

Staying Competitive in the High-tech Global Economy:
Another Look at the H-1B Visa

by

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Abstract

This paper addresses a specific suggestion for immigration reform—that we must seek skilled immigrants—by examining support for a move to unlimited H-1B visa issuance. Great care is taken to include up to date media coverage as immigration policy is greatly affected by public opinion. This paper outlines the historical precedent for looser restrictions on immigration and then reviews the current landscape of U.S. immigration and the H-1B visa market, showing the strong moral and economic support for a move to unlimited H-1B visa issuance.

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I. INTRODUCTION

As the United States enters the 21st century, Washington is steeped in immigration controversy. The debate is focused on how to deal with illegal immigration, primarily from Mexico and China. The Immigration and Naturalization Service (INS) has come under fire for being irresponsible and there is widespread interest in policy reform, but the jury is out on how to best serve the U.S. national interest.

In recent publications the preeminent labor economist and immigration expert George J. Borjas pushes for a reduction by a factor of two—from one million to no more than 500,000—of the United States' yearly intake of immigrants. He cites the lack of skills of recent immigrants as a reason their large numbers were becoming detrimental (Borjas 1990). It is difficult to argue with the theory that the U.S. should seek to admit a larger percentage of educated immigrants, but the jury is out on the best way to pursue that goal.

This paper outlines the history and current landscape of the immigration market, showing the necessity of opening our borders to skilled foreigners. This paper lays out compelling evidence supporting removal of the quota on H-1B visas.

II. IMMIGRATION IN U.S. HISTORY

There is a strong historical precedent for open immigration in the United States, a nation built by immigrants from various Western European countries. The thirteen colonies that became the United States were settled by immigrants in search of better lives. Many

came for religious freedom, all came for economic betterment. The “New World” promised a classless, democratic form of government (Rein et al. 1999).

At the heart of the American dream lay the promise that anyone with the vision and drive to come to America could do so—and achieve success through hard work. That vision was appealing to many people and they flowed into the U.S. in small numbers throughout the 18th and 19th centuries. Between 1880 and 1924, twenty-six million immigrants arrived (Krueger 2000). Many of them were hired at the docks of big cities—by companies who paid for their passage—and transported to mining and factory towns. It has been argued that New York, Chicago, and Los Angeles were the home of thriving companies, because immigration filled them with ambitious, inexpensive workers (Leone et al. 1994).

Though open immigration fueled the growth of the United States, it eventually faced stiff opposition. Article I of the Constitution granted Congress the right to pass immigration laws when it stated, “Congress shall have the power to establish a uniform rule of naturalization...” (Rein et al. 1999, p. 4). Congress did not exercise that power until the second half of the 19th century, when the U.S. started controlling immigration through various quotas and stipulations.

The Chinese Exclusion Act and the Gentleman’s Agreement, which made it difficult or impossible for Chinese and Japanese people, respectively, to migrate to the United States. The Immigration Act of 1924 established a system of national origins quotas for immigrants, based on its relative proportion of the population according to the 1920 census (Smith and Edmontson 1997). No longer were our borders open to anyone with the desire to cross them

and start a new life. For the first time, formal policies began to dictate who could cross the border and become American.

III. CURRENT LANDSCAPE OF U.S. IMMIGRATION

In *Heaven's Door*, Borjas notes that the United States admitted approximately 730,000 legal immigrants, 100,000 refugees, and over 200,000 illegal aliens per year (1999). He proceeded to point out that many of those immigrants were “relatively unskilled,” and said:

...an immigration policy better attuned to the country's national interest—which, *by assumption*, is to maximize the economic well-being of natives—would probably grant fewer entry visas, and that most of the successful visa applicants would be more skilled (emphasis in original text). (1999, p. 189)

Borjas' position is based on two factors. First, skilled immigrants increase the after-tax income of natives, because they earn more and use less welfare programs than unskilled immigrants (1999, p. 190). Second, evidence suggests that the “per capita income in the United States would rise most if immigration policy favored skilled persons” (1999, p. 191). [Figure 1 shows the high returns for education in the American labor market.] Borjas mentions the H-1B visa only in passing, saying “the debate [over H-1B issuance] ended with Congress voting to increase the number of temporary visas granted to high-tech workers...” (1999, p. 198). He proposed a new point system for determining who should be admitted to the United States and who should be denied. He did not, however, acknowledge the H-1B visa as a tool for increasing entrance of skilled persons.

