

H-1B Visa and Green Card Reform

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Abstract

H-1B visas and green cards for high-skilled foreign workers have had an almost entirely positive effect on the American economy. H-1B visas, which are temporary non-immigrant visas, and green cards, which allow for permanent residence, are being issued at too low of a rate, even considering the decline in growth of the American economy. Support for removing the cap on H-1B visas and green cards will be based on analysis of current literature regarding the shortage of high-skilled labor in America, free market solutions to immigration issues, and the failure of other policies to solve the labor shortage.

Due to the need for a greater number of skilled workers, and to lessen the problem of outsourcing, Congress should pass legislation to enact both H-1B visa and green card reform. Currently, corporations like Google and Microsoft must circumvent H-1B visa restrictions by outsourcing jobs overseas. Lifting the cap on H-1B visas will help end this detrimental process. Also, the green card application process should be simplified so H-1B workers who deserve green cards can obtain them. Positive effects will include an increase in the sense of acceptance among H-1B workers, an increase in their sense of civic responsibility, and incorporation of these workers into within the tax base. The complaints of many American workers should be taken seriously and properly addressed, but the potential benefits of H-1B visa and green card reform prove that they outweigh the costs.

Introduction

America is a nation driven by innovation, technological prowess, and free trade. During World War II, America imported European scientists to design the first nuclear weapons under the Manhattan Project, establishing the United States as the center of scientific research. The Silicon Valley boomed in the 1980s and 1990s due to the entrepreneurship of foreign businessmen. In fact, more than half of Silicon Valley startups over the past decade were started

by foreigners.¹ However, many of these people are forced outside of the country after graduation from American universities due to the H-1B cap, the limit on the number of H-1B visas that are granted. H-1B visas have facilitated this free exchange in the past, but recently the cap has prevented many highly-educated foreigners from entering the country, which is detrimental to the innovation that drives American economy.

The cap on H-1B visas set by Congress has shifted frequently in the past. For the fiscal year (FY) of 2009, the cap on the number of H-1b visas was 65,000, but in the FY of 2001, 2002, and 2003, it was 195,000.² Congress reduced the cap to 65,000 due to pressure from anti-immigration and pro-US computer programmers and engineers groups. They believe that by hiring foreign H-1B workers, US corporations undercut the prevailing wage of workers in industries related to science, technology, and engineering.³

The lack of interest in science and engineering among native-born American is due to the high costs in time and money of graduate school.⁴ Additionally, the payoff of degrees in the areas of law, business, and finance has increased much more rapidly in recent years than that of degrees in science and engineering. A Masters of Business Administration (MBA) takes two years to complete, while a Juris Doctor takes three years.⁵ However, the average time it takes to

1:Friedman

2:"H-1B Visa"

3:One Hundred Ninth Congress Second Session

4:North 23

5:North 22

earn a doctorate in the sciences is around six to seven years.⁶ The average Ph.D in the natural sciences has to work about two and a half decades before earning back the costs of graduate school plus the income that was given up by not working.⁷

The cap on H-1B visas needs to be completely eliminated, and the green card process needs to be streamlined so non-immigrants can attain permanent resident status more quickly. The three central arguments in this policy recommendation are the following: that foreigners make up a substantial number of U.S. Ph.D's but are often forced out of the country after graduation; giving green cards to H-1B workers will help them gain more bargaining power and eliminate criticism that employers can charge them low wages; and high-skilled foreigners will be incorporated into American society and therefore into the tax base.

Background

Labor shortage

While they are not directly involved in the manufacturing process, mathematicians, scientists, and engineers develop many of the automobiles, prescription drugs, software, personal computers, and other electronic goods that America exports to the world. Manufacturing decreases America's trade deficit, increasing its self-reliance. However, manufacturing in America has declined, and so have the jobs associated with it. White collar workers are now more likely to enter the worlds of finance, law, and medicine⁸, and often learn skill-sets useful only in the United States. For example, American-trained lawyers learn a law

⁶North 22

⁷North 28

⁸North 22

code that is irrelevant outside of the country. These careers are much more lucrative than careers in science, and, in the case of finance and law, require less education.⁹

