July 15, 2004 quoting RAND data: **"...neither earnings patterns nor unemployment patterns indicate [a science and engineering] shortage in the data we were able to find."**

"Rising S & E unemployment in 1990s while the overall economy is doing well, is a strong indicator of developing surpluses of workers, not shortages."

"Altogether, the data...do not portray the kind of vigorous employment and earnings prospects that would be expected to draw increasing numbers of bright and informed young people into [S&E] fields."

Paul Craig Roberts former Assistant Secretary of the Treasury for Economic Policy for **Reagan** recently stated in a column that "**In five years (January 2001 to January 2006) the US economy only created 70,000 jobs in architecture and engineering, many of which are clerical. Little wonder engineering enrollments are shrinking. There are no jobs for graduates. The talk about engineering shortages is absolute ignorance. There are several hundred thousand American engineers who are unemployed and have been for years." http://www.vdare.com/roberts/060211_jobs.htm**

One has to wonder if we only created 14,000 jobs per year in architectural and engineering why do we need 85,000+ H-1b and a similar number of L-1 workers per year?

Roberts continues **"Job growth over the last five years is the weakest on record. The US economy came up more than 7 million jobs short of keeping up with population growth. That's one good reason for controlling immigration." http://www.vdare.com/roberts/060211_jobs.htm**

"For the past five years US job growth was limited to these four areas: education and health services, state and local government, leisure and hospitality, financial services. There was no US job growth outside these four areas of domestic nontradable services." http://www.vdare.com/roberts/060303_jobs.htm

Alan Tonelson speaking of the current **glut of "studies"** by the proponents of lower wages **"What's wrong with these findings?** Only two things: **First, the main studies themselves are slipshod methodogically and internally contradictory. Second, they clash with everything known about major trends in the U.S. labor market, and about labor shortages themselves." http://www.americaneconomicalert.org/view_art.asp?Prod_ID=2205**

"**Not surprisingly, these studies are all coming from the outsourcing lobby itself.** In November, the National Association of Manufacturers, whose sector of the economy has lost 3.34 million jobs since employment peaked in 1998, reported finding "a widening gap between the dwindling supply of skilled workers in America and the growing technical demands of the modern manufacturing workplace."
http://www.americaneconomicalert.org/view_art.asp?Prod_ID=2205

"Similarly, many of the policies long championed by these multinational-dominated business groups thoroughly undercut their professed concerns about labor shortages. For example, **it's hard to imagine that talented people will flock to manufacturing production careers in a nation whose trade policies encourage the massive offshoring of such jobs. And it's hard to imagine that talented people will flock to research, development, engineering, and design careers in manufacturing in a nation that not only encourages the offshoring of these jobs, too, but that admits large numbers of immigrants who will do this work for bargain basement pay.** Yet that's exactly the kind of nation that Washington has given us – at the behest of the same multinationals now crying "Labor shortage!" Talk about creating a self-fulfilling prophecy!"
http://www.americaneconomicalert.org/view_art.asp?Prod_ID=2205

"Moreover, the kind of country we desire only can exist if average people have jobs which pay a family wage, enough that the husband can give his family a middle-class standard of living on one paycheck so his wife can stay home with the children. That usually requires a job in industry, in a factory that manufactures. The free-

trade policies which have shipped so many manufacturing jobs overseas also have exported many Americans' way of life." Paul M. Weyrich **http://www.newsmax.com/archives/articles/2006/3/27/131155.shtml**

Obviously, H-1b, L-1 and other "work visas" also impact the middle class prosperity just as does Mr. Weyrich's comments. These visas facilitate offshoring.

Here is the Department of Labor's expectation for the following occupations through the year 2012. Their expectation comments are as compared to all occupations. The occupations in **Bold lettering are those most commonly used in the IT industry. None are expected to grow faster than average!**

Computer programmers	**Grow about as fast as average**
Mathematicians	**Expected to decline**
Aerospace Engineers	Expected to decline
Agricultural Engineers	Grow about as fast as average
Biomedical Engineers	Faster than average
Chemical Engineers	**Little or no growth**
Civil Engineers	Grow more slowly than average
Computer Hardware Engineers	**Grow more slowly than average**
Electrical Electronic Engineers	**Grow more slowly than average**
Environmental Engineers	Grow much faster than average
Industrial Engineers	Grow about as fast as average
Materials Engineers	**Grow more slowly than average**
Mechanical Engineers	Grow more slowly than average
Mining & Geological Engineers	Expected to decline
Nuclear Engineers	Little or no growth
Petroleum Engineers	Expected to decline
Atmospheric Scientist	Grow about as fast as average
Chemists & Materials Scientist	**Grow about as fast as average**
Environmental Scientists & Geoscientists	Grow about as fast as average
Physicist & Astronomers	**Grow more slowly than average**

Source: USDOL Bureau of Labor Statistics Occupational Outlook Handbook 2004/2005

Of the 20 occupations listed **only Biomedical Engineers is "faster than average"** and **only Environmental Engineers is "much faster than average"**. Four are expected to decline, six are expected to grow "about as fast as average", the remaining eight are expected to "grow more slowly than average" or have "little or no growth". **This is the "shortage" industry lobbyist speak of.**

"Our government has abandoned American workers. They are letting others come into the country, break our laws, and take our jobs. Then they lie to us and say it isn't happening….I have seen first hand the pain and suffering that good people suffer because their government no longer cares about them. Our leaders are so removed, so arrogant, and, yes, so corrupted by corporate interests they are destroying the livelihoods and the lives of our friends and neighbors." Angela "Bay" Buchanan former Secretary of the Treasury under **Reagan** Feb. 15, 2006

Thank you,

MR. JOHN WILLIAM TEMPLETON, COALITION FOR FAIR EMPLOYMENT IN HIGH TECHNOLOGY

Silicon Ceiling 6: 70,000 blacks out of work in computer, technology industries

Contact: John William Templeton 415-265-9455

October 31, 2005

(WASHINGTON) -- Experienced African-American workers are twice as likely to be unemployed in the computer and technology industries as the general labor force, according to Silicon Ceiling 6, a report by the Coalition for Fair Employment in High Technology.

The annual report is regarded as the most authoritative reference on equal opportunity in high technology and has been quoted on the floor of Congress and in relevant committees over the past six years as well as by at least one presidential candidate.

An analysis of Bureau of Labor Statistics data shows that 70,000 African-Americans were unemployed in six computer related occupational groups in September 2004 out of a national total of 445,000 unemployed. The ratio for African-Americans was 8.62 percent compared to 3.82 percent overall.

In September 2005, 68,000 blacks were unemployed in those fields out of a total of 470,000 American workers out of work. The ratio for blacks dropped slightly to 7.89 percent while overall unemployment rose to 4.04 percent. Report author John William Templeton, editor of blackmoney.com, said, "The data for African-Americans and the overall population proves that there are more than enough qualified American workers to fill the employment needs of our industries." He concluded that the last minute Halloween attempt to add 30,000 H1-B visas would create additional unemployment for African-American workers and American workers in general.

Partly as a result of the statistics in previous Silicon Ceiling reports, the H1B limit was returned to its traditional limit of 65,000 per year. However, a change last year allowed another 20,000 graduates of American colleges and his year's particularly inventive effort would "recapture" unused visas going back to 1991.

High tech companies need to redouble recruitment activities in African-American communities, particularly in the wake of the damage from recent natural disasters in the Deep South, where more than 50 percent of black high tech workers live, said Templeton.

###

MR. MICHAEL EMMONS, INFORMATION TECHNOLOGY PROFESSIONAL, LONGWOOD, FLORIDA

Keatley, Benton

From: Mike@hannatroup.com
Sent: Tuesday, March 28, 2006 1:14 PM
To: Keatley, Benton
Subject: House Judiciary Subcommittee on Immigration

To whom it concerns:

I am one of 20+ Americans that were ordered by corporate management to train our replacement workers.

Siemens ICN Lake Mary, FL & San Jose, CA brought the Americans into a room. They told the Americans that they would be laid off, but first they said "We want you to train your replacements, then we'll have this severance for you when you leave." It was the most demoralizing time of my life.

Our replacements are Tata India employess, holders of congressional H-1b and L-1 "guestworker visas." Now, just about all the Americans are gone and the Siemens ICN IT department in Lake Mary, FL is your "guestworkers."

I spent 6 months training 4 Tata guestworkers. Each learned a different facet of my job.

Your foreign worker visa programs (replacement worker programs) are a crime; a crime against hard working well-educated American citizens.

For once, give us a break; we have families to support too.

Michael T. Emmons
818 Miami Springs Dr
Longwood, FL 32779
407-756-0918

MS. ESTHER MASSIMINI, PRINCIPAL ENGINEER, AEROSPACE ELECTRONICS HONEYWELL

STATEMENT FOR PUBLIC RECORD

Re: Oversight Hearing "Should Congress Raise the H-1B Visa Cap" 03/30/2006

Hon. Chairman Hostettler and Distinguished Members of Congress:

Thank you for sponsoring this hearing on the H-1B visa program. I also thank you for allowing me, as a Technical Expert, to enter public testimony into the record.

My name is Esther Massimini. I am a 48-old woman engineer in the aerospace industry. I am married (to a former electrical engineer who now is a market research analyst in the Semiconductor Industry) and have two teenage children. I have over twenty-seven years of continuous technical industry experience. Almost seven of those years were spent serving this country as an officer in the United States Air Force. My academic background includes Bachelor degrees in Mathematics and History from one of this country's most prestigious liberal arts and sciences colleges. I also hold a Master of Science from Foggy Bottom's own George Washington University, School of Engineering and Applied Science, and a Certificate in Program Management from the George Washington University Graduate School of Business.

I am also an immigrant. My father is one of the few people to become an American citizen outside the United States. A World War II child refugee, he came to the US and was drafted as a teenager into the US Army, which became his career. He had a second career in government service at the US Air Force Academy and Peterson AFB. He is a Vietnam veteran and married a non-American.

We moved to the United States when I was 16. As a child, I was always interested in math, science and to be honest, just about everything. I grew up speaking fluent German, French and English, attending Canadian Department of National Defense schools in what was then West Germany. My last two years in high school were at an inner-city school in Colorado. At the time, I had never seen a computer nor heard of engineering, and certainly had no knowledge of women in such fields. I had teachers however, who encouraged me to apply to college. I obtained my Bachelor degrees in 1979 and had a desire to become an astronaut. As a child, I was engrossed in the world of Star Trek and heavily influenced by actress Nichelle Nichols, who became a NASA spokesperson when I was in college.

Unfortunately, being near-sighted, I was rejected from the first space shuttle class. I did the next best thing and became a commissioned officer in the USAF. I studied computer science, graduated #1 in my class at Keesler AFB, and was offered a regular commission. I spent my entire AF career in Washington, primarily at the Pentagon, Office of the Secretary of Defense, Office of Program Analysis and Evaluation (PA&E). This is the Systems Analysis branch of the DoD (www.pae.osd.mil/). There, I was a rare female (both as an officer and in engineering) and worked primarily on computer simulations. The work we produced also involved the Defense Budget, delivered to the White House daily. My work was of such caliber that I was selected to have my Masters Degree funded at the university of my choice by the AF. I attended graduate school at George Washington University fulltime and then worked at an Air Force agency that provided computer capacity planning services to the Federal Government.

Once I fulfilled my obligation to the country, I followed my Air Force mentor (who had retired) to Arizona. I worked in Computer-Aided Engineering at Motorola, before moving to SGS-Thomson Semiconductors, where I was Director of Computer Operations for North America. In late 1987, I joined my present employer, in aerospace. I have worked there since, on military programs such as Joint Strike Fighter (JSF), and civilian aircraft such as Boeing 777 and Airbus. I have twice been nominated for technical achievement awards, once for integration for the Boeing 777, now used by Lockheed on the JSF, and for my work in Model-based Development.

I have just accepted a new assignment to deploy common Software Development methodologies throughout my company. Last year, I added the Program Management Professional credential to my portfolio.

During the past five years, I have seen increasing use of both H-1B and L1 visas in conjunction with the loss of jobs on-shore. I see this across the board. At the same time, the companies that make heavy use of these programs also decry the lack of a pipeline of US citizen scientists and engineers. My experience leads me to believe that there is no lack of such persons, just a lack of employers willing to pay prevailing US wages. In the position I just left, I had a yearly goal to increasing the work moved offshore. In some cases, this work goes to a country with which our national defense structure is not exactly friendly: Communist China. Most of my experience has been with India and with the Czech Republic. I have found that india in particular is lax regarding protecting intellectual property, and that employers will push the envelope as far as they can in order to get export control restrictions removed. In almost all cases, I have found the work substandard and have myself, along with others, worked 20-hour days, uncompensated, to deliver the faulty product.

