Gaming the System

Guest Worker Visa Programs and Professional and Technical Workers in the U.S.
The research for this report was conducted by DPE Researcher and Representative Alexis Spencer Notabartolo.

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ABOUT THE DEPARTMENT FOR PROFESSIONAL EMPLOYEES, AFL-CIO

The Department for Professional Employees, AFL-CIO (DPE) comprises 24 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.

ACKNOWLEDGEMENTS

DPE gratefully acknowledges the assistance received from the International Affairs Department of the American Federation of Teachers (AFT), Legislative Director Stan Sorscher of SPEEA - International Federation of Professional and Technical Engineers (IFPTE) Local 2001, the Governmental Affairs Department of IEEE-USA, DPE Research Intern Kelly Gaberlavage and DPE Web Intern Andrew Nacin in the creation of this report.

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Executive Summary

The United States' guest worker visa programs are a flashpoint in the ongoing immigration debate. With a fallible reporting process and no unified government agency to provide oversight, the U.S.'s panoply of guest worker visa programs are overly complicated, lack accountability, have lax tracking enforcement and are a prime example of why U.S. immigration policy needs to be reformed. Three factors are especially important in assessing guest worker visa programs, such as the H-1B or L-1: the program itself, the condition and demand of the domestic U.S. labor market and the situation faced by workers whom such programs affect. The following report will examine these three factors, with attention to the particular effects of guest worker visas on the science, technology, engineering, math (STEM) and education workforces. The end of this report will present a workable framework for immigration reform that the Department for Professional Employees, AFL-CIO (DPE), sees as addressing and remediating many of the problems with guest worker visa programs specifically and U.S. immigration policy in general.

The present guest worker visa system in the U.S. evolved over time. The much discussed H-1B visa, for example, originated in the Immigration and Nationality Act of 1952, creating a temporary program for foreign nationals of "distinguished merit and ability." This requirement was dropped from the legislation when the Immigration Act of 1990 created the H-1B program in its current form to bring guest workers to the United States to fill temporary 'shortages' in different sectors of the economy. Initially, only 65,000 foreign workers were allowed to work in the U.S. on an H-1B visa, but the number of H-1B visas has fluctuated due to the yearly allotments set by Congress. Additionally, no cap is placed on workers coming to work for nonprofits or institutions of higher education, 20,000 visas are set aside for foreign workers with Masters or PhDs from American institutions, and there are certain cap exemptions for workers coming from Singapore and Chile as part of free trade agreements (FTAs) (refer to page 18 of this report for details). Without some form of unified body overseeing these programs in light of the genuine needs and capacity of the U.S. economy, the number of H-1B visas allotted each fiscal year becomes dangerously politicized.

Claims of shortages necessitating these programs, especially in the STEM fields, have been widely disputed and are not borne out by basic economic indicators. A Congressionally-mandated study released by the National Research Council found that, "the current size of the H-1B workforce relative to the overall number of IT professionals is large enough to keep wages from rising as fast as might be expected in a tight labor market." If a genuine labor shortage existed, wages in these fields would have risen dramatically in ways they have not.

In addition, unemployment rates in this sector have increased dramatically over the past year, with engineers reaching their highest unemployment rate since at least 1972. Graduation rates in the STEM fields also indicate that the United States is producing enough graduates to meet the employment needs of the industry (see "By the Numbers," page 22 of this report).

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4. Ibid.
The sectors of the U.S. economy seeking guest workers are also diversifying. H-1B visa holders, for example, are generally thought to be employed solely in computer-related and engineering occupations. Growing numbers of educators and health care workers, however, come to the U.S. on H-1B visas. Guest workers are often mistreated and exploited by unscrupulous recruiters, while the underlying need for greater training of domestic workers and rectification of workplace issues contributing to low retention and recruitment rates goes unaddressed.

While detailed information about the H-1B visa workforce is often hard to come by, it is clear that employers and visa recruiters often use their position of authority to abuse the rights of workers on H-1B visas. According to the General Accounting Office, "H-1B workers may be vulnerable to abuse since their dependency upon their employer may lead to reluctance to complain." The uneven worker-employer or recruiter relationship is heightened by the threat of deportation if fired and the inability of guest workers to readily change employers if mistreated. Employers or visa recruiters may illegally charge visa applicants fees for a visa or for employment placement services, burdening new guest workers with substantial debt. These practices create a situation in which guest workers are rendered de facto indentured servants, unable to change their employment situation without penalty and indebted to their recruiting agency.