For those individuals who do wish to major in the sciences or engineering as undergraduates and do not want to go on to medical school, there is little incentive to pursue a doctorate degree. Engineers in particular have little reason to pursue a Ph.D, because a Bachelor's of Science degree is usually enough to be considered a professional. According to a salary survey done in 1992, a chemical engineer with a bachelor's degree will only make about \$154,050 less than someone with a Ph.D over the course of a lifetime.¹⁰ This has led many Ph.D programs across the country to readily accept foreign immigrants. These foreign students are eager to learn using facilities that often do not exist in their home countries.¹¹ They achieve much higher quantitative GRE scores than their American peers,¹² and most hope to eventually become permanent residents and perhaps naturalized citizens. There is nothing wrong with reverse this phenomenon of brain drain in itself, but the additional jobs that are created outside of America every time a high-skilled worker leaves will not benefit the American economy. For any job that is created, a host of support positions are created around that job. By forcing foreign high-skilled labor back to their home countries, we are also sending these jobs away.

H-1B Visas

⁹North 22

¹⁰North 29

¹¹North 74

¹²North 27

The H-1B Visa Program started in 1990 as a way for high-skilled foreign workers to enter the United States. H-1B visas are sponsored by corporations and allow foreign workers to stay in the country for three to six years. Currently, 65,000 foreigners are allowed into the country on H1-B visas each year.¹³ Educated foreigners play major roles in many of America's biggest corporations. About half of all companies founded in Silicon Valley were started by foreigners.¹⁴

Currently, corporations waste time and effort that could be used for something more useful when they haggle with the government to get H-1B visas or green cards for foreign workers. American businesses have also resorted to outsourcing to get around the H-1B cap, doing the very thing proponents of the H-1B cap oppose. Rather than force American corporations to outsource, the government should keep these jobs in the country by allowing foreigners to come here. These jobs are not created in isolation, and support positions will be created based around these new foreign worker-filled jobs if they remain in the United States. Foreigners who receive degrees here in the United States also are often kept out of the US by the H-1B visa system. There is no sense in allowing foreigners to come here to be educated, but then forcing them to take their knowledge back to their home country as soon as they complete their studies graduate. Having Allowing them to stay here would be a great benefit to the country.

H-1B workers also use US infrastructure and other services provided by the government. If H-1B workers who plan to stay in the U.S. for a long time period were given green cards in a

¹³ "H-1B Visa"

¹⁴ Friedman

timelier manner, the tax base would expand, because H-1B workers do not pay income taxes while green card holders do.¹⁵

Green Cards

Employment-based green cards are divided into three different categories: EB-1, or priority workers, with extraordinary abilities in the arts, sciences, education, business, or athletics; EB-2, for professionals holding advanced degrees; and EB-3, for skilled workers. Forty thousand green cards are issued at the beginning of the fiscal year in each of these categories. With employment-based green cards, an American employer must first perform labor certification to prove that there are no domestic workers to fill the job to be filled by the immigrant.¹⁶ The employer then files a petition for a foreign worker. The U.S. Citizenship and Immigration Services (USCIS) must approve the petition. Once the petition is approved, the applicant receives a number, and a priority date. In the year that the priority date is before the cutoff date published annually by the USCIS, the applicant can apply to the USCIS or at his country's US consulate for an adjustment of status. Once the adjustment of status is received, the applicant is a legal immigrant.

Department of Labor

¹⁵ "H-1B Visa"

¹⁶ "Permanent Residence"

The Department of Labor (DOL) is involved in the processing of both H-1B visas and green cards. A Labor Condition Application (LCA) certified by the DOL is required for each H-1B applicant.¹⁷ This process is separate from the one used to determine who is given green cards. The employer must sign the LCA, showing that the H-1B working will be working for the prevailing wages.

The DOL currently uses a system to called permanent labor certification (PERM) to certify green cards. The current system used by the DOL to certify green cards is permanent labor certification (PERM). Unlike the pre-2005 labor certification system, PERM is online and much more efficient. Where with the old labor certification process it could have taken after the employer established the prevailing wage, under PERM, labor certification may occur in under six months. However, if the process is audited by the DOL, it could be much longer. About one in every two PERM applications is audited.¹⁸

Because of the *American Competitiveness in the Twenty-First Century Act of 2000*, H-1B employees are allowed to switch jobs if they have had an I-485 application pending for six months and an accepted I-140 application.¹⁹ The I-140 application shows the employer's financial records and the employee's education background; while the I-485 application shows medical, marriage, and immigration history. However, complications may arise that prevent H-1B employees from getting their I-140 application accepted, preventing them from changing employers if they have too.