Each year, the bar is raised higher; new euphemisms are introduced. My current employer calls off-shoring "co-sourcing." The phrase "engineering footprint" is used to gauge the extent of outsourcing. We also refer to H-1Bs, L1s, etc. as "workers from low-cost regions." If technical competency were the issue, they would be referred to simply as engineers or programmers.

In the meantime, industry and university lobbyists tell a different story. As a member of the Society of Women Engineers (SWE) and the Institute of Electrical and Electronics Engineers (IEEE), I have seen studies citing that both US and non-US enrollment in science, mathematics, and engineering is declining. The reason is that there are no jobs for graduates, except for a limited number in Program Management, which is not a technical discipline. Available technical jobs are mostly now done by foreign nationals on H-1B, L-1, TN, F-1, M-1 and J-1 visas.

As a mother and a woman, I was always grateful for the advantages my technical education afforded: excellent pay and a somewhat mother-friendly work environment during the years that employers actually tried to increase the number of women and minorities in their companies. However, our children and their parents are not stupid. They are opting for careers in law, politics, business management, culinary arts, and criminology - areas of opportunity. Parents and guidance counselors warn them not to waste their money and education on computer science, mathematics, or engineering, and many have seen their parents suffer unemployment in spite of having the training that President Bush says they lack. I ask you, what good is a community college training program to a PhD in Physics?

One aspect of these programs not addressed is the effect on historically underrepresented classes of persons, such as minorities and women. 99% of H-1Bs and L1s are males. They replace persons who are qualified but who traditionally could not get in the door. Now these minorities and young women cannot be hired. In my state, we have reservations full of our citizens of Native American heritage whose children could be trained and educated. However, these citizens have cultural ties to their land. It is ironic that it is possible for employers to work with people half a planet away, but not with our Native American brothers and sisters mere hours away.

Many H-1B and L1 visa holders also come from countries that traditionally do not value women. I refer you to United Nations reports on female infanticide in India and Communist China. Most have social customs that preclude a single woman from moving to the US to take advantage of these visas, and it is rare for married mothers to work. These visas are the domain of single men.

What this does is bring a culture that devalues women into the American workplace. As H-1Bs and L1s, they are subject to the personnel policies of their foreign-based job-shop, not the US client company. Some things I have personally experienced or seen are: being ignored,

consulting my subordinates in full view of my team on technical matters, having males from another culture turn their back on women in the room and only address men.

I am very concerned that our children are ill-served and that our teachers and schools are being blamed. My children go to public schools and have had an outstanding mathematics and science education. I am active with youth mentoring programs and see many intelligent young girls at events such as Dr. Sally Ride's Science Festivals. But when the rewards are in other fields, or coworkers bring an oppressive culture to the workplace, no matter how much we may say the country needs that expertise, families will vote with their checkbooks.

As a start, I request that this committee look into House Resolution 717 (109th). Congress asked, and paid $335,000, for analytic reports of the impact of these issues on the American worker and workplace and got nothing back but delays and a watered-down, 12-page one-sided report consistent with the claims of industry lobbyists. Government analysts who worked on these studies have attested to House members about these claims.

As a citizen, I expect the Congress to safeguard US citizens first. The signers of the Declaration of Independence, particularly Thomas Jefferson, used the writings of John Locke as a basis of their philosophy. Jefferson paraphrases Locke by discussing the concept of the social contract: "*That to secure these rights, governments are instituted among men, deriving their just powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these ends, it is the right of the people to alter or to abolish it.*"

This is an abstract concept to many members of the public, so let me paraphrase in a way familiar to our times. One of my family's favorite television programs is the Gilmore Girls. Created by Amy Sherman Palladino, it is presented to the public as comedy. Over the course of five years, two main characters converged on a path and the show delivered on its premise. And when they did, the ratings went up. So as with every TV show, there is an implied contract between the creators and the viewing public.

This year, in the eyes of many viewers, Ms. Sherman Palladino and her creative team unilaterally broke that contract. The main characters (Luke and Lorelai) end the season apart and the entire year has been relentlessly depressing, not at all a comedy. Just like when our baseball icons use steroids, the contract with the public was broken.

In the same way, raising the H-1B Visa cap while not enforcing its provisions breaks the contract between our government and its citizens. As a member of the Institute of Electrical and Electronics Engineers, a member of the Society of Women Engineers, and a member of the Program Management Institute, I hear daily about the negative effect on wages and jobs because of the cap. I see minorities and children unable to attend college due to finances, while corporations reap the rewards, enabled by the congressional Visa programs.

I urge the Committee to not imitate the creators of a TV show like the Gilmore Girls by breaking the contract between our citizens and our government. As a citizen of the United States, I ask that the political and business leadership in this great country live up to our contract, and not allow the lives and the fortunes of American Citizens to be compromised by the H-1B visa program.

Thank you for giving me this opportunity.

Esther Marx Massimini
4150 E Becker Ln
Phoenix, AZ 85028
602-494-9715
esther@massimini.com

MR. HENRY G. HUESTIS, ELECTRICAL ENGINEER, SPOKANE VALLEY, WASHINGTON

Testimony of Henry G. Huestis to the
House Subcommittee on Immigration-April 5, 2006

Introduction- My name is Henry G. Huestis, and I am submitting this testimony to the House Subcommittee on Immigration as it pertains to the High Tech Foreign Guest Worker visa, otherwise known as the H1-B visa program. Currently the H1-B visa program allows up to 65,000 foreign nationals per year to enter the United States to work under sponsorship of a U S employer, with most of these H1-B workers employed in high technology endeavors, including engineering, computer sciences, information technology and others. Currently, both the U S Senate and the U S House of Representatives are considering increasing this cap (of 65,000) with the reason for raising this cap as being that there is a "shortage" of American citizen high technology workers.

Background of Henry G. Huestis- Let me give you a bit of background of myself. I am a 54 year old American citizen who is an unemployed Electrical Engineer, with considerable training and experience in the Electrical/Telecommunications Engineering profession. I am also a Vietnam war veteran, in which I did see combat action in Vietnam from 1972-1973, and for this experience and action, I did receive the Vietnam Service Medal and Air Force Commendation Medal in 1973.

My history in involvement in Electrical Engineering actually started when I was in the U S Air Force where I served from 1971 to 1975 where I was an Aircraft Radio repairman (Avionics Communications Technician) which peaked my interest in Electronics and Radio Technology. I was discharged from the U S Air Force in March of 1975, and after discharge from the U S Air Force, I decided to continue my College education first in Alpena Michigan , and then I moved to Washington State to continue my education. At first, I decided to major in Science education, but in February 1977, I decided to change my major to Electrical Engineering after I realized that there were no teaching jobs in Washington State in the science area.

From February 1977 to June, 1979 I did pursue the degree requirements for a Bachelors degree in Electrical Engineering in which I did receive my Bachelors degree in June 1979.

After receiving my Bachelors degree, I then went to work for the U S Department of Energy, Bonneville Power Administration (BPA), in which I was assigned as a data systems engineer for the SCADA II system which was installed at the BPA Eastern Control Center in Moses Lake, Washington. I did work at that position (with BPA) until March, 1982 in which I resigned from BPA. The reason that I resigned was to accept a higher paying job in Saudi Arabia, which I accepted in March, 1982.

As stated before, I did accept a higher paying position in Saudi Arabia in March 1982 in which I was assigned as a contract telecommunications engineer for the Arabian American Oil Company (which is now known as Saudi ARAMCO). This position was provided as a project engineering coordinator for the Arabian American Oil Company which I worked from March of 1982 to June of 1986 in which I was laid off. It is with

this position, and a subsequent position with Saudi Electricity Company that I did have exposure to a number of foreign nationals, and I was considered as a foreign guest worker in Saudi Arabia.

After being laid off from the job at the Arabian American Oil Company, I was unemployed for a period of about 6 months, and unable to find engineering work in the United States, I did receive a job offer from the Saudi Electric Company-Eastern Region Branch, as a Telecommunications Engineer, in which I did accept the position. So it was back to Saudi Arabia in December, 1986.

Upon returning again to Saudi Arabia, I was employed by Saudi Electricity Company, Eastern Region Branch in which I worked as a Telecommunications Engineer, and then as a Telecommunications Engineering Supervisor. The period that I worked was from December 1986 to January, 2001. I loved the job, and the job did pay a good wage, and I was very satisfied with the job, but due to a health condition that I had (related to my left kidney) which could not be treated in Saudi Arabia, I was forced to leave this job in January 2001. It is then that I decided to return to the United States to seek medical treatment, and to look for a job.

About that time, the telecommunications crash and the dot.com crash did hit, so I realized that it would be virtually impossible to locate a job in the telecommunications area, since the jobs simply did not exist. So it was with this in mind that I decided to study and obtain my Professional Engineering Registration from the State of Washington, and to work on obtaining my Masters degree in Electrical Engineering from the University of Idaho, with the emphasis this time being in Electric Power Systems.

In this respect, I did obtain my Professional Engineering Registration from the State of Washington in June of 2002, and I decided to work on my Masters of Engineering in Electrical Engineering from the University of Idaho which I started in September 2002, and which I completed all the degree requirements for the Masters degree in May of 2005. I should note that I did pay for my Graduate education, as well as my living expenses from savings which I managed to save from Saudi Arabia for the 18 and ½ years that I worked in Saudi Arabia. I should also note that during my degree studies, I was still unemployed, and not deriving an income during that period.

This leads me to the period from May of 2005 to the present. Considering that since I do now have a Masters degree in Electrical Engineering, and a Professional Engineering Registration in May of 2005, I did figure that I would have a reasonable chance of landing an engineering related job here in the United States. However, in my job search, I have run into companies who knowingly hire H1-B foreign guest workers at the expense of US Citizens, and have had at least one situation where a company did boast about their H1-B workers to me.

In this respect, after firing off thousands of resumes to prospective employers, I have received little hope and encouragement in my job search, of which I attribute much of the failure of myself in terms of obtaining a living wage engineering job on the situation pertaining to the H1-B labor pool who is already in the United States, and prospective H1-B candidates from countries such as India, China, and other countries.

In certain context, I feel that there is a fundamental wrong in having an H1-B work for a company in an engineering position which myself, being a Vietnam Veteran should be able to fill and which I should be given preference for in terms of the application process.

I should note that, although I was not directly displaced by an H1-B worker (as many others have testified to you about), I do feel that the current H1-B labor pool here in the United States (and possible expansion of that pool under current legislation that is being considered) has directly impacted me and hurt my chances in obtaining living wage work in the area that I have been trained in, and if these trends continue, I have my doubts if I will ever find living wage work. And there is the distinct possibility that when my savings run out, I will be left for homeless, living on the streets, thanks to the H1-B situation.

That is all that I do have. If you do want to contact me, I can be reached at my E-mail address which is h_huestis@ netzero.net, or at my telephone number which is (509) 927-8257.

Sincerely,

Henry G. Huestis
E 10819 Third Ave # 46
Spokane Valley WA 99206

MR. MICHAEL W. GILDEA, EXECUTIVE DIRECTOR, DEPARTMENT FOR PROFESSIONAL EMPLOYEES, AFL-CIO

Chairman Hostettler, Representative Sheila Jackson Lee and members of the Committee:

Thank you for the opportunity to present the views of our organization on the matter of the H-1B visa program. The Department for Professional Employees, AFL-CIO is a consortium of 22 national unions representing nearly 4 million professional and technical employees in both the public and private sectors.

Today under U.S. immigration law there is a near alphabet's soup of professional visas under which foreign professional and technical workers can come to our shores. The H-1B, L-1, TN, I, O, P and other such visas all have one thing in common—each operate under different standards, limitations and rules of accountability and no interconnectivity exists between any of them.

Given the adverse impact that most of these programs are having on U.S professionals—many of whom are either unemployed or underemployed—as well as on the non-immigrant workers themselves, now is the time for Congress to develop a more comprehensive, coordinated federal policy in this regard.

What is particularly baffling about these programs, especially H-1B, is that none of them correlate to the realities of the U.S. labor market. There exists no nexus between the current rates of occupational unemployment among professional and technical workers—which as of the end of 2005 is 40% higher than in 2000—and the fact that, according to some estimates, the total professional guest worker population is probably close to 750,000 when former H-1Bs who are illegally out of status are included. Programs like H-1B in effect force well qualified, American professionals to compete against foreign workers here in the U.S. for domestic jobs. In our opinion, there's something seriously wrong with that picture.