IV. THE H-1B VISA

Established in 1990, the H-1B is a nonimmigrant classification used by an alien who will be employed temporarily—for no more than six years—in a specialty occupation. “A specialty occupation requires theoretical and practical application of a body of specialized knowledge along with at least a bachelor’s degree or its equivalent. [See Table 1.] For example, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts are specialty occupations.” H-1B status requires a sponsoring U.S. employer, who must pay a fee and file numerous forms with the INS (INS 2000).

Derided by some as a temporary fix while Washington stalls on serious immigration reform, the H-1B visa program has been so successful that the quotas have been consistently met early in each year. In 1999, Congress passed a law that increased the H-1B cap for 1999 and 2000 from 65,000 to 115,000, under heavy pressure from technology companies (Masci 2000). On December 19, 2000, the U.S. Department of Labor issued regulations to implement statutory amendments to the H-1B program. The new rules implemented statutory changes to the Immigration Nationality Act (INA), enacted through the American Competitiveness and Workforce Improvement Act (ACWIA) in 1998. The regulations also reflect recent amendments to the INA, which were made in October 2000.

The ACWIA and the amendments of October 2000 changed the H-1B program in a number of ways. The annual limit of H-1B visas was raised to 195,000 for fiscal years 2001, 2002 and 2003. Until October 1, 2003, the regulation calls for nondisplacement and recruitment attestations by certain H-1B employers. Those who are “H-1B dependent” or willful violators are prohibited from “replacing U.S. workers with H-1B workers, and from

placing H-1B workers at other employers' worksites where U.S. workers are being displaced" (DOL 2000, p. 1). The recruitment provision requires employers to favor qualified U.S. workers over equally qualified H-1B workers (DOL 2000). In addition, the new regulation provides protection to employees who cooperate in investigations or proceedings and disclose information about potential violations. The "Department of Justice may allow H-1B worker whistleblowers to stay in the U.S. for up to six years" (DOL 2000, p. 2). The new regulations took effect on January 19, 2001.

An important question is whether or not the H-1B visa should be used as a component of overall immigration policy. California Congressman David Dreier, known as an immigration hard-liner, championed the bill that raised the H-1B quota to 195,000 per year. "Without these professionals, the prosperity we are enjoying today will be threatened," he said. "It's a skilled-workforce bill, not an immigration bill" (quoted in Ripley 2000, p. 26). Others disagree, arguing that it is likely that most H-1B workers find a way to get a green card. The regulations say that "an H-1B alien can be the beneficiary of an immigrant visa petition, apply for adjustment of status, or take steps toward Lawful Permanent Resident status without affecting H-1B status" (INS 2000, p. 2). Some estimate that 25% of all H-1B workers get citizenship. If that is the case, then the H-1B visa is an indirect approach to increasing the skilled component in the immigrant flow. For those who oppose higher H-1B issuance, that is one basis for objection. In fact, it supports the H-1B as a component of immigration policy. With a small change, Permanent Resident status could be an option open to all H-1Bs and the quotas placed on other types of immigrants would need to be lowered to compensate. Besides political and humanitarian goals, the aim of immigration policy is to

attract those workers who are most beneficial to the economy. The changes I have proposed fit into the latter category. It has already been shown that those immigrants who come with more education are most likely to succeed, and one must have a job waiting in the U.S. in order to get an H-1B visa. Clearly, the H-1B is a vehicle for highly-skilled immigrants.

V. OPPOSITION TO THE H-1B VISA

Julian Simon, professor of business administration at University of Maryland, College Park, points out that there is well-organized opposition to immigration and a total lack of organized support for it. FAIR, the Federation for American Immigration Reform, has a large budget—it amassed \$2,000,000 in revenues in 1989—and a large staff. It supports letter-writing campaigns to newspapers and legislators, gets its representatives onto television and radio, and is in the Rolodex of every journalist who writes on the subject.

Several other organizations play a similar role. As Simon says, there is widespread “opposition by special interests, such as organized labor (which wants to restrict competition for jobs)” (Leone et al. 1994, p. 205). On the other side, until recently no organization advocated more immigration generally. On their own website [www.fairus.org] FAIR said, “FAIR adamantly opposes increasing or removing the current limit on the number of H-1B foreign workers admitted to the U.S. each year.” The FAIR home page fingers “mass immigration” as the cause of a projected 400 million person population in the United States in the year 2050 (FAIR). That argument is based on an appeal to fear of overpopulation. Those who fear overpopulation should see that a ban on immigration is no more legitimate than a ban on pregnancy. FAIR also cites concerns that foreign workers are exploited by American

companies. But Congress put in place controls that prevent employer abuses when it created the H-1B program, and the Department of Labor uncovered only ninety violations during the first six years of the program (FAIR; Rein et al. 1999, p. 123).

