

Exposing the Work-Visa Racket

REVIEWED BY MARTIN WITKERK

Much of America's present generation was sold on the notion that a credential in information technology or other STEM field (science, technology, engineering, or math) was a guaranteed ticket to the good life. Yet only one-third of native-born Americans with bachelor-level STEM degrees *and a job* actually work in a STEM occupation; another 1.2 million are not working at all. High-tech companies are awash in resumé and applications. Google gets "at least 1,000" for every opening they have; computers do the initial vetting. Microsoft also rejects most applications it receives "by applying an automatic computer algorithm, with no human involvement at all." In recent years, tens of thousands of American tech workers have been laid off: 59,528 in 2014 alone.

Some of this is due to a genuine decline in demand: for example, the number of American engineering jobs declined slightly from 2,506,000 to 2,381,000 between 1990 and 2013. But much of the job-carnage has a more sinister cause: American companies are deliberately discarding Americans—who invested years of their lives in acquiring highly specialized, non-transferable skills—merely in order to replace them with lower-paid foreign workers. In many cases, such Americans are forced to train their foreign replacements under threat of losing severance pay: the "dig your own grave" requirement. Sometimes they are required to sign "non-disparagement agreements" as well: promises not to publicly criticize the companies for their treacherous behavior.

Not many are able to bounce back. A kind of youth cult predominates in the tech world; at one tech conference in 2007, twenty-three year old CEO Mark Zuckerberg advised companies not to hire workers over thirty because "young people are just smarter." Older tech workers are more likely to be laid off, take longer to find a new position, and, if rehired at all, suffer a substantial loss in wages. Some hire make-over consultants and wardrobe stylists in an effort to appear younger than they are.

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The Botox-dispensing business is booming for San Francisco cosmetic surgeon Dr. Seth Mattaraso, whose clientele now mainly consists of anxious American tech workers trying to rejuvenate their looks. "It's morphed into, 'Hey, I'm forty years old and I have to get in front of a board of fresh-faced kids. I can't look like I have a wife and two-point-five kids and a mortgage.'"

SOLD OUT

How High-Tech Billionaires and Bipartisan Beltway Crapweasels Are Screwing America's Best and Brightest Workers

Michelle Malkin and John Miano



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In order to get access to foreign workers, American companies (not the foreigners themselves) must arrange for visas through the United States Citizenship and Immigration Service (USCIS). This process has become highly corrupt. In *Sold Out*, Michelle Malkin and John Miano lay out in painful detail just how corrupt it is, and who is responsible for making it so. John Miano is a computer programmer who responded to getting laid off by going to law school and founding the Programmers Guild to protect the interests of American techies like himself. He is a fellow at the Center for Immigration Studies and has testified before Congress on four occasions. Michelle Malkin is the well-known author of five previous best-selling books and a frequent guest on Fox News.

Sold Out is divided into three main sections: (1) the H-1B visa and its abuse, (2) various other visa classifications and loopholes for importing workers, and (3) the politicians and big business lobbyists primarily responsible for the mess.

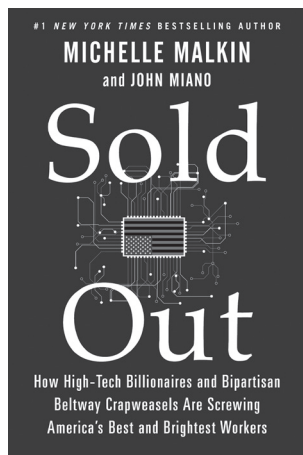
The primary vehicle for getting foreign workers into the U.S. is the H-1B guest worker visa, created by Congress in 1990. The visa is valid for three years, and may be renewed once. Originally intended only for tem-

porary workers, holders can now apply for permanent residence status (“green cards”), and may even apply for one-year extensions for as long as a decision on permanent residency is pending.

The law originally provided for a cap of 65,000 H-1B visas per year. In 1998, this was raised to 115,000. In 2000, it was raised again to 195,000, while institutions of higher education and nonprofit and government-research organizations were exempted from any cap. The circumstances surrounding this second expansion make interesting reading:

The House unanimously passed the 2000 bill on a voice vote that took place at night with only about forty members present. The vote took place after the leadership announced there would be no more votes for the day and most members had gone home. It is not known who was present voting for the bill.

