

Embedded Visas

Free trade agreements mean a flow of workers across national borders

by Rob Sanchez

Free trade agreements (called FTAs) such as NAFTA (North American Free Trade Agreement) receive a lot of public discussion because of the immense effect they have on our economy, but very few people understand that these agreements are about much more than trade and the exporting of jobs. Global trade agreements come with the extra baggage sometimes referred to as “embedded visas.”

FTAs contain embedded visas because immigration is often used as a bargaining chip during trade negotiations. Pressure for visas comes from multinational corporations seeking to import cheap labor, from special interests that want access to foreign markets, and from pro-immigration groups who have a variety of agendas.

To further the interests of the movement of labor across national boundaries, the General Agreement on Trade and Services (or GATS) was created. GATS contains two major components: the first is trade, which is defined as the movement of commodities and products across national boundaries without tariffs, and the second is the movement of people across borders to provide services. GATS negotiators consider human capital as a commodity that should be able to be moved across national boundaries wherever employers need it – and therefore subject to trade laws.

In 1995, the GATS agreement borrowed a World Trade Organization (WTO) term that describes the process of moving human capital across international borders. This process is called the “Movement of Natural Persons,”¹ which refers to the entry and temporary stay

of human laborers for the purpose of providing “services” for employers. The term “natural persons” is an Orwellian euphemism used by the WTO to describe working class people who are considered to be nothing more than mere commodities. Immigration policies restricting the flow of “natural persons” would be considered a violation of the WTO rules because borders must be kept open for the movement of these international laborers.

As part of the NAFTA agreement, an embedded visa called the “Trade-NAFTA (TN) visa” was written to further the movement of “natural persons” across the Canadian and Mexican borders. TN visas allow unlimited numbers of Canadians to obtain guest-worker visas while Mexico is restricted to 5,500 visas per year. Those visa limits just changed because the United States, Canada and Mexico are committed to phasing out trade barriers completely by January 1, 2009. The phasing-out process contains a ten-year time bomb that was inserted into NAFTA. The fuse has been lit and it’s too late to put it out. Detonation occurred on January 1, 2004 when all restrictions on the TN visa were lifted. Mexico now has the right to send unlimited numbers of TN visa holders to the U.S.²

Potentially a flood of aliens will be able to come into the U.S. by claiming they are Mexican citizens who have jobs in the USA. The TN visa program allows family members into the U.S. so the number of immigrants could be staggering. TN visas aren’t very temporary either since they can be renewed in one-year increments forever, or until the alien worker gets a green card. NAFTA is a guest-worker/amnesty bill that allows visa holders to take jobs from 67 different job categories.

Examples of jobs that TN visa holders can take include the following: Accountant, Architect, Economist, Engineer, Scientist, Hotel Manager, Computer programmer, Lawyer, Social Worker, Dentist, Nurse, Pharmacist, and Teacher.³

In fiscal year 2001, 92,951 Canadians and 2,571

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Mexicans entered the U.S. under the NAFTA visa. Temporary visa issuance hasn't been reciprocal – only 8,326 Americans and 101 Mexicans entered Canada using TN visas, while 46,335 Americans and 3,890 Canadians entered Mexico under the visa.⁴

More U.S. citizens use TN visas to enter Mexico than the other way around – 46,335 Americans versus 2,571 Mexicans. Only half of the Mexican allotment of TN visas are being used because there isn't much incentive to hassle with a visa as long as it's so easy to enter the U.S. illegally to work.

TN visas probably won't be a favored method for low-paid Mexicans to cross our borders unless the U.S. gets serious enough about border enforcement to cut off the flow of foreigners that illegally cross the border in search of work. It may however be used in larger numbers for skilled workers to cross our border to work – and not just from Mexico! Professionals from other Spanish speaking countries will find it quite easy to pose as Mexican nationals in order to qualify for a TN visa.

The potential for fraudulent visa issuance is worse than for just about any other type of visa because aliens can obtain TNs right on the border and they only have to submit the necessary documentation to support their visa.⁵ Mexican document mills routinely counterfeit the visa documents so it will be very easy for non-Mexicans to use the TN visa to enter the United States. Fraudulent documents could open the door for non-Mexicans to come across our border and it could be a red-carpet for aspiring terrorists.

