

What Needs to Be Done with the Higher-Skilled Work Visa Programs Such as H-1B?

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Abstract: There needs to be a countervailing force to the large amounts of money lavished on legislators to expand higher-skill work visa programs. Employer-interest profitability is substantially increased when employers hire large numbers of imported workers, yielding more money for influencing legislation. Needed reforms include either a substantial diminution in the annual numerical caps on visa issuance that apply to all employers and/or a substantial hike in all employer fees to hire foreign workers. A cap is also needed on admission of foreign students, so that only the truly talented and gifted are admitted — without causing a “brain drain” in their nation of origin.

The author personally witnessed two recent hearings in the U.S. House of Representatives regarding the subject of H-1B Visas. The first was on March 12, 2008,¹ and the second was on March 31, 2011.² The sense of the legislators being interested in obtaining additional campaign funding from employer interests that desire to expand the H-1B Visa program was palpable during both hearings. The notable exception was Rep. Dana Rohrabacher (R-CA)’s questioning of Mr. Gates during the March 2008 hearing. Rep. Rohrabacher’s questions focused on the “cheap labor” aspects of the H-1B Visa program and how H-1B was transferring brainpower from nations that desperately needed those intellectuals to help lift their nations of origin out of the grip of poverty. Instead, those minds are imported to the United States to benefit short-term employer profitability. The author believes that the theme of legislators wanting more employer-interest funding to protect their incumbency has been

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a significant feature of all House of Representative hearings regarding H-1B, including the one in which he presented formal testimony³

The “positive feedback cycle,” where increased employer profitability facilitates increased funding of legislatively connected expenditures, was discussed in conjunction with Microsoft Corporation in the author’s arguments contained in Exhibit 40 in the case *USA v Abramoff*.⁴

Microsoft has the distinction of having by far the greatest number of authorizations to hire H-1B Visa holders of any employer (37,808) in FY 2001-2012.⁵ Review of the author’s recent critique of the bloated numbers of higher-skilled work visas⁶ shows an estimated cost avoidance of \$150,000.00 per work visa admission — and a cumulative benefit to Microsoft’s profitability in excess of \$5,000,000,000.00. The author’s 2007 report⁷ estimated that Microsoft and its proxies expended about \$100 million in politically connected expenditures between 1995–2000. These figures underscore the large sums of money involved. Even Milton Friedman, the Nobel Economics laureate and free-market advocate, indicated that the H-1B Visa is a government subsidy (because it allows employers to hire skilled workers at below market wages) in a 2002 article.⁸ The marketplace distortions being caused by the H-1B Visa program have turned it into a government-sanctioned foreign hiring preference program.

The total numbers are bloated, with an estimated 1 million H-1B Visa recipients currently in the U.S. Ideally, in order to restore market competitiveness to experienced U.S. citizen technical professionals, the H-1B Visa and similar work visa programs should be abolished. The U.S. was creating innovations — and economic elites already reaped huge economic benefits when they mostly hired Americans, as was the case before the H-1B Visa program was created in 1990. If these programs cannot be terminated, this author and many other reform-minded authors have suggested a total annual visa cap of around 15,000. One way to make this change would be to substantially increase the visa

fee from the current total cost of about \$10,000 (for the most expensive version) to a fee between \$150,000 and \$250,000. This change would substantially decrease the economic incentive in substituting a young H-1B Visa recipient for an experienced American citizen worker.

As a result of political lobbying, nonprofits, colleges, and universities are not subject to the annual admissions caps, and most are exempt from H1-B Visa fees. These carve-outs serve to further expand this harmful program. These cap-exempt employers should be included in the annual caps with all other employers. This change would help to increase the attractiveness of pursuing a science, technology, engineering, or math (STEM) Ph.D. Currently, there is a negative economic value connected with American citizens earning such degrees, which harms the long-term economic competitiveness of the nation.

There is a progression of visas currently occurring for foreign nationals in STEM fields, is typically a student visa leading to OPT work authorization for up to 29 months, leading to a H-1B Visa and eventual “Green Card.” As a consequence of the bloated numbers and their cumulative harmful impact, the currently unlimited numbers of student visas and OPT work authorizations should be also capped at around 15,000 annually. This change would help restore meritocracy to those fields. The secondary benefit is that it would encourage many students in the developing world to remain in their nation of origin — and help increase the economic strength of the country they grew up in. ■

Endnotes

1. Testimony of William Gates, III before the House Science and Technology Committee. In the 18 pages of testimony, “H1B” appears 16 times, “Visa” appears 14 times, and “H-1B” appears 4 times.

<https://www.microsoft.com/en-us/news/exec/billg/speeches/2008/congress.aspx>

2. March 31, 2011 Hearing on: “H-1B Visas: Designing a Program to Meet the Needs of the U.S. Economy and U.S. Workers” by the U.S. House of Representatives Subcommittee on Immigration Policy and Enforcement. http://judiciary.house.gov/hearings/hear_03312011.html

3. Hearing before the Subcommittee on Immigration and Claims of the Committee on the Judiciary,

U.S. House of Representatives, “H-1B Temporary Professional Worker Visa Program and Information Technology Workforce Issues” August 5, 1999.

http://commdocs.house.gov/committees/judiciary/hju63314.000/hju63314_0.HTM

4. Victim Impact Statement filed on September 2, 2008 by the author as Exhibit 40 in the case USA v Abramoff at p. 84: <http://tinyurl.com/koyqg2> ... Software and Information Industry Association amicus brief co-filed by Attorney Ken Wasch against Microsoft Corporation regarding the antitrust litigation filed by the U.S. Attorney General on May 18, 1998. “Although Microsoft used to be a member of SIIA — and a member of the SIIA Board of Directors — Microsoft resigned from SIIA and withdrew its funding after SIIA filed an amicus brief criticizing Microsoft’s conduct at the liability stage of this proceeding. Microsoft has also induced some other companies dependent upon it to withdraw funding from both amici. These events shed a strong light on the remedy issue now before the Court. Microsoft’s power and wealth give it the ability to both punish its critics and retain battalions of lawyers, lobbyists, and publicists to undermine the government at every turn.” (Brief on Remedy of Amici Curiae, Computer and Communications Industry Association and Software and Information Industry Association [SIIA], May 19, 2000.)

5. 33,934 Labor Condition Applications (LCAs) filed in FY 2001-2011 with 202 LCAs denied. As of December 19, 2012, Microsoft had filed a total of 4,076 LCAs for FY 2012, yielding a net total of 37,808 LCAs. To put that figure in perspective, Microsoft indicated that its total U.S. employment in 2007 was 45,000. <http://www.myvisajobs.com/Visa-Sponsor/Microsoft/356252.htm>

6. “How Record Immigration Levels Robbed American High-Tech Workers of \$10 Trillion,” by Gene Nelson, Ph.D. *The Social Contract* Spring, 2012 <http://tinyurl.com/74cc64p>

7. “The Greedy Gates Immigration Gambit,” by Gene Nelson, Ph.D. *The Social Contract*, Fall 2007 <http://tinyurl.com/3718ry>

8. “H-1B Is Just Another Gov’t. Subsidy” By Paul Donnelly, *ComputerWorld*, July 22, 2002.

http://www.computerworld.com/s/article/72848/H_1B_Is_Just_Another_Gov_t_Subsidy