The cap eventually settled back to 85,000 per year, but the university and research lab exemptions remain to this day.



H-1B workers are supposed to be “highly skilled,” and some misinformed persons have actually referred to H-1B as a “genius visa.” In fact, most H-1Bs are low-level computer workers such as code writers: “A bachelor’s degree, even a mail-order one from an Indian diploma mill, is all it takes to qualify.” A few H-1Bs even go to school teachers, physical therapists, and fashion models.

The tech industry invariably claims a “shortage” of qualified tech workers, but this is an abuse of language. In economics, a “shortage” exists when customers *willing and able to pay the market price* for some commodity still cannot find it. There is no “shortage” of gold or diamonds, for example, although such goods are expensive.

Not only has there never been a shortage of tech workers in the proper sense; wages in the IT sector have been nearly flat since the 1990s. As one observer explains:

When companies claim they face a shortage of engineers, they usually mean that they face a shortage of young, relatively inexperienced engineers with the latest skills, even when they have a queue of experienced engineers who want retraining.

That same Google honcho who boasted of getting a thousand applications for each opening has gone to Washington to call for more H-1Bs. In October, 2014, Bill Gates put his name to an editorial demanding more H-1B visas the very same week Microsoft was handing out pink-slips to eighteen thousand employees. Another Microsoft big-shot has written breathlessly of an “historic H-1B cap crisis.”

The reason for all this corporate fustian about work visas is simple: H-1B workers are commonly paid a fourth or fifth the salary an American would receive. The authors cite one extreme case of an Indian replacement getting one-sixteenth the pay of his American predecessor. H-1B workers are also exceptionally docile employees, since their employers can have their visas revoked at any time.

But, as the authors observe, you get what you pay for. John Miano was once hired to revise the work of some Indian techies who turned out to be “blithering incompetents... The programming work John and his team had to wade through and clean up looked like the work of high school-aged programmers.” Security breaches are also common with foreign workers. The authors list several large companies that have recently been “re-insourcing” because of such problems. Overall, however, corporate voracity for cheap foreign workers seems as robust as ever.

One entire chapter of *Sold Out* is devoted to refuting widespread misinformation about temporary work visas. Despite frequent assertions to the contrary, employers do not have to demonstrate their inability to find comparably skilled Americans before importing H-1Bs. In a minority of cases, employers must *certify* (but not *prove*) that they have “taken good faith steps to recruit in the United States.” They do this by checking a box on a government form, and Labor Department workers are explicitly required to approve all applications that are correctly filled out.

Another widespread myth is that employers must pay H-1B workers the “prevailing wage” for the kind of work they will be doing. Such a requirement was, indeed, written into the law creating the H-1B, but it is extremely easy to get around: companies are allowed to determine the “prevailing wage” for themselves, often using entry-level wage surveys or even their own internal surveys. Those same H-1B workers who were “highly skilled” when the corporations were lobbying for increased caps suddenly turn into “beginning level employees who have only a basic understanding of the occupation” when it is time to determine their salaries.

A third kind of misinformation consists of claims that H-1B workers create new jobs for Americans: anywhere between 2.62 to 7.5 jobs for each H-1B issued, depending on which study one wishes to cite. Malkin and Miano demonstrate that such studies depend on

arbitrarily chosen parameters, confuse correlation with causation, and are not reproducible. Concocted from macroeconomic data—sometimes for the entire world rather than just the United States—no such study is able to point to specific American jobs H-1Bs can be shown to have created.

The second major section of *Sold Out* details a number of alternatives to the H-1B: in the authors' words, "an alphabet soup of visa fraud, abuse, and corruption."

The B visa is intended for brief business trips, personal visits, and tourism. Valid for one to six months, there is no cap on how many B visas can be issued; the approval process is quick and cheap. A B visa is not valid for paid work in America, but a holder can receive payment in his country of origin. One way to get around this limitation is for American companies to set up paper subsidiaries abroad just to pay these workers. Alternatively, foreign workers may be paid by "bodyshops," companies set up for the express purpose of supplying workers to American corporations. The American firm then pays the bodyshop, not the worker. This system is known as BILOH: "B in lieu of H-1B." Foreign nationals are coached not to mention the work they will be doing when being interviewed by U.S. consular officials. Sometimes they are instructed to lie about their intended destination as well. Other times they do not have to lie at all because U.S. consulates are complicit in the process. Whistleblowers face harassment and retaliation; one found a note on his keyboard reading: "Jack: Just leave your not wanted here hope your journey brings you death stupid American."