Documents Required for TN Visa

- * Proof of Citizenship (Birth Certificate or Passport)
- * A temporary Offer of Employment from a prospective U.S. employer
- * Copies of relevant educational degrees, diplomas and certificates
- * Letters of reference from previous or current employers confirming your experience in your occupation (if applicable)

TN visas are a potential back-door into the U.S. for aliens with expired visas when they go out-of-status due to loss of jobs or from term expiration. H-1B visa holders have entered Canada in order to come back into the U.S. on TN visas, and there is no reason it would be more

difficult for them to do the same thing from Mexico – providing of course if they can pose as a Mexican national. It is only a matter of time before Spanish speaking people throughout the Americas discover how easy it is to enter the United States with the TN visa.

Guest-worker to amnesty proposals are being bandied about in Congress that could reduce the incentives to use TN visas, but if they fail to be approved by Congress, the TN visa will be waiting for those who wish to enter the U.S. to take our jobs.

Proposed Guest-Worker Bills That Could Undermine the Need for TN visas

- * President Bush's Guest-Worker Proposal of 2004
- * Be-Real Act of 2003 –Introduced by Colorado Rep. Tom Tancredo.
- * Border Security and Immigration Improvement Act of 2003 – Sponsored by Sen. John McCain (R-AZ), Rep. Jeff Flake (R-AZ), and Rep. Jim Kolbe (R-AZ).
- * The Border Security and Immigration Reform Act of 2003 – Introduced by Sen. John Cornyn, (R-Texas).
- * Agricultural Job Opportunity, Benefits, and Security Act of 2003 – Introduced by Sen. Larry Craig, (R-Idaho) and sponsored by Sen. Edward Kennedy, D-Mass. Co-sponsors include Chris Cannon (R-UT) and Howard Berman (D-CA).

Science fiction writers often use a theoretical phenomenon called the “wormhole effect” that warps space and time in order for space travelers to traverse the universe. The TN-NAFTA visa is an immigration wormhole that allows aliens to traverse the Mexican border, but these aliens will come to the U.S. – not to meet our leader but to take our jobs!

GATS mandates other types of visas also.⁶ The minimum number of H-1Bs issued per year is to be 65,000 no matter how bad unemployment is, and worse yet, L-1s are unlimited. These visas affect over 150 job categories – and most of them are for white-collar professionals.

On July 31, 2003, the Senate approved the latest exercise in trade related immigration policy called the Singapore and Chile Free Trade agreement, Acronyms for this agreement aren't available but it's easy to form one by using the “S” from Singapore, and the “Ch” from Chile to form the acronym “SCHAFTA,” but for the purposes of this paper – and to refer disparagingly to the

consequences – “SHAFTA” will be used. This trade agreement sets up an embedded visa called the H-1B1 that has a limit of 6,800 visas per year that are counted against the H-1B visa cap. L-1s from Singapore are unlimited.

SHAFTA is a huge gift given by President Bush to corporatists who seek to offshore more jobs to overseas sweatshops and import cheap labor into the U.S. Even more ominous, it’s also another wormhole. NumbersUSA research⁷ confirmed that employees of Singaporean companies would not have to be Singapore citizens to have unlimited access to L-1 visas to the U.S. That leaves plenty of room for sham companies to be set up in Singapore that would be “staffed” by tens of thousands of Asian posing as workers. Once they are working in Singapore they could easily enter the U.S. by using fraudulent L-1 “intra-company” transfers.

Singapore and Chile won’t be the last countries to glue onto SHAFTAs either. There are new agreements in the pipeline such as the Central American FTA, or CAFTA. The Bush administration says that there are 32 countries next in line for agreements including Brazil, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Peru, Bolivia, Ecuador, Australia, Israel, Jordan, Pakistan, Morocco and India. Expansions of these SHAFTAs were agreed to during the Free Trade Areas of the Americas (FTAA) meeting last November 19-21, 2003 in Miami, Florida. Fortunately the meeting hit a few snags, but despite the problems agreements were made with at least six countries – the Dominican Republic, Panama, Bolivia, Colombia, Ecuador, and Peru. Expansion of CAFTA is just a matter of time as further meetings are held.

Embedded visas are very difficult to reverse once they are signed because they are adjudicated by the WTO – not the United States government.⁸ Our rights to self-determination are sacrificed in the name of globalization because policy-making authority is granted to the WTO – a foreign entity. Article 15 of GATS states that in the event of a disagreement, the WTO will set up a world tribunal to adjudicate the dispute. The tribunal, *not the U.S. Congress*, will arbitrate the dispute. Citizens of the US will have no say in these proceedings.