As members of the Committee will recollect, H-1B was initially designed to address small, "spot" labor shortages of minimum duration. Our affiliated organizations have no problem with that basic concept. But we vehemently object to how this program has over time contorted into something completely contrary to its original intent and that now victimizes large numbers of highly skilled, American professionals.

As Congress contemplates major changes in immigration law enforcement and perhaps new guest worker initiatives, now is the time to be asking tough questions and to consider real reforms in H-1B. Chief among them are:

- What is the total number of guest workers that should be allowed into the U.S. under all such programs in periods of high and low unemployment?
- To what extent should there be some uniformity across all programs with regard to worker protections, employer eligibility, visa duration and fees, guest worker qualifications and credentials, enforcement and penalty protocols, etc?
- Should U.S.-based employers each be limited in the total number of temporary foreign workers that they can have on the payroll from all guest worker programs?
- Are these programs contributing to the off-shoring of American jobs?
- What impact, if any, are they having on the national need to attract the best and the brightest American students into critical undergraduate and graduate disciplines?
- Can multiple U.S. government agencies be reasonably expected to manage, control and enforce the few standards that apply to H-1B when the entirety of the nation's immigration policy is a train wreck?

A failure to dig deeply, to ascertain and fix existing problems within current programs will risk repeating the policy failures that now plague immigration law and perpetuate abuses that hurt American workers. We sincerely hope that this Committee will address these overarching issues before any consideration is given to raising the annual limits—"caps"—on H-1B visas.

What follows is a brief summary of what we consider to be some of the more blatant abuses that have evolved under H-1B along with some suggestions for reform.

1. REPLACEMENT OF U.S. WORKERS

Background: At the hearing on 3/31/06, IT professional David Huber spoke eloquently about how an American company replaced him with H-1B workers and how difficult it has been for him to find other IT work. Sona Shah, a young well educated, highly skilled, Indian-American tech worker, told a similar story at 2004 hearings before the House International Relations Committee about her former company—a body shop where misuse of all kinds of visas was a daily exploit. Other statements will be submitted to the subcommittee by professionals recounting similar experiences. Often the indignity of losing they're job is compounded by the demand of the employer that the U.S. worker(s) train their replacements, sometimes as a pre-condition to receiving their severance pay or getting a good reference.

This victimization of American workers is being played out everyday as domestic corporations shed their American workers here in the U.S. to hire lower cost visa workers. It should be a fundamental principle of immigration law that no professional worker in this country should ever have to live in fear of losing their livelihoods because federal law allowed a foreign guest worker to come here and take it away from them. Ironclad protections to guarantee that outcome are long overdue.

Reforms:

- The 90 day, no layoff protections that now exist in law but only for so-called "H-1B impacted" companies (defined as having 15% or more of their workforce as H-1B visa holders) should instead be applied to all companies.
- The 90 day standard should be extended to 180 days and applied before and after the hiring of an H-1B visa worker.
- Improved safeguards should be coupled with stiff penalties including civil fines and debarment for violations;
- Finally, any worker—U.S. or foreign—aggrieved by violations of any H-1B protections should be given a private right of action to sue an employer for such law breaking activity.

2. VISA CAPS

Background: Under current law, the annual statutory cap on H-1B visas is 65,000. However, a previously approved exemption for educational institutions, nonprofits and other entities allows another 27,500 foreign workers on average to come in to the U.S. At the end of 2004 a Senate Committee initiated exemption—adopted as part of the Omnibus Appropriations bill—created still another cap loophole by adding on another 20,000 annual allotment for U.S. educated foreign workers with advanced degrees. In addition, since the "temporary" H-1B visa is good for up to 6 years, according to government data some 125,000 existing visa holders renew annually. As a result, under current law over 230,000 foreign professionals get new or renewed guest worker visas—and American jobs—each year!

There is absolutely no economic justification for expanding the H-1B program at this time. Unemployment among professionals in H-1B occupations remains high. For example, in Information Technology—the largest single business user of these visas—according to BLS data, joblessness for computer scientists/systems analysts, programmers, and software engineers is at 45%, 133%, and 115% higher respectively than in 2000—the year before the tech bust. Thus claims of labor shortages in key computer occupations are bogus particularly when weighed against wage data. If the laws of supply and demand are to be believed, then alleged shortages would produce significant wage hikes as employers bid up the price for scarce labor. In fact, real wages for computer scientists/systems analysts declined by nearly 7.5% from 2000–04 while income for IT workers in the other two categories barely grew above the rate of inflation. None of these wage improvements are indicative of a labor shortage.

Finally it is worth pointing out that industry apologists for off-shore outsourcing have long proclaimed that one of the benefits of globalization would be the creation of high end, high skilled technical and professional jobs for workers in the U.S. These same industries now seek to contract the number of these very same high end job opportunities that should otherwise be available to highly skilled American workers by vastly expanding the H-1B visa program.

Reforms:

- Set a "Hard Cap" on the H-1B program with no annual adjustment and eliminate all exemptions. Exemptions make a mockery of any annual numerical cap and should be eliminated.

3. OVER-ISSUANCE

Background: Twice in the last five years—once in FY 2000 and again in FY 2005—the INS/DHS over issued by a substantial amount the number of visas permitted under law. In 2000 the excess was some 23,000—an astounding 20% over the then annual cap of 115,000. And what was Congress' response to a federal agency unable to enforce an elemental standard in immigration law—they forgave the violation by sanctioning it in new statutory language and then proceeded to increase the cap from 115,000 to 195,000 with a new exemption. The inability of government to first enforce a fundamental legal requirement in the H-1B program coupled with Congress' eagerness to simply look the other way and ignore the transgression sent an unmistakable message to the private sector about compliance, oversight and enforcement. Then just last year, according to a Department of Homeland Security, OIG report requested by Chairman Hostettler and Senator Grassley and entitled *USCIS of H-1B Petitions Exceeded 65,000 Cap in fy 2005,* the over-issuance was 7,000 visas or nearly 11% more than permitted by the 65,000 cap. In its review the OIG cited these contributing factors:

- CIS officials at all levels in Washington, DC and at the service centers were aware of and attempted to comply with the statutory limit on the number of persons granted H-1B status.
- However, CIS had neither the technology nor an operational methodology to ensure compliance with the precise statutory ceiling.
- Faced with the certainty of issuing either too few or too many approvals, it had been CIS' explicit practice to avoid approving too few.
- The CIS' "business process," of taking all petitions submitted before an announced cut-off date, guarantees that an inexact number of petitions will be approved.
- The structure of DHS handicaps counting efforts; a complex adjudication process makes the count fluctuate;
- A complex counting process makes the cap a moving target; and, an unexpected influx of petitions in mid-September 2004 swamped the cap counting process.

In other words DHS can't count! And until the agency can guarantee to the Congress that it can and thereby enforce the law, there should be no increases in the H-1B yearly visa cap.

4. DURATION

Background: A problem common to all of the professional guest worker programs including H-1B is the renew-ability of the visa. This issue was a major point of controversy regarding the misnamed "temporary entry" provisions of the trade agreements whose one year visa can be renewed forever. Initially H-1B visas were good for only 3 years. Now these guest workers can stay in the U.S. for at least six years (two, three year renewable visa terms) or longer if their paperwork to transition them to green card status is in the DOL pipeline. A program of six years duration does not anyone's definition of "temporary" and the program should be more limited.

Reforms:

- Restrict H-1B visas to one, three year (non-renewable) term.

5. EMPLOYER ATTESTIONS

Background: At the hearing on 3/31, Rep. Lamar Smith, the former chairman of the subcommittee and an author of many past pro-worker reform suggestions, expressed hi view that employer attestations are "unenforced and unenforceable." We concur.

A law which relies on something akin to "scout's honor" for enforcement of the requirements that employers must make a "good faith" effort to recruit U.S. workers and not layoff Americans before applying for an H-1B visa is absurd. A decade ago, in a Department of Labor OIG *Audit of ETA's Foreign Labor Programs Final Report" No. 06–96–002–03, US Department of Labor, 5/26/96(No. 06–96–002–0),* found that, more often than not, employers:

> "specifically tailor advertised job requirements to aliens' qualifications. The jobs' education and experience requirements were based on the aliens' qualifications, not on the skills required to perform the work" and that "The special requirements identified on the application appear to be customized to fit the alien's qualifications rather than represent actual job requirements. This appears to be restrictive criteria to eliminate qualified U.S. workers."

Reforms:

- Eliminate and replace attestation process.

6. Prevailing Wage Determination

Background: Although the H-1B program does have a prevailing wage requirement, it is ineffective because employers can fabricate a wage by supplying their own wage data instead of relying upon government wage information. The so-called "prevailing wage determination process", which is not subject to DOL rate setting and may or may not be based on a bona fide locally calculated wage rates, again provides employers with the ability to in effect set their own rates and pay far lower than the actual prevailing wage for a given professional occupation.

Several government reviews again have identified this area as one wide open for fraud and abuse. The DoL's OIG audit referred to earlier found that:

> "There is no certainty that U.S. workers' wages are protected by the LCA [Labor Condition Application] program's requirement that employers pay aliens the higher of the prevailing wage or actual wage paid to their employees who are similarly employed."
>
> "For 75% of all cases where the non-immigrant worked for the petitioning employer, the employer did not adequately document that the wage level specified on the LCA was the correct wage. In their review of LCAs, the DOL regional Certifying Officers do not verify or question if a public file *[on the method of determining the wage and the impact of the wage rate on similar workers]* actually exists. 8 U.S.C. 1182(n)(1) does not give them the authority to do so. "The Labor Condition Application Program is being manipulated beyond its intent of providing employers the best and brightest in the international labor market while protecting the wage levels of U.S. workers."
>
> "Even where the employer adequately documented the wage paid, 19% of the aliens were paid less than the wage specified on the LCA."

Four years later, The U.S. General Accounting Office in its May 2000 report H1B *Foreign Workers, Better Controls Needed to Help Employers and Protect Workers* found wage chiseling in over 4 out of 5 cases it investigated:

> "WHD (DoL's Wage and Hour Division) is significantly more likely to find violations in H-1bB (back wage) complaints than in complaint cases under other (wage and hour) laws. . .over the last four and a half years, 83% of the closed H-1B investigations found violations—compared to about 40 to 60 percent under other labor laws"

Requiring the payment of a real and enforceable prevailing wage to H-1B workers would discourage those who would try to use the program as a back door to cheap labor.

Reforms:

- Employers petitioning for H-1B workers must pay the higher of:
  - the locally determined prevailing wage level for the occupational classification in the area of employment;
  - the median average wage for all workers in the occupational classification in the area of employment; or
  - the median wage for skill level two in the occupational classification found in the most recent Occupational Employment Statistics survey;
- In order to better keep track of H-1B workers and insure that they are paid the appropriate pay, employers should be required to file a copy of the workers' yearly W-2 form with the DOL/INS.
- Penalties—Subject employers who violate prevailing wage requirements to both double back pay awards common in other labor laws to aggrieved foreign workersµcoupled with employer debarment from the program. These kinds of punitive remedies will make employers think twice about using H-1B for purposes of worker exploitation.

7. Fraud

Background: Falsified immigration documents, bogus credentials, sham employer attestations, phony applications, forged petitions on behalf of unknowing employers, wage chiseling and other scams are just some of the litany of illegalities uncovered by investigators at four federal agencies. According to the *Semiannual Report of the Office of Inspector General (OIG) to the Congress" April-September 30, 2000:*

> "The OIG [DOL Office of Inspector General] continues to identify fraud in the labor certification program, particularly in the H-1B temporary work visa program. These cases involve fraudulent petitions that are filed with DOL on behalf of fictitious companies and corporations; individuals who file petitions using the names of legitimate companies and corporations without their knowledge or permission; and increasing numbers of immigration attorneys and labor brokers who collect fees and file fraudulent applications on behalf of aliens. Based on prior investigative and audit work that found programmatic weaknesses and vulnerabilities in the program, the OIG remains concerned about the potential for increased fraud in this area."

"The OIG has averaged 14 indictments and 11 convictions per year for labor certification fraud over the prior [1996] five-year period."

And in the DoL's 1996 OIG audit:

"Some aliens are themselves the petitioning employer, thereby filing petitions on their own behalf."