The L-1 visa was created by Congress in 1970 to allow American companies with offices abroad to transfer key personnel freely within the organization. An L-2 visa is available for the spouse and dependent children of such personnel. Some large multinationals are allowed to file "blanket petitions" to transfer employees en masse without having to file individual paperwork. L-1 visa holders are supposed to be executives, managers, or highly skilled personnel, but many are "just average people." One whistleblower reported seeing his L-1 replacement "reading the introductory textbook to using the database language—a skill level well below what an L-1 visa purportedly requires."

There are no numerical caps on how many L visas can be issued. Before 1992, less than 20,000 L-1s were issued, but by 2007, 80,000 were being handed out, along with an indeterminate number of L-2s. No database is maintained on how long L visa holders have stayed or how many are here at any given time; one expert estimates the current total at half a million, counting L-1 and L-2 together.

The all-time champion L-1 petitioner is a company called Tata, which applied for 4,887 such visas in 2006. As Sen. Dick Durbin (D-IL) commented: "I find

it hard to believe that any one company has that many individuals that are legitimately being transferred within a single year." The explanation is that Tata is an Indian "bodyshop," existing only to provide cheap foreign workers to American firms.

And cheap they are! A U.S. Department of Labor investigation turned up one printing technology company in California paying its Indian L-1 visa workers as little as \$1.21 per hour. Some worked as much as 122 hours a week. The company was forced to pay \$40,000 in back wages to eight employees. A company spokesman explained the incident as an "administrative error."

The F-1 is a foreign student visa whose popularity has exploded in recent years: 534,320 F-1s were issued in 2013, three-and-a-half times as many as the H-1B and eight times as many as the L-1. The government estimates that close to 1.2 million foreign students and their dependents were living in the U.S. as of 2012. There is little oversight of the F-1 program, and unscrupulous operators have set up phony "schools" that are really in the business of selling visas. An example is the Florida Language Institute, located in a Miami strip mall, whose "students" were not required to attend classes. Between 2007 and 2010, the Institute raked in six hundred thousand dollars in fees for arranging visas before the feds were tipped off and shut the operation down.

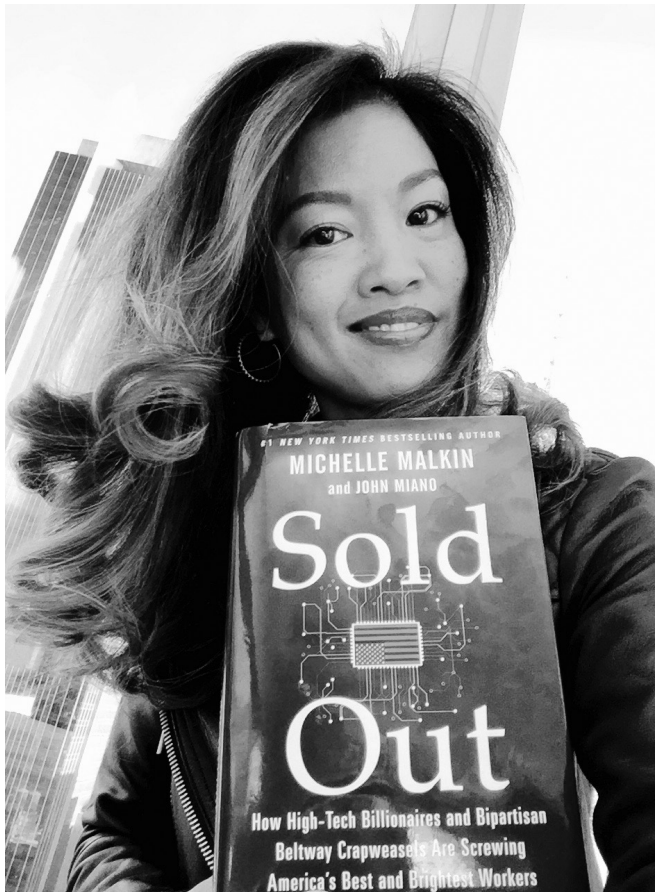
All persons receiving an F-1 are required to certify: "I seek to enter or remain in the United States temporarily, and solely for the purpose of pursuing a full course of study at the school named on page 1 of this form."

