



DPE RESPONDS TO U.S. CHAMBER OF COMMERCE ATTACKS ON DPE VISA STUDY

On August 12, 2010, the U.S. Chamber of Commerce and the American Council on International Personnel (collectively “the Chamber”) released *Regaining America’s Competitive Advantage: Making our Immigration System Work*¹ in response to the Department for Professional Employees, AFL-CIO’s (DPE) 2009 report *Gaming the System, Guest Worker Visa Programs and Professional and Technical Workers in the U.S.*² The Chamber either conceded or remained silent in its response to the vast majority of research outlined in *Gaming the System*.

DPE responds to the major points raised by the Chamber’s study below. Initially, it bears mentioning that the Chamber does not refute that: many science, technology, engineering, and math companies request H-1B visas for workers and not green cards; “body shops” are used by employers to avoid paying the prevailing wage to thousands of H-1B visa holders; some firms try to avoid hiring U.S. applicants; there is a lack of oversight of guest worker visa programs; there is a lack of information on guest worker visa holders; and there is fraud in the guest worker visa system.

In its study, the Chamber argues that: first, DPE opposes the issuance of any guest worker visas; second, U.S. companies do not use H-1Bs as a cost-saving measure;³ third, H-1Bs are crucial to the U.S. remaining competitive in the global marketplace;⁴ fourth, the H-1B system would be improved by eliminating the caps on the number of visas issued each year;⁵ and fifth, abuses of H-1B visas, while widespread, do not demonstrate that there is a problem in need of reform.⁶

First, the Chamber repeatedly attempts to construe DPE’s position as advocating that high skilled foreign nationals be barred, blocked, or significantly restricted from entering the U.S. workforce.⁷ This is an erroneous characterization of DPE’s position. DPE has consistently advocated for the improvement, not elimination, of temporary worker programs, including H-1B and L-1 visas. Improvements can be made if there is a systematic study done of past and present

¹ Anderson, Stuart, *Regaining America’s Competitive Advantage: Making our Immigration System Work*. U.S. Chamber of Commerce and the American Council on International Personnel, 2010.

² For clarification, the Chamber study appears to confuse DPE with the AFL-CIO. DPE comprises 23 AFL-CIO unions representing over four million people working in professional and technical occupations, however, it is not the AFL-CIO.

³ Anderson (2010), 5, 32-36.

⁴ *Ibid*, 16-22, 60-62.

⁵ *Ibid*, 9, 57-59

⁶ *Ibid*, 48-52.

⁷ Anderson (2010), 2, 13, 44, 47.

guest worker visa holders. DPE supports such a study.⁸ DPE also supports the creation of an independent commission that would make decisions about the needs of the labor market.⁹ If wages, the workforce, and businesses would benefit from a greater number of guest worker visas, as argued by the Chamber, then the commission would have the authority to increase the number of visas to be issued. However, the Chamber opposes the creation of an independent commission.¹⁰

Second, the Chamber's study asserts that businesses do not hire H-1B visa holders in order to pay lower salaries and benefits.¹¹ The Chamber asserts that businesses could just send jobs overseas if the motivation is to save money.¹² This strategy has certainly increased the profits of many corporations. However, outsourcing may not always be practical, which is why there may be an incentive for some companies to cut costs by hiring temporary foreign workers. The Chamber cites a May 2010 study to argue that "foreign-born professionals in information technology (IT) actually earned more than their native counterparts."¹³ This is a single study limited to IT and does not refute DPE's report, which noted that "[e]mployers often set lower salaries by: selecting a survey source with the lowest salaries, misclassifying experienced employees as entry-level, giving an H-1B visa holder a lower job title than their work requires, or citing wages for a low-cost area of the country while the H-1B holder is unlawfully transferred to a higher cost area."¹⁴ Also, the Chamber did not attempt to defend instances in which U.S. workers were laid-off and replaced with foreign workers. The laid-off U.S. workers were then required to train their foreign replacements, which challenges the notion that the foreign workers are more skilled than the U.S. workers they are replacing.

Third, the Chamber asserts that the ability of U.S. companies to create new and innovative products hinges on the recruitment of thousands of *temporary* H-1B visa holders.¹⁵ DPE asserts that if a professional worker is exceptionally talented, a company has every incentive to persuade the foreign worker to make a long-term commitment to the company by becoming a U.S. citizen. The Chamber's study cites examples of foreign nationals who worked for U.S. companies and contributed to the growth of his or her U.S. employer.¹⁶ Under the circumstances described in the Chamber's study, U.S. employers would be best served by making these employees permanent U.S. residents. Congressional testimony by Microsoft Chairman Bill Gates was also cited by the Chamber to support an argument that jobs for U.S. citizens are actually created by the hiring of H-1B visa holders. Specifically, Mr. Gates claimed

⁸ DPE (2009), 35.

⁹ *Ibid*, 37.