Many of these abuses have been traced to outsourcing companies, a.k.a. "body shops" who bring in foreign workers by the tens of thousands and then subcontract them out to other businesses. We doubt that the Congress envisioned the likes of Tata Consultancy Services, Wipro Technologies, and Infosys Technologies—all Indian owned firms—when it created this program. These firms are now among the biggest users of H-1B supplying Indian IT talent to a who's who of the fortune 500 corporations. Some of these firms and others like them have had a troubled history under the H-1B program. In fact, prior legislation relating to H-1B has specifically addressed abusive practices by them such as benching.

Reforms:

- Ban "body shop" access to the program—Congress should apply the same restrictive language it adopted in 2004 to the L-1 visa program and prohibit access to this program by anyone other than the primary employer.
- Require employers to file electronically with the DOL key information about each H-1B hire—name, country of origin, academic degree, job title, start date, salary level. The DOL shall then make such data available on the Internet.

8. QUALIFICATIONS AND CREDENTIALS

Background: H-1Bs are supposed to be highly skilled professionals with the requisite academic degree. But even this standard is undercut by language that allows a vague degree equivalency, such as work experience, to suffice. In addition there is no system in place to verify that those with degrees have valid credentials or that they are equivalent to a U.S. degree.

As far back as 1999, the accusations that H-1B applicants falsify job experience and education were exposed. In testimony on May 5th of that year before the Subcommittee during hearings on Nonimmigrant Visa Abuse:

- Jacquelyn Williams-Bridgers, State Dept. Inspector General, stated that attempts to falsify, alter, or counterfeit U.S. visas or passports and attempting to obtain false documents to obtain visas is a *"constant problem both within the U.S. and overseas."*
- Jill Esposito, State Dept. Post Liaison Division, Visa Office, Bureau of Consular Affairs, backed up Yates' statement that documents are routinely falsified. She said that, although many foreign workers in the U.S. on nonimmigrant visas are here legally and properly, there are *"thousands of marginally qualified applicants (who) are also entering the United States in the H-1B and L-1 categories."*

Ms. Esposito also detailed a year-long joint INS and Department of State initiative which focused on the American Consulate in Chennai, India, which issued more than 20,000 H-1B visas in Fiscal Year 1998—more than any overseas post. The investigation found that 45 percent of the 3,247 work experience claims made to the INS were fraudulent.

Reforms:

- Current law allows H-1B applicants to have a college degree or the "equivalent". This sets a highly subjective standard that is most difficult to apply and often abused. Work experience should not be a substitute for the required academic credentials. This vaguely-worded equivalency standard should be eliminated.
- At present there is no procedure in place for checking on the validity of a college degree cited to support an H-1B petition. The Secretary of State through its consular offices that issue the visas (or another appropriate federal agency) should determine whether such a degree has been granted by a bona fide institution of higher education (authenticity) and is equivalent to college degrees obtained in the U.S.
- To assure that H-1B visas are mainly allocated for use by the most highly skilled and educated, a "carve out" beginning at 40% and increasing to at

least 50% of the total number of visas should be reserved for "guest workers" possessing a master degree or higher.

9. ENFORCEMENT AND OVERSIGHT REMEDIES

Background:

According to the DoL's own Inspector General as well as the GAO, federal enforcement mechanisms are woefully inadequate to compel employer compliance with even the weak safeguards that exist under the H-1B program that are supposedly designed to protect American workers. Penalties for violations and outright fraud are too meager to induce compliance.

In this regard, the 2000 GAO study referenced earlier in this statement included the following findings:

> "Labor's [U.S. Department of Labor] limited legal authority to enforce the program's requirements and weakness in INS' program administration leave the program vulnerable to abuse. Under the law, in certifying employers' initial requests for H-1B workers, Labor is limited to ensuring that the employer's application form has no obvious errors or omissions. It does not have the authority to verify whether information provided by employers on labor conditions, such as wages is correct."
>
> "There is not sufficient assurance that INS reviews are adequate for detecting program noncompliance or abuse."
>
> "However, as the program currently operates, the goals of preventing abuse of the program are not being achieved. Limited by law, Labor's review of the LCA [labor certification application] is perfunctory and adds little assurance that the labor conditions employers' attest to actually exist. Expanding Labor's authority to question information on the LCA would provide additional assurance that labor conditions are being met"

Reforms:

- To protect American and visa employees who discover abuses, whistle-blower safeguards should be implemented so that either can report employer misconduct to the appropriate federal agency without fear of reprisal.
- Department of Labor (DoL) enforcement authority should be beefed up to monitor L-1 usage through random surveys and compliance audits, investigate and adjudicate complaints and impose penalties where warranted. Automatic audits for employers with over certain number of guest workers should be mandated and DOL investigations of suspected misconduct should be allowed without the necessity of having to have a complaint as justification.
- Strict timelines be imposed for the response, processing and administrative adjudication of complaints by DoL; Administrative and /enforcement functions should be centralized in one federal agency—DoL.
- Disallow employers from forum shopping, e.g. appealing an adverse DOL decision on the LCA to the INS.
- To allow for careful review of H-1B applications, the practice of submitting blanket petitions for multiple workers should be eliminated;
- Civil penalties should also be applied for misrepresentation or fraud related to the information submitted on the visa application;
- Congress should mandate appropriate data collection protocols and timelines for reports by the relevant federal agencies to assist Congress with its oversight of this program.

10. OFFSHORE OUTSOURCING

Finally, there is one last issue that the Committee should be cognizant of, and that is the likelihood that visa programs like H-1B are directly contributing to the outsourcing of U.S. professional and technical jobs overseas. This matter has been the focus of several hearings in the House Small Business Committee and we commend Chairman Manzullo for his past efforts in this regard.

Every day in newspapers around the nation we read more articles about how U.S. firms are now exporting white collar jobs. The reason I raise it in the context of this review is that there is a connecting thread. And that is Tata Consultancy Serv-

ices, Wipro Technologies, and Infosys Technologies—the Indian- owned firms I mentioned earlier.

These firms are not just brokerage houses for H-1B, L-1 and other visas. They are among the primary culprits involved in the heist of hundreds of thousands of U.S. jobs and tens of millions in payroll. It goes something like this: First they contract with an U.S. based firm to perform a tech related service like software development or maintenance. Then they bring in the Indian guest workers by the thousands to do the work here at bargain basement rates. As committee members may already know, India is by far the largest user H-1B and L-1 visas. Once the team of temporary workers has the knowledge, and technical skills—sometimes after being trained by U.S. workers—as much of the work that is technically feasible to off-shore is then carted back to India. There, the same Indian firms that stoke the visa pipeline are facilitating the creation high tech centers that employ hundreds of Indian nationals to do the work formally done by American professionals.

An earlier study by Forrester Research estimates that if current trends continue over the next 15 years the U.S. will lose 3.3 million high end service jobs and $136 billion in wages. Other recent studies predict the same or higher levels of jobs and salary losses. In one key segment of the tech industry, Jon Piot CEO of Impact Innovations Group in Dallas says that "software development in the U. S. will be extinct. . .with gradual job losses much like the U.S. textile industry experienced during the last quarter of the 20th century." Today major U.S. firms from many sectors are falling all over themselves to climb on the outsourcing bandwagon.

As they used to say in one of this nation's' greatest technology initiatives, the space program—"Houston we've got a problem". And I would suggest it's a big one. Only this time it's not those textile, steel, machine tool and other manufacturing jobs; many of them are long gone. Now it's the high tech, high end, high paying jobs that are headed out of town. These are the same jobs that we were smugly assured by free trade advocates the U.S. would retain as our manufacturing base was exported. The question for federal legislators is to what extent are the professional guest worker programs contributing to the outsourcing tidal wave. I would suggest that it is significant.

In conclusion, professional and technical workers in this nation have made enormous personal sacrifices to gain the education and training necessary to compete for the knowledge jobs in the so-called new American economy. They deserve better than to be victimized by immigration programs like H-1B. Congress can make a long, overdue start in cleaning up the guest worker visa mess by implementing badly-needed reforms. At a time when so many American professionals are out of work, from our perspective public policy inaction to clean up the H-1B visa mess is not an option. Until that is achieved there should be no increase in the H-1B annual visa limits.

MR. MARK A. POWELL, INFORMATION TECHNOLOGY PROFESSIONAL, WESTMINSTER, CALIFORNIA

STATEMENT FOR PUBLIC RECORD

Re: Oversight Hearing "Should Congress Raise the H-1B Visa Cap" 03/30/2006

I have a Bachelor of Science Degree in Business Administration, Management Information Systems and two decades of information systems programming experience. My area of expertise is Enterprise Resource Management Systems (ERP) used in the manufacturing industry. I Performed as an Applications Programmer, Systems Analyst, and System Administrator. My technical experience has been on systems ranging from PC Networks, Unix systems from, HP, SUN, IBM, and Microsoft NT / Intel based servers.

From 1986 through 2001 I never collected a day of unemployment in my life. My first four years out of college were at a small manufacturer, the next six were at a large international manufacturer. Then in 1996 took a job at an ERP consulting company often requiring me to travel throughout the country.

In the past 5 years I have lost $400,000 dollars in earnings due to the H-1B Visa.

After never collecting unemployment during the first 15 years of my life, I have been unable to work a permanent job in my industry since being replaced by an H-1B worker in 2001. When Congress raised the H-1B cap it allowed the consulting company that I worked for "SE-Technologies" to SWAP OUT higher paid employees with newer cheaper lower paid employees.

It was not just the Americans who were swapped out. They even replaced the higher paid H-1B workers with lower paid H-1B workers. They would swap an experienced person on an H-1B with a cheaper inexperienced H-1B worker and pay them half as much.

The displaced H-1B workers remained in the country competing for jobs with Americans.

The H-1B is about cheaper workers – Not a shortage of workers

When I took the job for the consulting company in 1996, I learned about the H-1B visa for the first time in my life. At that time the visa was restricted to 65,000 per year. During the interview, the boss mentioned the obvious large number of Foreign workers – he assured me that soon they would hire more Americans. That they had a training program and had put some Americans through it along with the Foreign workers. I worked out of the Irvine CA office and they had just opened it.

I was hired with 3 years experience in Baan ERP which I got at my prior employer. My position was to be the Lead Programmer and Systems Analyst. As the staff increased in the office, I noticed they were all H-1B workers making 20-25% less than me.

As for the "Training Program" only Foreign workers were put through it, many of them had no experience at all. I asked our recruiter: Why does he hire inexperienced Foreign Workers? Especially when he could hire American workers? **The reason they hired foreign workers was because they were cheaper.** Why else hire inexperience foreign worker?

Because the H-1B cap was limited to 65,000 in the 1990's they still had to pay a decent (yet cheaper than American) wage for Foreign workers. When congress increased the cap to 115,000 in 2000 my company started **swapping out these older H-1B workers for newer cheaper ones.** Then in 2001 with the rise to 195,000 I was swapped out for a cheaper foreign worker.

Mark Powell (714) 895-6204 Markpowell92683@aol.com
5551 Lutford Circle, Westminster, CA 92683-4127

The job market is Saturated:

After being laid off in April 2001 I began looking for work, and was shocked at how badly the job market had turned since 1996 when I last changed jobs. At Job Fairs people would be lining up around the room at the booth for IT jobs. Yet at the booths for non IT jobs only a handful of people would be in line. Soon employers started posting **"No IT Resume Accepted"** signs. Many recruiters who I talked were asking "Why am I getting so many IT resumes".

Many employers were reporting an overwhelming 4-800 resumes for every job posting. One employer called me up... "Admitted the job should have paid $80,000 but wanted to know if I would do it for $40,000." I told her in today's job market sure! She then told me... "We are just doing a prescreening now to cut down on the number of applicants" I then asked how many people were willing to work for 40 thousand? She told me... "117 so far and I am not even ½ through the stack!"

At a Job interview, the actual hiring manager told me that he would rather hire an H-1B and train them than an American. He told me that he had five H-1B workers all working for $42,000 that he had trained. Perhaps the only reason he posted a job on Monster was to satisfy a legal requirement to say he "tried to hire an American."

Lack of Jobs depresses salaries – not just in IT:

The Wall Street Journal recently reported that wages are recovering in Silicon Valley up from 65 thousand in 2004 to 67 thousand in 2005. But wages are down from the mid 80's (85 thousand) dollars in 2000 or about 20%. What is hidden is that the displaced workers often work for half their former pay.