F-1 holders may not work off campus during their first year of study. Beginning in 1992, however, students in their second year or later have been allowed to apply for twelve months of Optional Practical Training (OPT) in a job related to their fields of study. But there is little oversight of this program, and students have turned up working supposedly career-related OPT jobs at dollar stores, 7-Elevens, and tobacco shops thousands of miles from the school where they were enrolled.

Offering work visas to foreign students can turn an entire school around. In 2006, San Jose's International Technological University was enrolling only eighteen students and facing bankruptcy. That year, however, ITU began promising foreign students they could work full-time jobs off-campus starting as soon as they arrived (illegal with F-1s, but the school may be using the alternative J visa). Classes are held only three weekends per semester, all day Saturday and Sunday, allowing students to work full-time jobs out of state. They earn academic credit for their employment as well. Enrollment has skyrocketed to nearly 1,500, and school officials' salaries have skyrocketed as well. Most likely, many of those enrolling at ITU are motivated primarily by the desire to obtain an American work visa and are

not here in order to study at all. Nevertheless, the school was granted accreditation by the Western Association of Schools and Colleges in February 2013.

In April, 2008, the OPT period for F-1 STEM students was expanded from twelve months to twenty-nine; in addition, they were given permission to apply for H-1Bs, continuing their OPT work until a decision was reached: another six months or more, in some cases. This was done not by Congress, but by Secretary of Homeland Security Michael Chertoff, under pressure from American corporations. Normally, regulatory changes of this sort are subject to a public notice and comment period, but Sec. Chertoff got around this requirement by labeling the action an “emergency measure” and simply inserting it into the Federal Register. In the summer of 2015, the administration of Pres. Barack Obama announced plans for increasing the OPT work period to *six years*.



A long chapter of *Sold Out* is devoted to cataloguing the chief groups and individuals who lobby for cheap foreign labor. TechNet, launched in 1997, is “the granddaddy of the tech industry’s political advocacy groups.” CEOs shell out at least ten thousand dollars a year to belong. When Pres. Bill Clinton announced his intention of vetoing legislation expanding the H-1B program back in 1998, TechNet threw him a fundraiser. Clinton

reversed himself “two days before showing up in California to collect his bribe.” More recently, TechNet has been heavily involved in lobbying to allow the spouses of H-1B workers to work on H-4 dependent visas. The Department of Homeland Security has acknowledged that the new rule will add as many as 179,600 new foreign workers in its first year and 55,000 annually in subsequent years. The change was forced through by executive fiat, without any authority granted by Congress. A legal challenge is pending.

Bill Gates was slow to get into the lobbying game: before the antitrust case of 1997, Microsoft’s tiny lobbying contingent was based in the company’s local sales office in Chevy Chase, Maryland; but since their conviction, the company “has poured more than \$100 million into K Street’s economy.” In 2007, Gates testified before a Senate committee in favor of an “infinite number” of H-1B visas. Between 2008 and 2013, Microsoft hired nearly seventy outside lobbyists to work on immigration issues, and the company has spent more on lobbying and political contributions than any other American firm. Microsoft lobbyists are behind the Immigration Innovation Act of 2015 (S. 153). This bill would greatly increase the H-1B cap while charging companies much less for each visa; it also exempts anyone with a master’s degree or higher from a U.S. school from the cap. In the authors’ words, “There are so many exemptions and quota increases in the bill that it is impossible to predict how many foreign guest workers [the Immigration Innovation] bill would add.” The legislation is still pending.

Facebook’s Mark Zuckerberg has been spending heavily on immigration liberalization. Its contributions to political candidates increased eightfold between 2008 and 2012, and in 2013 it spent over \$6.4 million lobbying the federal government. In April, 2013, Zuckerberg announced the launch of FWD.us (pronounced *forward us*) to “advocate a bipartisan policy agenda to build the knowledge economy.” The organization raised \$37 million during its first year. Two affiliates have been created for the purpose of working through the Democratic Party and Republican Party, respectively, but both have the same purpose: supporting politicians willing to deliver cheap foreign labor.