¹⁰ Anderson (2010), 55-57.

¹¹ *Ibid*, 32.

¹² *Ibid*, 6.

¹³ Mithas, Sunil, and Lucas, Henry C. *Are Foreign IT Workers Cheaper? U.S. Visa Policies and Compensation of Information Technology Professionals*. *Management Science*, 56, 5 (2010): 745-765.

¹⁴ DPE (2009), 25.

¹⁵ Anderson (2010), 16-22, 60-62.

¹⁶ *Ibid*, 17-21.

that ““Microsoft has found that for every H-1B hire we make, we add on average four additional employees to support them in various capacities.””¹⁷ However, neither Mr. Gates nor the Chamber provides any evidence to support the anecdotal claim that jobs for U.S. workers are created by H-1B visa holders.

The Chamber fails to mention the downside to hiring thousands of temporary workers. Instead, the Chamber notes that, in its view, the “labor market is global”¹⁸ and U.S. companies should be able to recruit from this global labor market. However, due to the wages offered abroad, most U.S. workers have little ability to work in the global labor market. Practically speaking, a young American engineer would not be able to repay thousands of dollars in student loans working as a systems engineer in Delhi, India for \$6,000 per year. The Chamber seems to envision a future where a U.S. worker is required to compete in the U.S. labor market with unlimited H-1B visa holders, without the similar ability to work in the global labor market outside the U.S. While the labor market may be global, the U.S. is not obligated to allow corporations to bring in as many foreign guest workers as they desire. Especially in these difficult economic times, it is reasonable to give a U.S. worker the first opportunity for a job in the U.S., which is what current law requires.

Fourth, the Chamber proposes eliminating or significantly increasing caps on guest worker visas.¹⁹ The Chamber urges that this would allow the “market” to decide the number of temporary guest workers that corporations need. In reality, the Chamber wants corporations, not the market, to decide the number of temporary guest workers. The financial crisis of 2008 provided a painful reminder about what happens when we leave corporations and markets to run wild with limited regulation. History teaches us that U.S. workers and consumers are best served when corporations are subject to reasonable limits and regulation.

The Chamber’s proposal could also harm the U.S. economy by driving down wages. The Chamber noted that the annual salary for a systems engineer is \$6,000 in Delhi, India. Presumably, the Indian systems engineer would be paid more in the U.S., but with the U.S. job market flooded with unlimited H-1B visa holders, a decrease in wages for professional workers would likely follow.

Finally, the Chamber’s study attempts to minimize the abuse of the H-1B system while acknowledging that 54 percent of companies with 25 or fewer employees had fraud or technical violations, 41 percent of companies with annual revenue of less than \$10 million had fraud or technical violations, 11 percent of companies with 26 or more employees had fraud or technical violations, and 7 percent of companies with revenues above \$10 million had fraud and technical violations.²⁰ The Chamber speculates that the high violation rate is due to the complexities of

¹⁷ *Ibid*, 17.

¹⁸ *Ibid*, 6.

¹⁹ *Ibid*, 9, 57-59

²⁰ *Ibid*, 48-49.

the system or that the findings of fraud or technical violations were erroneous.²¹ The Chamber goes on to question the planned 25,000 on-site inspections by USCIS of the current 276,252 H-1B visa holders as excessive.²²

In conclusion, the lack of comprehensive data in the Chamber's study reinforces DPE's strong support for a systematic study by the General Accounting Office (GAO) that would determine the work profile of H-1B visa holders over at least the past ten years. A GAO study is crucial to an informed discussion among the interested parties about guest worker visas. Congress should also incorporate the framework laid out by former Secretary of Labor Ray Marshall²³ into any immigration reform initiatives. This framework calls for: an independent commission to assess and manage future flows, based on labor market shortages that are determined on the basis of actual need; a secure and effective worker authorization mechanism; rational operation and control of the border; adjustment of status for the current undocumented population; and improvement, not expansion of temporary worker programs, limited to temporary or seasonal, not permanent jobs.²⁴

For further information on professional workers, check the DPE website: www.dpeaflcio.org.

The Department for Professional Employees, AFL-CIO (DPE) comprises 23 AFL-CIO unions representing over four million people working in professional and technical occupations. DPE-affiliated unions represent: teachers, college professors and school administrators; library workers; nurses, doctors and other health care professionals; engineers, scientists and IT workers; journalists and writers, broadcast technicians and communications specialists; performing and visual artists; professional athletes; professional firefighters; psychologists, social workers and many others. DPE was chartered by the AFL-CIO in 1977 in recognition of the rapidly-growing professional and technical occupations.

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²¹ *Ibid*, 50.

²² *Ibid*, 50-51.

²³ Marshall, Ray. *Immigration for Shared Prosperity: A Framework for Comprehensive Reform*. Economic Policy Institute. April 2009.

²⁴ DPE (2009), 36.