The lack of jobs available for Programmers, Engineers, and other High Tech got so bad that many Technical Recruiters switched over to other areas because no placement commissions existed. The Wall Street Journal reported on the "domino effect" of the high tech downturn hurting salaries of high tech hurting technical recruiters. **US based Technical Recruiters do not get paid when a company hires an H-1B.** Many are now recruiting in other areas.

College Education is not an issue:

Despite spending weeknights in a hotel room traveling, I continued to invest in my career by taking Friday night and weekend college programming courses. When I first started in the late 1990's I was on of the oldest people in class. Then come year 2001 the number of over 40 students skyrocketed to 75% of the class in computer programming. College enrollments spiked as a result of this trend.

The reason for so many older students was because all of these people had been laid off. They were trying to learn newer skills in hopes of regaining employment. The irony was that they were replaced by foreign workers who had their old supposedly obsolete skills. **Foreign H-1B workers imported to do COBOL programming** a language which has been around longer than Senator Ted Kennedy.

Enrollments drop due to lack of jobs:

After about two years enrollment dropped dramatically. Colleges had to cancel 1/3 of all scheduled sections two semesters in a row. Administrators were shocked by the drops in enrollment in technically orientated classes. The reason for the drop was two fold. 1.) Older people who returned to school realized that nobody would hire a 40 year old even if he had the latest skills. 2.) Younger people who recently graduated could not find jobs. Soon underclassmen changed majors.

America's Students who are the best and the brightest - Are changing majors!

Mark Powell (714) 895-6204 Markpowell92683@aol.com
5551 Lutford Circle, Westminster, CA 92683-4127

Selfish Universities want more H-1B Visas:

US Colleges say we need more H-1B visas because Foreign students can not get jobs in America. They are only telling a half-truth. The whole truth is that the American high-tech graduates can not get jobs either. We have more than enough H-1B visas 85,000 in total. The truth is corporations would rather hire cheaper foreign trained foreign workers.

Granting more H-1B Visas is a cheap labor subsidy to corporations. It is also a subsidy to Universities, by increasing their student body. This fills class seats that could go to Americans, and cost the taxpayers money by educating foreign students.

The H-1B Visa takes money out of the Economy:

It is not just myself who has suffered an economic loss due to losing his job to the H-1B Visa. While attending college at night I met many others who suffered the same fate. In 2002 a 45 year part time college student old lost his job in Phoenix, after spending 7 months job searching, and answering 2100 ads, he finally landed a programming job in California. He had to sell his house and move to get a job. His new job in CA paid so poorly that he was unable to cover his living expenses. So each month he had to draw from the proceeds of the house he sold. He went from a home owner, to a renter, and spent the equity he cashed out just trying to support his family.

Many 40-49 year olds with years of experience including Programmers, Electrical Engineers, and Mechanical Engineers are unemployed or underemployed. **These people should be in their peak earning years.** Yet many of them are working as substitute school teachers, tutors, or are selling used cars, doing woodworking, working as cashers, or working at Target or Home Depot, or as movie extras.

Many 25-30 year olds upon graduation from college are still working the same job they had while in college. These people are still living at home with their parents and have no hope at all of leaving the nest or becoming home owners, or participating in the ownership society.

These under-employed people do not show up in the unemployment rate.

The cost to America is not just lost wages, people losing homes, or prematurely withdrawing from their retirement accounts by using 401-K and IRA money to buy car / health insurance.

The H-1B does not make America Competitive:

The real cost to America is loss of productivity. This happens when experience highly skilled people are no longer working where they are most productive. We lose the years of experience by displacing these workers.

Also the new graduates who are unable to find work in their field are a net drain on the economy too. The reason is twofold;

1.) Loss of opportunity and productivity because as students they are not contributing to the economy. Then when they get out they are in the same place they were 4-5 years ago, working at Starbucks.

2.) Loss of capital – The money spent by the student going to college could have been invested into the economy in a more productive way. Rather than training him to do a job where Foreign workers have saturated the market. The cost to the student is not just his tuition money, but his time, and loss of investment opportunities, and loss of other employment opportunities.

Thank you,

Mark Powell (714) 895-6204 Markpowell92683@aol.com
5551 Lutford Circle, Westminster, CA 92683-4127

MS. LYNN SHOTWELL, EXECUTIVE DIRECTOR, AMERICAN COUNCIL ON INTERNATIONAL PERSONNEL

April 5, 2006

Honorable John N. Hostettler, Chairman
Immigration, Border Security and Claims Subcommittee
United States House of Representatives
B-370B Rayburn House Office Building
Washington, DC 20515-6217

Re: Subcommittee Hearing on H-1B Worker Visas

Dear Chairman Hostettler:

We appreciate the Subcommittee's March 30th hearing addressing the critical issue of whether Congress should raise the H-1B cap. While we are disappointed that the Subcommittee did not opt to hear from U.S. employers concerning this important matter, we are pleased to submit these comments for the record.

The American Council on International Personnel (ACIP) represents over 200 multinational employers, ranging from leading U.S. high-tech, manufacturing, healthcare and service companies to some of the nation's premier research and academic institutions. ACIP members rely on the H-1B program to maintain a competitive workforce. Over half of the H-1B visas go to professionals holding advanced degrees, primarily from U.S. universities. Thus, American employers recruiting at American universities are competitively disadvantaged by the unavailability of H-1B visas. The visa is used by a wide array of professionals including, physicians, teachers, scientific researchers, engineers, architects, lawyers, accountants, marketing experts, and many others who provide direct services to Americans and create new American jobs and products.

The existing H-1B quotas do not support American competitiveness and innovation. In 2005, foreign nationals earned more than 40 percent of the master's degrees and 60 percent of the PhDs in engineering awarded by American universities. We are delighted that already this year 2.1 million jobs have been created and that U.S. unemployment stands at 4.9%—full employment. The U.S. Department of Labor estimates that between 2002 and 2012 there will be 2 million more job openings in America alone in the fields of computer science, mathematics, engineering and the physical sciences. Worldwide competition for this talent is fierce yet American employers are hamstrung in their efforts to recruit and retain scientific and engineering talent.

On August 10, 2005 the H-1B cap was exhausted nearly two months prior to the beginning of fiscal year 2006 (FY06). Additionally, in January 2006, the H-1B FY06 advanced degree cap exemption was also prematurely exhausted. Both cap exhaustions leave a variety of business sectors, medical facilities and educational institutions unable to hire new H-1B workers until October 1, 2006, an unfortunate result in an innovative market. The best talent will continue to be lost to our competitors year in and year out until our quotas reflect market demands. U.S. employers need predictability to remain competitive in today's global economy, one that could be provided through a market-based H-1B cap.

We disagree with certain critics of reform who argue that the global flow of talented students and employees only hurt America's homegrown workforce and lower U.S. worker wages. Quite the contrary, these innovative foreign nationals fill jobs that currently would remain unfilled and additionally create new American jobs. We believe that in the worldwide economy companies will move to where the skilled and educated workers are if not given the option to bring that talent here and pay them the higher of the actual or prevailing wage. In fact, if it were about cheap wages as critics argue, why would any American employers use the H-1B program at all? They would not; instead they would send all work overseas. But, of course, quite the opposite is true as American employers continue to exhaust the cap early each fiscal year and struggle to recruit the workers they need to keep jobs at home.

America's ability to attract and retain the best foreign talent is increasingly at risk. In addition to the H-1B cap, foreign professionals face years long processing delays and unavailability of green cards. Visa retrogression has forced thousands of foreign professionals from countries around the world to wait up to five years to get a green card. Most of these professionals have already been in America for upwards of a decade and this unavailability forces them to put their lives on hold even longer. These backlogs unfortunately result in U.S. employers losing many foreign professionals to competition abroad.

ACIP encourages the Subcommittee to consider legislation that includes the following solutions to keep America and U.S. employers on the cutting edge of innovation: (1) a market-based cap for H-1B visas; (2) exemptions from the employment-based immigrant visa caps for workers needed for their knowledge or contributions to innovation in fields like science, technology, engineering and mathematics; and (3) a direct path to green card for advanced degree graduates of American universities.

We look forward to working with the Subcommittee, the full Committee and the entire U.S. House of Representatives as we proceed on immigration reform this year.

Sincerely,
Lynn Shotwell
Executive Director

American Council on International Personnel

MS. SANDRA J. BOYD, CHAIR, COMPETE AMERICA

April 6, 2006

Honorable John N. Hostettler, Chairman
Immigration, Border Security and Claims Subcommittee
United States House of Representatives
B-370B Rayburn House Office Building
Washington, DC 20515-6217

Re: March 30, 2006 Subcommittee Hearing on H-1B Visas

Dear Chairman Hostettler:

On behalf of Compete America, a coalition of more than 200 corporations, universities, research institutions and trade associations concerned about legal, employment-based immigration, I would like to thank you for addressing the important issue of H-1B visas in the Subcommittee's March 30th 2006 hearing. Our membership is committed to ensuring that the United States has the highly educated workforce necessary to ensure continued innovation, job creation and leadership in a worldwide economy, and the H-1B visa program is critical to achieving this goal. Because none of our members were able to participate in the Subcommittee's hearing, we would like to add our comments to the official hearing record.

The title of the hearing "Should Congress Raise the H-1B Cap?" asks a very important and timely question given the attention focused on immigration reform in both houses of Congress. We believe, however, that to fully address the issues facing U.S. employers and their insufficient access to highly educated foreign talent, the Subcommittee must also look at the problems with the employment based (EB) visa or "green card" system. We urge the Subcommittee to schedule a follow-up hearing to specifically address the issues facing U.S. employers and tens of thousands of valued U.S. employees now caught in the woefully inadequate EB visa system.

Compete America members believe now is the time to fix both the outdated and counterproductive H-1B and EB visa programs. The current system for legal immigration *hurts U.S. competitiveness* by making it too hard for highly educated, sought after foreign professionals to come to the United States to live and work.

H-1B shortages are well documented, and the backlogs in the green card system are only getting worse, forcing thousands of valued foreign-born professionals - including researchers, scientists, teachers and engineers - into legal and professional limbo for years.

America benefits from the contributions of highly educated foreign nationals, whether they are here on temporary H-1B visas, or as permanent residents. Both the H-1B and EB visa programs have been responsible for bringing much needed foreign talent to live and work in the United States, and most importantly, to make significant contributions to our economy and our global competitiveness.

H-1B Visas

H-1B visas give employers access to highly educated foreign professionals who work in the United States temporarily to fill a specialty occupation. Under current law the program is capped at 65,000, down from 195,000 in FY 2003. The FY2006 cap was exhausted on August 10, 2005, *nearly two months prior to the beginning of the new fiscal year.* This marked the seventh time since 1997 that the H-1B cap has been reached before the end of the fiscal year and the second year in a row that it has been reached on or before the start of the fiscal year. (August 1997, May 1998, June 1999, March 2000, February 2004, October 2005, August 2005).

With no access to H-1B talent, a variety of business sectors, medical facilities and educational institutions are being adversely impacted. U.S. employers need predictability - something the current system does not provide.

Nevertheless, the H-1B visa remains an important tool, especially for hiring foreign nationals who receive their advanced degrees from U.S. universities.

In many critical disciplines, particularly in math, science and engineering, 50% or more of the post-graduate degrees at U.S. universities are awarded to foreign nationals. For example, in electrical engineering, 55% of master's and 68% of PhD graduates of U.S. programs in 2005 were foreign students.

In FY 2005, Congress recognized the growing problem and added an additional 20,000 H-1B visas as a set-aside for foreign graduates of U.S. universities receiving

their Master's or PhD. In January 2006, only four months into the fiscal year, this cap was also reached.

The numbers Congress has allotted for H-1B visas are clearly inadequate to meet the demand - and it is clearly a counterproductive system that trains foreign scientists and engineers and then sends them home to compete against American businesses.

We were gratified that President Bush has acknowledged the problem facing U.S. employers and has called for the H-1B cap to be raised. We hope the Congress will do so this year.

EB Visas

Employment-based (EB) green cards are provided to foreign nationals who are seeking permanent residence and are sponsored by employers to work in the United States. EB green card holders are well-educated job creators who must pass strict labor market tests in order to be eligible for admission. The annual EB green card cap of 140,000 is allocated equally among all countries and covers five worker preferences.

The 140,000 number, however, is misleading. Unlike H-1B numbers, spouses and dependents are counted against the EB visa cap - greatly reducing the number available to highly educated workers.

A further complication is the individual country quotas mandated by the system. For professionals born in high-demand countries, such as India and China, the wait can span up to five additional years beyond the normal adjudication process of two to three years, even if the overall visa limit is not reached.