Subsequent sections deal with other villains. Some are well known, such as Spencer Abraham, George Soros, Michael Bloomberg, Sheldon Adelson, and Rupert Murdoch. Others—just as important—will be new names to most readers.

A full chapter tells the story of the “Gang of Eight” bill (S. 744), which read like a Christmas wish-list for cheap-labor-hungry American corporations. “Really, the tech industry wrote it,” said one observer. The complexity of the bill was such that one attorney described it as a “permanent pension plan for immigration lawyers.”

The Gang of Eight bill mercifully died in the House of Representatives, but 2015's Immigration Innovation Bill is its anointed successor.

Sold Out closes with a handful of recommendations. One is that any bill embodying genuine "comprehensive immigration reform" should begin with the words: "The Immigration and Nationality Act of 1952 as amended is hereby repealed." Otherwise, any new bill would simply be "piling more complexity onto an already broken system." The supposed "comprehensive immigration reform" offered by the Gang of Eight bill ran to 1,198 pages, for instance, and its authors were counting on few people being able to read and digest it. The process of creating a reform bill should also be public and transparent. Here again, the Gang of Eight bill, virtually written by lobbyists to the exclusion of the public, is the perfect example of how not to go about reforming the system.

Another important authorial recommendation is

the creation of a central database for all nonimmigrant visitors, including an exit tracking system using biometric data. An estimated half of illegal immigrants present in the U.S. today are visa overstayers. Congress once mandated such a system, but it has never been put in place.

But most of the necessary reform is simply a matter of enforcing the original intent of laws passed by Congress:

The B in Lieu of H-1B program must be abolished. F-1 student visas must be for students, not cheap foreign workers. L-1 visas must be for legitimate business transfers. Scrap postcompletion Optional Practical Training. Have people come to the U.S. for one purpose. Go back. Get another visa if they want to return. We'll know when the immigration system makes sense: No one would need a lawyer to complete a visa petition. ■

Excerpts from Michelle Malkin and John Miano's *SOLD OUT*:

FOLLOW THE MONEY

Who in Washington will stand up for our nation's best and brightest?

We know who stands with American tech companies and their offshore outsourcing partners in championing low-cost foreign workers:

President Barack Obama and the Senate's so-called Gang of Eight—Sen. Michael Bennet (D-Colo.), Sen. Richard Durbin (D-Ill.), Sen. Jeff Flake (R-Ariz.), Sen. Lindsey Graham (R-S.C.), Sen. John McCain (R-Ariz.), Sen. Bob Menendez (D-N.J.), Sen. Marco Rubio (R-Fla.), and Sen. Chuck Schumer (D-N.Y.)—side with the CEOs of Disney, Intel, Cisco, Facebook, Google, and Microsoft.

News Corp. founder Rupert Murdoch, GOP megadonor Sheldon Adelson, former New York mayor Michael Bloomberg, and liberal billionaire hedge fund mogul George Soros all support the Big Tech, open-borders agenda.

Revolving door operatives on both the Left and Right, such as Virginia governor Terry McAuliffe (D), Hillary Clinton brother Tony Rodham, former Michigan senator Spencer Abraham (R), Grover Norquist of Americans for Tax Reform, and former Mississippi governor Haley Barbour (R), have made millions consulting for foreign governments, investors, and visa seekers.

The Republicrats and Demopublicans in D.C. pay lip service to improving the twenty-first-century workforce. They've got fancy blueprints and buzzword-filled plans for helping the American middle class and encouraging American students to pursue college and advanced degrees in science, technology, engineering, and math (described by lobbyists and educrats using the buzzword "STEM"). They say they oppose tax breaks for offshoring and want to "Bring Jobs Home." Yet untold thousands of skilled U.S. workers have been laid off, replaced, and forced to train their imported replacements—and most politicians embrace "solutions" that will only make things much, much worse. ■

Michelle Malkin and John Miano, *SOLD OUT: How High-Tech Billionaires and Bipartisan Beltway Crapweasels Are Screwing America's Best and Brightest Workers*, Threshold Editions/Mercury Ink, 2015, Introduction, xii.