VI. SUPPORT FOR THE H-1B VISA

A. Support from Universities and Businesses

The strongest argument for unlimited H-1B visas comes in the form of testimonials by leaders of universities and high-tech businesses. Dr. Daniel L. Sullivan, senior vice president of human resources at Qualcomm, Dr. Richard W. Lariviere, associate vice president of International Programs at the University of Texas at Austin, and Dr. T. J. Rodgers, president and CEO of Cypress Semiconductor Corporation each spoke before the Subcommittee on Immigration of the House Judiciary Committee.

Sullivan pointed out that much of Qualcomm's success—over \$2.1 billion in annual sales—can be credited to the contributions of employees who came to the company as foreign nationals. He went on to state that, “American companies cannot compete globally without access to the top engineering and scientific talent, and that includes engineers and scientists drawn from an international pool of talent” (quoted in Rein et al. 1994, p. 124). Lariviere stressed that, “In education as well as business, the flow of human capital and ideas across borders is a key to success in a global society.” and that “The contributions of H-1B professionals at the post-graduate level fill a crucial need for U.S. academic institutions from an academic and training perspective.” (quoted in Rein et al. 1994, p. 125). Lariviere went on

to describe the synergistic collaboration of foreign nationals at U.S. universities, and the significant benefits their presence confers.

B. Addressing the Opposition's "Bad Arguments"

Rodgers was particularly acerbic in opposing the "factually hollow, emotion-driven claims of those who insist the U.S. [high-tech] industry can retain its current global leadership without an adequate supply of high-quality engineers, including immigrants." He outlines a number of "bad arguments" by those opposed to H-1B visas (quoted in Rein et al. 1994, p. 125). In response to "Bad Argument #1," that American high-tech companies do not make an adequate effort to recruit engineers at home, Rodgers said, "High-technology companies pump tens of millions annually into bolstering science learning, while sponsoring job fairs and recruiting intensely on U.S. campuses." In response to "Bad Argument #2," that American high-tech companies do not make enough effort to train the engineers they recruit, he said, "Despite our significant investment in recruiting and training, we [Cypress Semiconductor] have historically averaged between 75 and 250 openings at any given time." In response to "Bad Argument #3," that immigrants take jobs from native-born Americans, he said:

Cypress has 470 engineers and 2,771 worldwide employees. Roughly speaking, this means each engineer creates jobs for six additional people who make or administrate or sell the products developed by our engineers.

...if we had been prevented from hiring the 172 immigrant researchers we have hired, we would have failed to create about 1,000 other jobs—70 percent of which are held by native-born Americans..." (quoted in Rein et al. 1994, p. 126)

The common theme of the testimony before Congress is that the H-1B visa program is necessary for the continued growth of American high-tech industry, and that foreign nationals create jobs for native-born Americans rather than taking them away.

VII. THE MARKET FOR H-1B VISAS

A. Giving Away Jobs?

Some Americans argue that instead of importing workers to fill vacancies, the United States should focus on training unemployed Americans. That is certainly a popular stance, but it is fundamentally flawed. It is based on the injustice of giving away American jobs to foreigners, but immigration quotas serve only to keep the cost of labor artificially high in the U.S. That means that high-tech jobs have followed the lead of manufacturing jobs—often simply leaving the United States altogether. Daniel Sullivan warns that, “limiting the number of H-1B visas granted each year will only force U.S. companies to hire these [foreign] students and settle them in their countries of origin, or in another country...” (quoted in Rein et al. 1994, p. 125).

Harris Miller, president of the Information Technology Association of America, said there is a huge gap between the number of jobs and qualified workers in the IT industry. Estimates of the shortage run over 800,000 (Masci 2000). In 1996, the economy generated 135,000 new positions in the software industry alone—while universities produced only 36,000 computer science graduates (Rein et al. 1994). It is in part because of that ever-present shortage that a labor supply shock would help rather than hurt the economy. The influx of

skilled labor would fuel renewed productivity growth and the economic expansion could continue unbounded.

B. Bypassing the H-1B

John Chambers, the CEO of router giant Cisco Systems, told a gathering of technology experts in New Delhi that world-class engineers in India cost only a fraction of their American counterparts (Madhavan 2001). Cisco predicts a worldwide shortage of two million networking professionals by 2005. Cisco is eyeing India as a “key base,” with two software development centers in the country already and plans to set up 34 training academies to produce about “100,000 Internet network executives to combat the expected professional shortage” (Madhavan 2001, p. 2). Sullivan’s prediction was right on the money, and the result is movement of American corporate operations to foreign nations.