Because of the tremendous backlogs in the processing of EB green card applications, tens of thousands of highly trained and sought-after professionals must wait far too long for processing - with no assurance of outcome. Many simply abandon their efforts and return home or move to more welcoming countries - including Canada, Australia and the EU - that are direct economic competitors of the United States.

This is just a glimpse into the quagmire we call the green card system.

Both the H-1B and EB visa programs have been responsible for bringing much needed foreign talent to live and work in the United States, and most importantly, to make significant contributions to the U.S. economy and U.S. global competitiveness. Compete America members believe that any immigration reform legislation must include the following:

- a market-based cap on H-1B visas;
- exemptions from EB caps for an expanded group of workers that are needed for their knowledge or contributions to innovation in fields like science, technology, engineering and mathematics (STEM);
- an easing of visa requirements for prospective foreign students seeking to pursue advanced degree study in the U.S.; and
- a direct path to green cards for advanced degree graduates of U.S. universities.

U.S. employers need the ability to employ the highly educated workers they need to stay competitive and keep jobs here in the United States. Unlike ever before, the United States is in a fierce worldwide competition for top talent. As our competitors have stepped up efforts to attract these workers, the current U.S. immigration system is preventing U.S. businesses, universities, medical institutions and research centers from hiring much-needed highly educated foreign-born talent.

If America is serious about remaining the world's innovation and technology leader, we must fix a broken system preventing the legal employment of highly educated and sought after foreign professionals.

Thank you for this opportunity to present our views. I have attached a March 27, 2006 editorial from the *Wall Street Journal* that offers an excellent summary of the issue. I would ask that it also be included in the hearing record. Compete America looks forward to working with you and the Subcommittee to as the debate on immigration reform continues.

Sincerely,

Sandra J. Boyd
Chair, Compete America

THE INSTITUTE OF ELECTRICAL & ELECTRONICS ENGINEERS - UNITED STATES OF AMERICA

Statement of

The Institute of Electrical & Electronics Engineers - United States of America (IEEE-USA)

To The

Subcommittee on Immigration, Border Security and Claims
Committee on the Judiciary
United States House of Representatives

For Inclusion in the Record of a Hearing Entitled

Should Congress Raise the H-1B Cap?

06 April 2006

IEEE-USA appreciates this opportunity to comment on important issues raised at the March 30 House Judiciary subcommittee hearing on the H-1B visa program.

Our answer to the fundamental question - should Congress raise the H-1B cap – is "No," not until legislation has been enacted to correct serious weaknesses in basic administrative and enforcement processes that leave the program vulnerable to fraud and abuse. These weaknesses have been documented in major government reports and program assessments (**See Attachment**). Yet Congress has, to date, not acted on them.

As the White House Office of Management and Budget recommends in an H-1B program assessment updated in January 2006:

> "Congress and the Department of Labor should re-examine ways to strengthen the Labor Condition Application (LCA) process by: 1) requiring employers filing LCAs to test the labor market; 2) ensuring the integrity of the process by allowing the agency to verify the accuracy of information provided on LCAs; and 3) adding an audit function or other anti-fraud protections."

In addition to fixing the LCA process, legislators should also strengthen program investigation and enforcement authorities and take steps to ensure timely access to basic information about the program and its beneficiaries to facilitate more effective Congressional and agency oversight.

Moreover, as Congress takes up comprehensive immigration reform, including expanded opportunities for the legal permanent admission of professionals and other skilled workers, we encourage legislators to consider whether permanent admissions options provide a better way to

ensure a strong high-tech workforce and eliminate the need to expand a badly broken H-1B guest-worker program.

Background on the H-1B Temporary Work Visa Program

As amended by the Immigration and Nationality Act of 1990 (INA), the H-1B visa program is designed to enable U.S. employers to hire skilled foreign professionals to work temporarily in the United States in specialty occupations or as fashion models for periods of up to six years.

Supporters of the program, including public and private sector employers, insist that the program increases U.S. economic and technological competitiveness. It is supposed to allow businesses to meet short-term labor market needs by hiring the "best and brightest" from around the world, subject to statutory safeguards for job opportunities, wages and working conditions for U.S. workers.

IEEE-USA, and other organizations with individual members who have been adversely affected by the program, see the program differently. Our perspective is based on evidence documented in critical reports and assessments issued over the past 10 years by federal agencies including:

- the Inspector General of the Department of Labor (DOL),
- the Inspector General of the Department of Homeland Security (DHS),
- the United States Government Accountability Office (GAO), and
- the White House Office of Management and Budget (OMB).

We have also examined the best publicly available data on how the H-1B visa program is actually being used, including the DOL's own on-line LCA database. Collectively, these official sources offer compelling evidence that the program is not working as Congress intended. Although it does allow employers to fill vacancies with talented people from around the world, it does so in ways that can, and do, adversely affect job opportunities, wages and working conditions for American and foreign workers in the United States. By reducing job opportunities and depressing wages, it also acts as a disincentive to young people who might otherwise elect to pursue educational and career opportunities in high demand occupations, including computer science and engineering.

Before accepting employer pleadings that the H-1B visa ceiling be raised or eliminated entirely, Congress should enact legislation to correct weaknesses that limit the program's overall effectiveness and efficiency and strengthen statutory safeguards for U.S. and foreign workers who are affected by the program.

Problems with the Labor Condition Application Process

To qualify for an H-1B visa, foreign nationals must have at least a baccalaureate degree or equivalent experience in an occupation requiring the theoretical and practical application of specialized knowledge and skills, and a job offer from a U.S. employer. Use of the term "equivalent experience" means that workers without a college degree are also eligible for H-1B visas.

There are supposed to be two levels of protection embedded in the law to deter employers from using the program in ways that adversely affect U.S. and foreign workers: a prevailing wage requirement and two additional recruitment and retention (no lay-off) attestations. In neither case do the protections work.

Employers who intend to hire H-1B workers must first file Labor Condition Applications (LCAs) at the U.S. Department of Labor. On their applications, employers must affirm that they will pay H-1B workers the higher of the actual or the prevailing wage for the occupation in the intended area of employment.

Unfortunately, the prevailing wage requirement is riddled with loopholes. Rather than having to pay current prevailing wages identified using standardized procedures, employers are free to use a variety of sources to establish the validity of the wages they intend to pay. Sometimes wage rates are based on surveys that are two or three years old. Nor is there any requirement that employers match the qualifications of workers with the requirements of jobs they will be hired to fill. As a result, jobs described as "entry-level" can be filled with more experienced workers who can still be paid entry-level wages. This is true even if the workers are given work commensurate with their experience.

A comprehensive study prepared by John Miano of the Programmers Guild and based on publicly available LCA filings by employers of H-1B workers indicates that many H-1B workers are paid substantially less than similarly skilled U.S. workers, $13,000 less on average.

So-called "H-1B dependent employers" - those with a workforce consisting of at least 15percent H-1B workers – must also attest that they have made good-faith efforts to recruit U.S. workers and that they have not displaced and will not displace similarly qualified U.S. workers 90 days before and 90 days after filing an H-1B visa petition. Unfortunately, H-1B dependent employers only account for a handful of the companies using the visas. As a result, most companies face absolutely no legal requirement to even try to recruit U.S. citizens before hiring H-1B workers.

This is what program evaluators at the Department of Labor have said about the LCA process:

> "The H-1B program does not require there be a shortage of U.S. workers in the occupation for which aliens are being hired."
>
> "The processing system used by DOL for LCAs is designed to certify applications quickly rather than to screen out applications that do not meet program requirements."
>
> "In our opinion, as the H-1B program is currently operated, DOL adds nothing substantial to the process." [Report #06-03-007-03-321]

Further evidence of the lack of effective worker protections can be found in the jobs that the DOL routinely approves to be filled by H-1B visa holders. Hundreds of examples can be found of jobs for which there are plenty of qualified Americans. To cite just one example from the LCA database, 800 H-1Bs were approved for attorney positions in 2005. Since when has there been a shortage of lawyers in the United States? During the same period, the DOL also approved H-1B visas for:

- Electrical engineers making $505 per week ($26,260 per year),
- Teachers paying $8.00 per hour,
- Design engineers paying $8.00 per hour, and
- Compliance auditors paying $8.33 per hour.

Supporters of the H-1B program claim that employers always pay H-1B workers more than these ridiculous amounts, but that misses the point. The fact remains that companies can pay their workers such ridiculously low salaries and still be in full compliance with the law. LCAs – originally intended to help safeguard U.S. and H1-1B workers - provide no protections at all.

H-1B Investigative and Enforcement Authorities Are Limited

With respect to the investigative authorities needed to ensure compliance by participating employers and uncover fraud and abuse in the H-1B program, a review by the Office of Management and Budget in 2005 found that:

> "Unlike the Permanent Labor Certification program, wherein the Department of Labor (DOL) has independent authority to review applications, DOL authority to certify LCAs comes by delegation, by virtue of the Immigration and Nationality Act's consultation requirement for H visas. The statute waives a labor market test, does not require submission of supporting documentation by employers, limits DOL's authority to review or question LCAs, and prioritizes the processing efficiency of the program.
>
> Evaluators have found some or all of these conditions leave the program vulnerable to fraud or abuse."
> [OMB Program Assessment, 2005]

The General Accountability Office (GAO) found the same weakness 5 years earlier:

> "Labor is limited to ensuring that the employer's application form has no obvious errors or omissions. It does not have the authority to verify whether information provided by employers on labor conditions, such as wages to be paid, is correct." [GAO Report #00-157]

Even these findings appear to be optimistic. Dozens of applications for H-1B visas were approved in 2005, despite containing obviously incorrect information. For example, a company called "testing" in "Baltimore, DC" received permission to fill a job titled "test" with an H-1B last year. 84 companies filed LCAs for positions they claimed had prevailing wages of more than $1 million, including one for a "piano strings" instructor at a community college in Laredo, Texas. The DOL approved all of them.

DOL's Wage and Hour Division (WHD) has very limited authority to ensure that H-1B employers comply with their legal obligations and that H-1B workers and their U.S. counterparts are protected under the law. Not only are the criteria that must be met before the agency can initiate investigations very specific, but the kinds of information and methods it can use to establish non-compliance are also limited.

Under these circumstances, relatively few complaints are ever filed by or on behalf of U.S. or foreign workers. H-1B workers, in particular, are understandably reluctant to complain to the government when their sponsoring employers fail to live up to promises made on their LCAs. The GAO recognized this problem, concluding that:

> "according the a Labor official, H-1B workers may be vulnerable to abuse since their dependency upon their employers may lead to reluctance to complain, not unlike those workers protected under FLSA." [GAO Report #00-157]

Significantly, recent WHD statistics indicate that, when H-1B workers did complain, the government found violations in 83 percent of the cases it investigated – far more than it did in cases investigated under other worker protection laws. We think it would be better to strengthen compliance by allowing administrative agencies to conduct random audits.

Better Information Needed to Determine Effects on U.S. Workers

The continuing lack of timely statistical information also limits the ability of policy-makers in Congress and responsible agencies to effectively oversee and manage the workings of the H-1B program. The most recent congressionally mandated DHS report on the characteristics of H-1B workers, for example, is for FY 2003.

Current information about H-1B workers, their employers and statistics on investigative and enforcement actions must be much more readily available to congressional and agency decision-makers to ensure that the program serves the best interests of employers and workers. Ideally, such information should include accurate estimates of the size of the H-1B population, not just work performed by various agencies (e.g., LCAs processed by the Department of Labor; visa petitions received and approved by the Department of Homeland Security: and visas issued by the departments of Homeland Security and State).

The GAO recognized the difficulty of properly evaluating and monitoring the program without this crucial data when it said:

> "Much of the information policymakers need to effectively oversee the H-1B program is not available because of limitations in the Department of Homeland Security's (DHS) current tracking systems. Without this information, policymakers don't know if the program is meeting employers' needs for highly skilled temporary workers in the current economic climate or how to adjust policies that may affect labor market conditions over time, such as the H-1B visa cap." [GAO Report #03-883]

The consequences of such deficiencies became glaringly obvious in 2005 when DHS issued 6,000 more visas than were authorized under the H-1B visa cap. A related investigation by the DHS Inspector General concluded that:

> "The Citizenship and Immigration Services (CIS) at the Department of Homeland Security (DHS) has neither the technological nor an operational methodology needed to ensure compliance with statutory limits on the

> numbers of persons who are granted H-1B visas. Faced with the prospect of issuing too few or too many approvals, it has been CIS's explicit practice to avoid approving too few." [Report OIG-05-XX]

If the DHS can't keep track of the 85,000 visas it distributes now, how can Congress expect the agency to keep track of even more should they raise the cap?