The guest worker visa system in the U.S., exemplified by the H-1B program, does not protect the rights of domestic or guest workers. Serious immigration reform is needed to insure that visa programs guarantee lawful and humane treatment of guest workers and that the overall picture of the U.S. economy is assessed when formulating immigration policy. A first, crucial step in remedying the overly complicated and highly corruptible guest worker visa system in the U.S. would be for the U.S. Congress to direct the General Accounting Office (GAO) to undertake a systematic study of H-1B visa holders to determine their work profile over the past ten years (1998 - 2008), as is called for later in this report (see page 35). Moving forward, Congress should incorporate the framework laid out by former Secretary of Labor Ray Marshall in the 2009 Economic Policy Institute publication "Immigration for Shared Prosperity: A Framework for Comprehensive Reform," into any immigration reform initiatives. This framework has five key elements:

1. An independent commission to assess and manage future flows, based on labor market shortages that are determined on the basis of actual need;

2. A secure and effective worker authorization mechanism;

3. Rational operation and control of the border;

4. Adjustment of status for the current undocumented population; and

5. Improvement, not expansion, of temporary worker programs, limited to temporary or seasonal, not permanent, jobs.

While each of these components is vital in ensuring truly comprehensive immigration reform and is strongly supported by DPE, this report will focus on point five of Secretary Marshall’s recommendations. Guest worker visa programs like H-1B and L-1 visas most directly impact the professional and technical workforce represented by the affiliate unions of DPE and it is our hope that this report will help generate informed discussion and heighten awareness of Secretary Marshall's sound policy recommendations as immigration reform moves forward.

- Paul Almeida, President, Department for Professional Employees, AFL-CIO
WHAT ARE GUEST WORKER VISAS?

The United States’ guest worker visa programs are a flashpoint in the ongoing immigration debate. With a fallible reporting process and no unified government agency to provide oversight, the U.S.’s panoply of guest worker programs are overly complicated, lack accountability, have lax tracking enforcement and are a prime example of why U.S. immigration policy needs to be reformed. This report will show that the guest worker visa system does not protect the rights of domestic or guest workers and why reform of guest worker visa programs, as included in the comprehensive immigration reform framework laid out by former Secretary of Labor Ray Marshall in the 2009 Economic Policy Institute publication "Immigration for Shared Prosperity: A Framework for Comprehensive Reform," is needed.

Three factors are especially important to consider when assessing guest worker visa programs, such as the H-1B and L-1 visas: the program itself, the condition and demand of the domestic U.S. labor market and the situation faced by workers impacted by such programs. This report is interested in the influence of guest worker visa programs on professional and technical workers in the U.S. and will primarily look at the visa programs most directly affecting those populations, like H-1B and L-1 visas.

WHAT IS AN H-1B Visa?

An H-1B visa is a non-immigrant visa for a foreign worker who will be employed temporarily in a specialty occupation or field.¹ This visa classification is renewable for up to six years and H-1B holders are to be employed in ‘specialty occupations,’ defined by the U.S. Citizenship and Immigration Services (USCIS) as an occupation which requires the “theoretical and practical application of a body of specialized knowledge along with at least a bachelor’s degree or its equivalent.”²

The number of H-1B visas is limited, although the cap has fluctuated throughout the program’s existence. Today, the cap is 65,000 foreign workers per fiscal year (FY).³ Not all H-1B visa applicants are subject to this annual limit. An additional 6,800 visas may be set within the cap each fiscal year under the terms of the U.S.-Chile and U.S.-Singapore FTAs (these visas are called H-1B1 visas). Unused numbers in this pool are made available for H-1B use for the next fiscal year (for further details see pages 18-19 of this report).⁴ In FY2005, Congress created an additional exemption from the H-1B cap for 20,000 aliens holding a master’s degree or higher from an American institution of higher learning under the Consolidated Appropriations Act.⁵ Nonprofits and institutions of higher education are also exempt from the annual cap and have no limit placed on the number of H-1B visas they use.

H-1B visas are intended to respond to employer needs; to obtain a visa, a foreign worker must have a sponsor employer. The H-1B applicant, if approved, can then work for the employer which

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petitioned for his guest worker status. Many business interests argue that guest worker programs like the L-1 and H-1B allow U.S. firms to remain “innovative,” and recruit and retain “the best and the brightest,” but the U.S. system, unlike many European and Asian states, does not have a points system or other means of assessing the abilities of visa candidates. Once the cap number has been reached, the system awards guest worker visas like H-1Bs via a lottery, the number of which is set by Congress.

Firms categorized as H-1B dependent, where at least 15% of workers are H-1B visa holders, must attest to the Department of Labor (DOL) that they attempted to fill those jobs with domestic workers and that they have not laid off domestic workers 90 days prior to the application or after hiring H-1B visa workers. The DOL is then responsible for examining employer applications and determining if they are accurate. If the employer fails to comply with DOL regulations, it is subject to fines, may be denied H-1B visa petitions, or be subject to other penalties. The prospective H-1B visa holder must demonstrate to the USCIS that he has the proper education and work experience for the posted positions. If the candidate’s petition is cleared, his visa is approved for a three-year period and can be renewed for up to six years. There are no annual reporting requirements for the H-1B visa program.