¹⁷ "Permanent Residence"

¹⁸ "Permanent Residence"

¹⁹ "H-1B Visa"

Even once the I-140 and I-485 applications are approved, a foreigner may still have two years until he or she can receive a green card. Some of the green card processing centers, like the Nebraska Service Center, take up to a year to file a green card application.²⁰ Then once the applications are approved, applicants have to wait for a visa number. Visa number retrogression is an especially tough problem faced by green card applicants from China, India, and the Phillipines. These countries exceeded their 25,620 limit on the EB (employment-based) green card category.²¹ The U.S. Department of State thus moves back the priority date for labor certification, disallowing a certain number of applicants from getting their visa numbers. Considering the number of highly skilled workers from these countries, this has hurt the U.S. greatly.

The labor certification process should be lessened in the stringency that it places on employers. For example, the LCP forces employers to place advertisements in a local newspaper, national newspaper, or journal for three days so that it can be proven enough effort was made to recruit domestic workers. However, employers who recruit workers through different methods are hurt by this. Already, 'reduction in recruitment' forms can be sent in by employers to shorten the LCP and to prove that the search for domestic workers has been adequate.²² There is no reason why the majority of non-immigrants should not be able to get green cards in a timely manner if they want one as long as they are on good behavior.

²⁰ United States Department of Labor

²¹ "Permanent Residence"

²² "Permanent Residence"

Conclusion

Ending the cap on H-1B visas and green cards will be an enormous boost to the American economy, especially in the high-tech sector companies. The limit is set way too low for the countries that produce a majority of skilled and highly-skilled workers like India and China. As long as immigration is tied to a need among American corporations, there will be no need to fear a surplus of foreign workers. Lifting the cap on employment-based green cards will also help us retain most of the foreigners who get educated here, since they tend to want become permanent residents.

H-1B workers should be allowed to switch jobs after about a half a year to eliminate complaints of indentured servitude among H-1B workers. The *American Competitiveness in the Twenty-First Century Act of 2000* has streamlined the green card process to a certain extent and has allowed H-1B workers in green card process to change jobs, but there are still enough kinks in the process that many applicants complain of having to wait for years for various parts of their application to be filed. It is important that the pathway to permanent residency for non-immigrants be kept open, since they will contribute to the tax base and to America's unique cultural landscape if they are allowed to stay here on a permanent basis.

H-1B visas and green cards are controversial mainly because skilled American workers fear that foreigners will undermine the long-term investment that they put into their education. This is a valid fear, and should not be merely dismissed as xenophobia. However, foreign highly-skilled from India and China are economic growth lifelines, pumping human capital into America. These people often show a great deal of gratitude and loyalty to America, are more

than adept at qualified for their jobs, and have an entrepreneurial spirit that coincides with America's reputation for innovation. No longer is America the center of the world; we need to reject our isolationist tendencies and join the movement towards globalization.

Annotated Bibliography

Bauer, T., & Kunze, A. (2003). *The Demand for High-Skilled Workers and Immigration Policy*. Essen, Germany: Rheinisch-Westfälisches Institut für Wirtschaftsforschung. Retrieved January 15, 2009, from http://repec.rwi-essen.de/files/DP_04_011.pdf

This paper mainly focuses on high-skilled immigration in Europe and the shortage of labor there due to a low replacement rate; however, there is some discussion of how foreign workers can complement domestic labor by bringing their own skill set. This includes knowledge of foreign languages and markets.

Compete America. (2008). *State by State Statistics- Engineering and Technology Graduate Degrees*. Retrieved January 19, 2009, from <http://www.competeamerica.org/states/index.html>

This webpage has a series of charts showing the percentage the students enrolled in engineering and technology graduate programs who are foreigners. The webpage comments on how it is unreasonable to prevent foreigners who want to get jobs in America from getting one if they have a degree from an American university.