Increasing Reliance on Guest-Workers Also Fuels Outsourcing

IEEE-USA also believes that by continuing to import guest workers through the H-1B and other temporary visa programs, U.S. employers are expediting the transfer of manufacturing and service jobs to lower-cost overseas locations. Many former H-1B workers are able to facilitate outsourcing by leveraging the American connections, language skills, and familiarity with U.S. markets, business practices and technologies they develop while in the United States. With that knowledge, coupled with lower domestic labor costs, their employers are well positioned to compete with U.S. firms for outsourcing work.

The net result is that the United States is becoming increasingly dependent on foreign technical expertise both here and abroad. Many U.S. students – including women and minorities - who might otherwise be attracted to scientific and engineering careers see diminishing chances for advancement and financial rewards in these fields and opt, instead, for careers in business, law and medicine. At risk is America's ability to innovate and to use technology to ensure continuing prosperity and better living standards for all of its people.

Policy Recommendations

To reduce the adverse effects of the H-1B work visa program on job opportunities, wages and working conditions for citizens, legal permanent residents and foreign nationals who have been legally admitted to work temporarily in the United States, IEEE-USA urges Congress to:

1. Maintain the H-1B Admissions Ceiling at Current Levels - 85,000 visas per year, including the 20,000 visas that are reserved for foreign nationals with advanced degrees from U.S. educational institutions.

2. Strengthen Essential Worker Safeguards – Extend the applicability of the recruitment and retention (no-layoff) attestation requirements to all employers of H-1B workers.

3. Ensure Program Integrity - Reduce fraud and abuse by authorizing random audits to ensure that participating employers comply with attestations made on their LCAs and related H-1B visa petitions.

4. Facilitate Effective Oversight - Mandate more timely publication of agency statistics on visa applications received and issued and critical demographic information about visa recipients, including age, occupation, educational attainment, level of compensation, country of origin and the names and industry sectors of their sponsoring employers,

5. Pass Representative Bill Pascrell's "Defend the American Dream Act" (HR 4378) - including enhanced worker safeguard, prevailing wage, job disclosure, audit and investigation and private right of action provisions.

6. Enact Permanent Employment-Based Admissions Reforms

Congress should recognize the advantages of expediting the legal permanent immigration of foreign nationals with advanced degrees in science, technology, engineering and mathematics instead of continuing to expand badly broken temporary work visa programs. Problems of low wages, worker displacement and exported skills will fade dramatically when skilled professionals are permitted to stay in the United States and become citizens, rather than being sent home after six years.

IEEE-USA firmly believes that welcoming foreign nationals with the knowledge, skills and determination needed to succeed and making them citizens has helped to make America great. To the extent that demand for high tech professionals exceeds the current domestic supply, we urge Congress to enact needed reforms in the nation's permanent, employment-based admissions programs in the belief that an immigration policy based on the concept of "Green Cards, Not Guest Workers" is what is really needed to help America create more and better jobs, maintain its technological leadership and ensure military and homeland security in the 21st Century.

American policy should be to bring the best and brightest to the U.S. permanently, allowing them to fully enjoy and embrace the American dream.

About the IEEE-USA

IEEE-USA advances the public good and promotes the careers and public policy interests of more than 220,000 engineers, scientists and allied professionals who are U.S. members of the IEEE. IEEE-USA is part of the IEEE, the world's largest technical professional society with 360,000 members in 150 countries. For more information, go to http://www.ieeeusa.org.

Contact
Vin O'Neill
Senior Legislative Representative
Career Policy Activities
IEEE-USA
Phone: 202.530.8327
E-mail: v.oneill@ieee.org

ATTACHMENT

Federal Agency Studies and Reports
H-1B (Specialty Occupations) Temporary Admissions Program
1996 - 2005

1. **The Department of Labor's Foreign Labor Certification Programs: The System is Broken and Needs to Be Fixed**

   US Department of Labor, Office of the Inspector General, Office of Audit, May 1996
   [Report # 06-96-002-03-321]
   http://www.oig.dol.gov/auditreports/htm

2. **H-1B Foreign Workers: Better Controls Needed to Help Employers and Protect Workers**

   US General Accounting Office, September 2000
   [Report # GAO/HEHS-00-157]
   http://www.gao.gov/

3. **H-1B Foreign Workers: Better Tracking Needed to Help Determine Program's Effects on U.S. Workforce**

   US General Accounting Office, September 2003
   [Report # GAO-03-883]
   http://www.gao.gov

4. **Overview and Assessment of Vulnerabilities in the Department of Labor's Alien Labor Certification Programs**

   US Department of Labor, Office of the Inspector General, Office of Audit, Sept 2003
   [Report # 06-03-007-03-321
   http://www.oig.dol.gov/auditreports.htm

5. **USCIS Approval of H-1B Petitions Exceeded 65,000 Cap in Fiscal Year 2005**

   Department of Homeland Security, Office of Inspector General, Office of Inspections and Special Reviews, September 2005
   [Report OIG-05-XX]
   http://www.dhs.gov/interweb/assetlibrary/OIG_05-49_Sep05.pdf

6. **H-1B Work Visa for Specialty Occupations – Labor Condition Application Program Assessment**

   Executive Office of the President, Office of Management and Budget, January 2006
   http://www.whitehouse.gov/omb/expectmore/detail.10002378.2005.html

---

MS. TONI L. CHESTER, SOFTWARE DEVELOPER, BLOOMSBURY, NEW JERSEY

April 4, 2006

The Honorable John N. Hostettler
Chairman
House Judiciary Subcommittee on Immigration
B-370B Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515-6217

Honorable Hostettler:

I would like to take this opportunity to thank you personally for holding this hearing concerning the H-1B Visa Program and its impact on the American Technical

Experts, like myself, in addition to the long term effects upon the country. I greatly appreciate the courtesy you have extended to us by allowing the opportunity for American Workers to offer comments for the hearing record. Thank you.

Please note this is just a brief synopsis of my experience with guest workers in this country on an H-1B Visa. I have much more to share, but due to content restrictions, I have limited my testimony to only a few.

Please do not hesitate to contact me directly concerning my experiences. I would be more than happy to share additional information with you.

I hereby swear that the testimony you are about to receive is true and accurate.

Sincerely,

Ms. Toni L. Chester
Sr. Software Engineer
102 Bradford Lane, Bloomsbury, NJ 08804
tlchester@enter.net
908-479-4114
212-259-7138 (daytime)

Attachment: My experience with the H-1B Visa Program

My name is Toni L. Chester. I am a forty two (42) year old female American technical worker with one son who I have raised alone. I have over seventeen (17) years of technical industry experience. My academic background entails a Bachelor of Science degree in Applied Mathematics, a Bachelor of Science degree in Statistics; I am four courses shy of a Bachelor of Science Degree in Computer Science. My academic focus was on engineering and computer science in addition to my specified majors. Today, I share my story, on behalf of hundreds of thousands of American Technical Workers.

At the age of nine (9), I was so engrossed and in love with Mathematics that I purchased my first algebra books at a flea market in Massachusetts. My love of math continued in High School where I excelled pursing an advanced program of study.

In my senior year, I had planned to go to college and become a Mathematics Professor. I was pulled aside by my physics teacher. He introduced me to the discipline of engineering. He encouraged me to pursue a career and education in Engineering. After all, it was the future of this country.

From here, I went to college and obtained my degrees. I had my son. I went to work.

I worked in the engineering discipline for seven and one half years. During this time, I became much more heavily involved with computers and programming. Although my academic background contained extensive work in the programming disciplines, I had not had the opportunity to fully utilize the skills. With my background in programming, I quickly moved from Steam Turbine Engineering to Software Development, a field in which I excelled.

I was quickly given increasing responsibility, frequently being named team lead for my assignments. I worked primarily as a contract employee for many leading companies including AT&T, Pricewaterhouse Coopers, Lucent Technologies, Ernst & Young.

My first experience with the H-1B Visa program occurred at AT&T in Piscattaway, New Jersey. The development team I was on, was comprised of two American developers and three H-1B contract developers. Through conversation with my teammates, I learned that Noel Desouza, Ramkumar (Ram) and Subramanian (Subu) were in the United States through the H-1B guest worker program. Ram and Subu were young men lacking experience. Noel was a few years older, male and experienced. They all made significantly less than me. Through various discussions, I learned that Ram and Subu were paid around $40,000 annually whereas Noel was paid a bit higher. At the time, my salary was $65,000 per year with benefits. Subu barely spoke English and assignments had to be dictated down to the algorithm (step-by-step instruction) level. This took time and energy. Another programmer could complete the work in the time that it took to provide the instruction to him. Subu and Ram were soon replaced for nonperformance and failing to report to work. The replacements, Sagar and Kalyan, were once again young, male H-1B visa holders in their 20s. Our team spent a great amount of time together. We often discussed our backgrounds and how my teammates had come to work in the United States. There were no Americans considered for the positions. I am aware that no Americans were considered for the positions because I was among the team of developers conducting the interviews.

Many times, I was put in a position to mentor or train my H-1B peers. At the time, I had no idea that they were in my country to be my replacements. Nor did I realize that the program afforded corporations a means to rapidly escalate the off-shore outsourcing process. The H-1B Visa program is the CATALYST to off-shore outsourcing. Workers are brought to the United States, trained by their American peers, taught project details. The Americans are terminated and the jobs are lost. In the summer of 2003, I read an article concerning my area of expertise and how the positions had been moved primarily to India.

I was terminated from my contract assignment on the Agere Systems spin project while two young, male, h-1B guest workers from India, Permjit Ghotra and Vic, more than 10 years my junior were retained. This decision was based on the recommendations of an employee, Charanjit Momi. The customer of my services had no input into the decision. The only remaining female, the only remaining American on the team was discharged. At the time, I had just turned 38 years old, I had significantly more experience than my peers and I was the only United States citizen. My skills were not inferior, as I was leading most of the effort. I was often contacted by Vic to assist in his job. When I learned that my contract was ending, I was told to be professional and to train my peer in the work I was doing. My last day was August 31, 2001.

I was aware that both men were here on an H-1B Visa due to conversations between us. Permjit had returned to India during the course of the project. At that time, he was required to renew his visa, and was thus detained. During this time, he did not communicate with us, so I proceeded with the work alone, having no knowledge of the status of his tasks. Vic joined the IBM team in the Spring of 2001. There were no American workers considered for position. Through conversation, I learned that Vic had been on an assignment in California prior to his arrival in Pennsylvania. He had not been in the country very long. We spoke quite frequently because I was his source of transportation for his visits to the Berkeley Heights, NJ location of Agere Systems.

Permjit and I were brought on this project to migrate computer applications from Lucent Technologies to enable Agere Systems to move forward toward their IPO. I joined the project first. Second came Permjit, a young man with whom I had worked in the past. We had the mission to complete the work quickly and without flaw. Upon his return, the project had to move quickly. We had limited time to migrate all the code and the data contained within the Lucent application. As this computer system addressed the Intellectual Property of the corporation, the data migration had to be completed with diligence to allow for the physical separation of the two companies.

In the meantime, my direct management changed. I was not introduced to the new manager, nor was he introduced to me. Permjit was introduced to the new manager by Charanjit Momi. He was engaged immediately. I was told that the new manager was too busy and didn't have time to meet with me. Several months later, I introduced myself. That was all the contact I had with him until weeks before my contract was terminated. On the afternoon of Monday, August 20, 2001, I was phoned by my consulting firm. I learned in that conversation that my contract would end on August 31, 2001. The H-1B guest worker, Permjit Ghotra, was being retained.

In the coming weeks, I would learn that jobs were not so easily found. This was the first time in my life that I filed for unemployment.

At the end of September, 2001, I landed an opportunity that took me back years in my experience. I was no longer using my current skills. Although I knew from the interview that the fit was not good, I had no choice. I could not decline the job by law. If an offer is made, I had a legal obligation to accept it. This position lasted just over a month. In November 2001, I began my long term unemployment. I didn't even have a chance to fight for a job. By January 2002, I was submitting as many resumes as possible regardless of the location. Many positions were only available for a window of two hours. There were so many resume submissions that they could not address all the candidates. Through conversations with local recruiters, I later learned that for every position posted there was a minimum of a thousand resumes presented.