Whether or not American special interests appreciate it, the 21st century is the home of a truly global economy; now more than ever, the market marches on, oblivious to the pleas of narrow-minded bystanders. Alicia Ault refers to a “cottage industry of US companies [which] has sprung up to bridge the gap [between the 195,000 H-1B per annum limit and the 850,000 tech-related jobs which will be left unfilled this year].” The new companies act as “global headhunters,” tracking down qualified programmers and coders overseas and then contracting them to do projects for US clients (2001).

Foreign laborers work from their home countries, sending their output to the US electronically:

Sunnyvale, California-based Angel Engineers charges firms \$35 an hour for work done by its 50 Chinese programmers. Openpages, a content manager in Westford Massachusetts, draws on talent from Moscow State University. The company has 130 contract workers in Russia, and its clients include Crain business publications and the online units of the *Chicago Tribune* and Knight Ridder. (Ault 2001, p. 74)

The ITAA's Harris Miller is not thrilled about the work getting shipped overseas, saying, "Eventually, these countries will become competitors" (quoted in Ault 2001, p. 74).

That comment is particularly poignant when one examines the "spillover" effect seen in areas such as Silicon Valley. In an area with a high concentration of professionals living in close proximity and socializing together, there is high rate of entrepreneurialship. The spillover takes the form of startup companies formed by like-minded individuals hoping to bring some talent or idea to market. If high-tech jobs are exported to communities in other countries, the spillover effect will enrich their economy instead of ours. As Krishna Kundu stated:

When the demand for workers cannot be met domestically, U.S. companies must seek talent elsewhere to fulfill their needs. If American companies are unable to gain access to the workers they need because of limits on H-1B hiring, then they have no recourse but to hire workers abroad and transfer their domestic operations overseas. New employment opportunities, existing jobs, and spending on other goods and services in the economy would also be lost to other countries. (2000, p. 4)

VIII. CONCLUSION

I propose a change to unlimited issuance of H-1B visas, and an additional three-year extension on a visa-holder's stay in the United States. Because they are only issued at the

request of American companies, there will be no glut of cheap, high-tech workers. During the 1990s, the United States took in nearly ten million foreigners. This numbers more than in any previous decade since the 1940s and almost double the number that came during the 1980s. The US also experienced the longest economic boom in its history amidst the “Second Great Migration,” although that is not to imply causation (Krueger 2000). Clearly there is a desire by foreigners to enter the United States, and there is no reason for those with needed skills to be barred. As Harris Miller said, “I urge you to...join me in being thankful that America remains a beacon to so many talented and educated people around the globe...” (quoted in Rein et al. 1994, p. 122).

Alan Greenspan also supports immigration as a source of skilled labor, saying, “As we are creating an ever more complex, sophisticated, accelerating economy, the necessity to have the ability to bring in...people from abroad to keep it functioning in the most effective manner increasingly strikes me as [sound] policy” (quoted in Masci 2000, p. 571). The bottom-line is not the only reason to support an open flow of workers from one country to another; there is also compelling moral support for such a decision.

Having been born in the United States should not give someone an advantage in receiving employment, and hard-working, educated foreigners should be given the opportunity to work in the U.S. Foreigners who have pursued a college degree are best positioned to take advantage of what the United States has to offer—and offer the most in return. The H-1B visa is the perfect vehicle for immigration reform, and the correct policy is to remove the quota on issuance of the important work permit.

Figure 1. Unemployment and earnings for year-round, full-time workers age 25 and over, by educational attainment

Table 1. H-1B Petitions Approved October 1999 to February 2000 by Highest Degree Earned

<i>Highest Degree Earned</i>	Total	Percent
Total	81,262	-----
Known Degree	74,205	100.0
No Diploma	357	0.5
High School Graduate	134	0.2
Some College, no Diploma	753	1.0
Associate's Degree	357	0.5
Bachelor's Degree	41,849	56.4
Master's Degree	22,974	31.0
Doctorate Degree	6,035	8.1
Professional Degree	1,746	2.4
Unknown Degree	7,057	-----

Note: Approximately 8.7% of total petitions have an unknown degree. Percents shown in the table are based on the total number of petitions with known degrees. This table was adapted from a report published by the INS, "Characteristics of Specialty Occupation Workers (H-1B): October 1999 to February 2000."

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