Recently the Commerce Ministry of India announced that they will go to the WTO services negotiations, currently underway in Geneva, to argue that the U.S. must raise the yearly quota on H-1Bs in order to

allow “natural persons” to cross our borders for work.⁹ We may get to see the World Tribunal in action if the United States fails to capitulate to India’s demands.

NAFTA set a precedent that will be followed in future trade agreements. Countries will ask for immigration treaties that are at least as good as the TN. The Bush Administration confirmed this carry-over when the President said he would use NAFTA and CAFTA as blueprints for future agreements with other countries.¹⁰

Congress granted the President the power to make these dangerous FTAs on July 24, 2003 when they gave him Trade Promotion Authority (TPA) to make NAFTA-like trade agreements with other countries. One of the pernicious aspects of TPA is that Congress only has the authority to approve or reject the free trade agreements. Once Congress gives its approval for the trade agreement, it may not pass laws that restrict or alter its provisions – and that of course means they have no say in what kind of embedded visas are included in the final package.

The AFL-CIO made an effort to convince Congress that embedded visas should never be inserted into FTAs.¹¹ Press releases from the AFL-CIO and the Communications Workers of America claim that, “Sensenbrenner now believes he has a commitment from the U.S. Trade Representative to never again include immigration provisions in trade agreements. Many House and Senate members, particularly GOP conservatives, voiced their commitment to oppose any future trade agreements should they do so.”

The unions are fooling themselves, because there is nothing Sensenbrenner or any other member of Congress can do to force embedded visas out of these agreements except to vote against the entire bill. Very few Congressmembers will oppose these packaged agreements since wealthy and influential corporate lobbyists descend on Capitol Hill whenever these agreements are being voted on. When it comes down to a choice between money and serving the public good, money usually triumphs in Washington.

The first step in preventing these FTAs from containing embedded visas is to insist that Congress revoke Trade Promotion Authority. Until Congress gets their Constitutional power back from the Administration, it’s unlikely that they will ever have control over embedded visas or any other aspects of international trade agreements. Revoking TPA will force Congress to

bear the responsibility for this subversion of our immigration policies and the resultant reduction of our national sovereignty. TPA is an American-job killer that must be revoked.

NOTES

1. GATS: Movement of natural persons, Mode 4 of the services agreement, July, 1995.

www.wto.org/english/thewto_e/whatis_e/eol/e/wto06/wto6_37.htm#note1.

2. "Study in Contrasts, Professional Visas Under NAFTA," by Bradly J. Condon, Professor of International Business Instituto Tecnológico Autónomo de México, Mexico City, http://www.clearhq.org/winter_2002_contrasts.htm.

3. NAFTA - Appendix 1603.D.1: Professionals <http://www.sice.oas.org/trade/nafta/chap-162.asp#Ap1603.D.1>.

4. Papademetriou, Demetrios. *The Shifting Expectations of Free Trade and Migration, NAFTA's Promise and Reality*. 2004, p. 43-45.

5. TN STATUS: Canadian Professionals working in the U.S. – "Procedural Advantages of a TN," [Visas4Canada.com](http://www.visas4canada.com),

<http://www.visas4canada.com/TN.htm>.

6. GATS/SC/90, "The United States of America – Schedule of Specific Commitments," April 15, 1994.

7. "Senate & open-immigration trade bills," by Roy Beck, NumbersUSA email newsletter, July 28, 2003.

8. United States Singapore Free Trade Agreement – Section C, Investor-State Dispute Settlement: <http://www.ustr.gov/new/fta/Singapore/final/text%20final.PDF>.

9. "India seeks higher H-1B quota," by Bipin Chandran and Sidhartha in New Delhi, *Business Standard*, October 15, 2003, <http://www.business-standard.com/today/story.asp?Menu=19&story=25096>.

10. Message to the Congress of the United States, George W. Bush, The White House, July 15, 2003: <http://www.whitehouse.gov/news/releases/2003/07/20030715-8.html>.

11. *DPE NewsLine*, August 2003, "Trade Agreements," http://www.dpeaflcio.org/news/newslines/newslines_2003_08.htm.