Times were rough. I had quickly depleted my available funds. Unemployment paid only a fraction of my mortgage. I could not pay my bills. In July 2002, my unemployment compensation was exhausted. I had obtained one extension. I had only worked three days since November 2001. Afterwards, I ended up living on my tax return. In September, I landed a six week opportunity. The money was low, but it was better than nothing. I was now making significantly less than before, had no opportunity for overtime, had no vacation, holiday or sick pay. I had to commute 75–80 miles each way. The project goals were unrealistic. The company was Accenture.

After completing the assignment, I opened a new unemployment claim. Over the duration of my unemployment, I had seen one particular job, through Crimson Precision, pop up frequently. Each time, I submitted my resume and received no response. Finally, in November 2002, I learned that the project had gone awry and that the existing development team was being replaced. The assignment was with Pricewaterhouse Coopers. I heard nothing more. Just days before Christmas 2002, I saw the job again. I contacted the company. I passed the technical interview, was hired, started the following day. I learned that three foreign guest had to be terminated for failure to produce. My role was technical writer, with an hourly rate $25/hour less than my previous assignments. I quickly escalated to the lead developer position. I was not offered monetary compensation for the change in position. The assignment was in Manhattan. My commute was 85–90 miles each direction and took hours. I completed the application in 10 months, mostly alone. The project had run several months prior to my arrival. During this time I was unemployed despite being more than qualified to do the job. Once I was given the opportunity I proved

I was more than up to the challenge. My employer just didn't think to offer it to me until they had exhausted their supply of H-1Bs.

After completing this assignment in September 2003, I was again unemployed. This time, I changed my approach. I sought out Indian based consulting firms. I recalled that Indotronics had supplied the H-1B guest workers to AT&T. Thus, I sent my resume to the Indian branch of Indotronics. I was contacted quickly by recruiters across the country. Discussions began. I was advised of an opportunity at Lucent Technologies in Murray Hill, NJ. The hourly rate for the position was between $28 and $30/ hour. The contract was offered through IBM INDIA. The rates were as is, no benefits. Previously, I had been paid $70–75 /hour with benefits for a similar position at the same client. I thanked them for contacting me and graciously declined.

My income has dropped dramatically. I have no vacation, no sick pay, no holiday pay, no medical insurance. When afforded an opportunity, I must work every day to barely make ends meet, which they frequently don't.

We have had no Christmas in years: Thanksgiving is just another day. There is nothing to celebrate, no money for a celebration. In October 2002, my cable was disconnected. We have had no television since October 2002.

This situation has adversely impacted my son's life. My son is a vibrant, young, intelligent minority who wishes to someday pursue the field of Electrical Engineering. He graduated from high school in June 2005 with honors. He passed both the AP Exam in Calculus and the AP Exam in Chemistry. Today, he sits at home waiting for his chance. He did not attend college this year because of my financial woes.

In the spring of 2002, while unemployed, having no prospects in site, I had a long talk with my son. The reality had struck, my education and experience was worthless. I told my son that a college education was not a viable avenue or path to pursue. This discussion was very devastating for me. I had to come to the conclusion that my career was over and that my educational and career achievements had no value, at least not in my country. At the time, he was 14 years old.

Today, I am forced to live my life in 3 day, 3 week, 2 month, 3 month or 6 month intervals. Nothing is long term. Nothing pays as it had a few years back. In order to survive, I must work every business day that is available to me. I don't get vacation or sick time. My commute is long and tedious. I pay the employers portion of Social Security.

Every day, I live in fear. I can no longer answer my phone. I'm afraid to pay my bills. Survival is all that I know today. I have no idea how long an assignment will last, thus I have to hoard money in preparation for another long term stay in the unemployment chain. This is the life of an American Technical Worker.

For the past four and a half months I have been unemployed. The last assignment paid $30/hour less than my going rate; the company, ISI, was in the midst of offshore outsourcing to India.

The H-1B program is being used to displace American Technical workers from their opportunities. The H-1B program, in many cases, brings young, less experienced, foreign, predominantly *male* workers into the country. The American workers are told to train their replacements, then dismissed. I know, because I have done it. I frequently see opportunities listed on job boards seeking only H-1B Visa holders. I have contacted the firms. I have been told that there are no jobs. I have contacted the firms about the FREE training they presumably offer. Most times, they don't respond. When I ask to be offered the training opportunities available, they never call back.

Five years ago I was one of the most qualified, most skilled and most sought after IT professionals in the country. I have an excellent education in mathematics, statistics and computer programming. My work history is spotless. Yet I am unemployable. I hear that American businesses want hundreds of thousands of H-1B workers next year to fill jobs "no American can do." I am here. I can do these jobs.

Nobody calls. Today, I have a homeless plan.

129

Shahid Sheikh

Keatley, Benton

From: Shahid Sheikh [ss1396@yahoo.com]
Sent: Tuesday, March 28, 2006 11:27 PM
To: Keatley, Benton
Subject: H-1B full of fraud and abuse -- destroying american middle class

I am one of the heaviest knowledgeable persons in the world regarding H-1B fraud and abuse. I have been writing against this H-1B and L1 visa program fraud and abuse since last 6 years. 80% of these H-1B visa holders are not skilled professionals. This is just abuse of H-1B visa program by more than 3000 Indian and US companies which are called BODYSHOPS. India is destroying American middle class completely. We must wake up!

These Bodyshop companies hire H-1Bs and then sublease them to other US companies which is totally illegal according to the LCA rule(DOL). 90% H-!B visa are abused because of this. This is mentioned as item number 3 in Bill Pescrell's new bill in congress called "Defend america act". The other things is that any Indian can buy a H-1B from India and come to USA. Any Indian can buy a H-1B from India and come to USA. We must stop this. We should impose exam requirements like TOEFL, GRE, KAPLAN, etc! tests as the requirement for applying for a H-1B visa. This will stop all kinds of fraud and abuse of H-1B visa.

H-1B and L1 abuse has brought 4.0 million Indians to USA. American kids are not getting chance. We are losing over $200B dollars per year in middle class income loss because of H-1B and L1 fraud and abuse. It has costed USA total over $1 trillion dollars.

We should not increase H-1B quota. We should give all H-1B visa to foreign students graduating from US universities. Because we are sure about their qualifications. We should not allow anybody to come from outside without EXAM /TESTs. Doctors / Nurses can not come to USA without exams.

I am repeating that there must be an exam requirement like foreign doctors to apply for an H-1B visa. This will totally stop fraud and abuse.

I have been replace at least 3 times from the job by H-1B visa holder! s. I can give proof that the H-1B program is full of fraud and abuse

There are job ads on dice.com where these Indian companies look for only H-1B and OPT workers.

Corporates can easily hire american college graduates and train them in special skills. It is such an easy thing to do. They are just finding easy way out. And Indian fraud companies are many money by hiring and sub-leasing Indians to US companies.

Indian fraud companies are many money by hiring and sub-leasing Indians to US companies.
Indian fraud companies are many money by hiring and sub-leasing Indians to US companies.

LETTER FROM MR. JACK KRUMHOLTZ, MICROSOFT CORPORATION

Microsoft Corporation
1401 I Street, NW, Suite 500
Washington, DC 20005

Tel 202 263 5900
Fax 202 263 5902
http://www.microsoft.com

Microsoft

March 29, 2006

The Honorable John N. Hostettler
Chairman
Subcommittee on Immigration, Border Security, and Claims
B-370B Rayburn House Office Building
Washington, D.C. 20515

The Honorable Sheila Jackson Lee
Ranking Member
Subcommittee on Immigration, Border Security, and Claims
B-351C Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Hostettler and Ranking Member Jackson Lee:

I am writing to highlight a matter of critical importance to Microsoft and the entire technology industry. As you know, highly skilled professionals from the U.S. and around the world drive innovation at Microsoft. Without access to the "best and the brightest" our ability to compete will be weakened, as will our nations' role as the global leader in technology innovation. Most of Microsoft's 36,000 employees in the United States are U.S. workers. However, as a leader in global technology development, it is vital that Microsoft have the ability to attract and retain highly skilled non-U.S. workers in order to drive innovation and spur growth.

Among the many high-skilled immigration challenges Microsoft faces, a key difficulty revolves around the fact that there are too few H-1B visas available to meet industry needs. The 65,000 H-1B cap is an arbitrarily chosen limit, and is in no way related to or calibrated to meet legitimate business needs. In fact, since the H-1B cap receded to 65,000 in FY 2004, the supply of H-1B visas has run out earlier and earlier each year. In FY 2005, it ran out on the first day of the fiscal year; in FY 2006, it ran out nearly two months before the start of the fiscal year, creating a fourteen-month blackout period for most H-1B hiring. This year, the supply is almost certain to run out even earlier. A new exemption for persons with advanced degrees from U.S. universities provided only modest relief. This year (FY2006) the exemption, capped at 20,000, did not last through January.

The very low H-1B cap hurts American competitiveness and often forces U.S. employers to shift projects abroad to access the necessary highly skilled workers. Difficulty with the H-1B cap has severely hampered Microsoft's ability to recruit the best and brightest workers, and it discourages the world's most talented scientists, researchers, doctors, and other skilled workers from considering a career at Microsoft because of the occupational and familial uncertainties placed on them by our immigration laws. If Microsoft cannot hire enough highly skilled workers for key positions, we lose ground in our ability to innovate and compete and we also lose the race for the best and the brightest to competitors in other countries whose immigration policies are designed to attract the talent that would otherwise come here.

Overall, the H-1B visa program has been a positive force for domestic economic growth and H-1B visa holders have helped raise America's standard of living and fuel our economy. At Microsoft, H-1B holders have helped develop: computer "vision" technology, promoting homeland security and personal safety; data exploration technology, boosting medical care in the U.S. and around the world; speech recognition technology for automobiles, improving road safety; and countless other innovations. H1-Bs also help create U.S. jobs. At Microsoft, many H-1B holders have risen to some of the highest positions of leadership in the company – often after becoming citizens or permanent residents – and have helped to create thousands of new jobs.

Microsoft employs H-1B nonimmigrant workers in a variety of highly specialized occupations including:

- **Software Development Engineers** – designing and developing software at its most complex levels, using computer science, engineering or mathematical analysis. Must have development and implementation experience using C, C++, C# or other high level programming languages. Many of these positions require graduate level degrees or significant experience.
- **Research Software Development Engineers** – conducting research at the most complicated and advanced levels of software design and theory. Most of these positions require Masters or Doctoral degrees.
- **Software Architects** – designing the large scale structures and interaction of software at the highest levels. Must have experience in software architecture, algorithm design and development, and system design and development, as well as project management experience.
- **Program Managers** – technical leaders of groups of software engineers who, in addition to designing and developing software, lead the development of applications, systems or services from design through product or program release. In addition to technical skills, these individuals must also have experience in project management, software project management, and developing business operations processes.
- **Localization Software Engineers** – by definition, localization (giving software applications the language, look and feel of a specific foreign country) is best done by nationals familiar with the language and culture of the target country.

The H-1B program has strong wage requirements and other protections for U.S. workers. Moreover, Microsoft compensates its H-1B workers at the same high levels as U.S. workers, and at levels substantially above the government set "prevailing wages" for each occupation (although some critics have confused the "prevailing wage" level for what Microsoft actually pays its employees), for example:

- Software Development Engineers averaged over $109,000 in total direct compensation in 2005.
- Program Managers averaged over $110,000 in total direct compensation in 2005.

There are many things Congress could do to address the crisis-level shortage of H-1Bs including:

- provide critical relief from H-1B visa shortages, by raising the base annual H-1B cap to 115,000 beginning in fiscal year 2007;
- Exempting from the H-1B cap those workers who have earned an advanced degree in science, technology, engineering, or mathematics;
- Retain the separate existing exemption from the H-1B cap for up to 20,000 workers who have earned an advanced degree (in any field) from a U.S. university; and
- Establish a market-based cap increase mechanism, so that if the cap is reached in any fiscal year, the cap for the following fiscal year would increase by 20 percent.

These commonsense provisions will provide all of our firms with the access to talent necessary to drive innovation. Their contributions to our schools, our companies and our culture have helped to make this country a beacon of opportunity and innovation. To remain a leader in the global economy, we should reaffirm our commitment to this important principle. Reforming high-skilled immigration policy is an important starting point.

Sincerely,

[s]

Jack Krumholtz
Managing Director, Federal Government Affairs
Associate General Counsel

Cc: Members of the Subcommittee on Immigration, Border Security, and Claims
Chairman James Sensenbrenner, Jr.
Ranking Member John Conyers, Jr.

○