Friedman, T. (2009). *The Open-Door Bailout*. Retrieved February 25, 2009, from <http://www.nytimes.com/2009/02/11/opinion/11friedman.html>

Thomas Friedman argues that the best boost to our economy would be to allow high-skilled labor to come into the United States. He begins by quoting Shekhar Gupta, an Indian news editor who points out that foreign-high skilled labor is willing to work for many hours and tend to save more. Friedman also opposes any protectionist measures in the bailout.

H-1B Visa. (2009, February 26). In *Wikipedia, the free encyclopedia*. Retrieved February 25, 2009, from <http://en.wikipedia.org/wiki/H-1B Visa>

This page gives basic information on H-1B visas.

Kirkegaard, J. (2008). *US High-Skilled Immigration Policy: A Self-Inflicted Wound*. New Haven, CT: Yale Center for the Study of Globalization. Retrieved January 17, 2009, from <http://www.iie.com/publications/papers/paper.cfm?ResearchID=972>

The report shows that there will be a further decline of high-skilled workers in the future. As the Baby Boom generation retires, the newest cohort of workers will not be able to replace them. A graph in the report shows that in most countries, the number of people going to college has exploded since the 55-64 age group went to college. However, in America, the rate of people going to college has stagnated.

North, D. (1995). *Soothing the Establishment: The Impact of Foreign-Born Scientists and Engineers on America*. Lanham, MD; London, England: University Press of North America

This book covers why foreigners dominate post-graduate education in the sciences and why US corporations desire them so much. While this book is old and came out before peak of the H-1B

crisis, it gives relevant information on why foreign-born workers are typically more qualified than their American counterparts.

One Hundred Ninth Congress Second Session. (2006). *Hearing Before the Subcommittee on Immigration, Border Security, and Claims of the Committee on the Judiciary House of Representatives*. Washington, DC: U.S. Government Printing Office. Retrieved from http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_house_hearings&docid=f:26768.pdf

In this hearing, several people on both sides of the issue of raising the cap on H-1B visas speak before the Subcommittee on Immigration, Border Security, and Claims. John Miano, the founder of the Programmers Guild, testifies in this session.

Permanent residence. (2009, February 15). Retrieved February 25, 2009, from [http://en.wikipedia.org/wiki/Permanent_residence_\(United_States\)](http://en.wikipedia.org/wiki/Permanent_residence_(United_States))

This page gives basic information on permanent residency in the United States.

Rockwell, Jr., L.H. (2006, February 7). *The Myth of the Math and Science Shortage*. Message posted to <http://www.mises.org>

Lew Rockwell, a paleolibertarian political, commentator, argues against government spending programs that are supposed to boost the number of American math and science students, arguing that free markets would do a better job.

United States Department of Labor. (2008). *Permanent Labor Certification*. Retrieved December 21, 2008, from <http://www.foreignlaborcert.doleta.gov/perm.cfm>

This website discusses the labor certification process that employers must perform to before they can hire a foreign worker that wants to work permanently in the country. It proves that there are no domestic workers willing, able, and available to be hired before an employer hires a foreign worker. The employer must, among other things, show documentation of the prevailing wage and a recruitment process that advertised the clearly advertised the position to domestic workers.

United States Department of Labor. (2008). *Foreign Labor Certification Prevailing Wages*. Retrieved December 27, 2008, <http://www.foreignlaborcert.doleta.gov/wages.cfm>

This website defines the prevailing wage as “the average wage paid to similarly employed workers in the requested occupation in the area of intended employment.” It describes the Immigration and Nationality Act as requiring the hiring of foreign workers not to adversely affect domestic wages.

United States Government Accountability Office. (2006). *Labor Could Improve Its Oversight and Increase Information Sharing with Homeland Security. Report to Congressional Requesters*. Washington, DC. Retrieved from <http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=gao&docid=f:d06720.pdf>

This report by the Government Accountability Office says that information on some H-1B visa applications is incorrect, including information about prevailing wages and the wage that the employees are to be given. This report wants the Department of Labor and Homeland Security to have fewer restrictions on sharing information with each other about applicants for H-1B visas and employers. While these recommendations might be worthwhile to implement, the

report never discusses how simply giving H-1B more freedom to changes employers would alleviate many of the issues regarding wage.