The L-1 visa, often discussed alongside the H-1B, is for intra-company transferees who, within the three preceding years, have been employed abroad by the sponsoring firm continuously for one year, and who will be employed by a branch, parent, affiliate, or subsidiary of that same employer in the U.S. in a managerial, executive or specialized knowledge capacity. This visa is renewable for up to seven years and does not require the employer to pay the prevailing wage.

**A Brief History of the H-1B Visa**

The Immigration and Nationality Act of 1952 (INA) created the H-1 visa program for aliens of “distinguished merit and ability.” These visas were given to workers filling temporary jobs and maintaining residence in a foreign country. In 1989, Congress split the H-1 visa program into both (a) and (b) categories. In the 1980’s, the National Science Foundation

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11. Ibid.
12. Ibid.
13. Ibid.
(NSF) predicted "looming shortfalls" of scientists and engineers through a series of "studies."16 During the 1990’s the United States experienced a prolonged period of economic growth and low unemployment rates. Congress and the Federal Reserve Board became concerned that labor scarcity, particularly in computer-related fields would slow the rate of economic growth.17

The Immigration Act of 1990 established the H-1B visa program as it currently exists. The H-1B program is based on bringing skilled foreign workers to the US on a temporary basis to fill "shortages" of qualified workers in critical fields.18

- The Immigration Act of 1990 changed the language of the 1952 Act from a program for aliens of "distinguished merit and ability" to those with "specialty occupations."
- The 1990 Act also set an annual cap of 65,000 visas and allowed H-1B visa holders to have "dual intent" rather than maintain foreign residency.19
- In addition, the 1990 Act created three other new visa categories (not discussed in this report) for skilled temporary workers—the H-1C visa for nurses and O and P visas for prominent scientists, educators, artists, athletes and entertainers.20
- The H-1B visa program became popular with the business community which claimed that it helped fill critical fields, like information technology, with qualified applicants.21

The 1994 Uruguay Round Agreements of the General Agreement on Tariffs and Trade (GATT) saw the United States commit to admitting 65,000 H-1B visa holders each year under the General Agreement on Trade in Services (GATS) (§101(a)(15)(H)(i)(b) of INA).22 The H-1B visa program became popular with representatives from the high-tech industry who lobbied the government to increase the number of visas. Throughout 1998, the employers’ position was strengthened by several developments:

- First, in September 1997, the annual 65,000 ceiling for H-1B workers was reached for the first time. Because of the cap, H-1B admissions were halted for the remainder of the fiscal year. Employers used this as evidence that the computer industry had unmet demand for high-tech workers.
- Also in September 1997, the U.S. Commerce Department issued a report predicting a coming shortage of high-tech workers. Although the report’s methodology was strongly criticized by U.S. Government Accountability Office (GAO), it allowed industry representatives to argue that official government statistics supported their findings about an unmet demand for high-tech workers.
- Finally, fears of a technological breakdown from the year 2000 computer transition (Y2K) fueled the industry’s charge that more workers were needed to reprogram computers to allow them to function properly after 2000.23 No globally significant computer failures took place when the year 2000 did arrive.

23. Usdansky, 9-10.
In 1998, Congress passed Title IV of the FY1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act, raising the H-1B ceiling over three years and adopting provisions meant to prohibit employer abuses. The new law set the maximum number of H-1B visas at 115,000 in both FY1999 and FY2000, 107,500 in FY2001, and back to 65,000 in FY2002. In both FY1999 and FY2000 the ceiling was reached within months. The business community used this as further evidence to advocate for raising the ceiling for H-1B visa workers. As a protective measure, H-1B dependent firms were required to attest that they had attempted to recruit US workers and state that they had not fired any workers in the 90 days before submitting an H-1B petition or after the fulfillment of an H-1B visa. Firms were also required to pay a $500 fee for every H-1B visa worker hired to cover the costs of education and training programs for U.S. workers.

On Oct. 2, 2000, not long after the initial visa increase, Congress passed the American Competitiveness in the Twenty-First Century Act of 2000 with bipartisan support. This bill raised the number of H-1B visas by 297,500 between FY2000 and FY2002 by allowing up to 80,000 new H-1B visas for FY2000, 87,500 visas for FY2001, and 130,000 visas for FY2002. It also authorized additional H-1B visas for FY1999 to compensate for an automated reporting system problem that inadvertently approved between 21,888 to 23,338 petitions in excess of the visa cap that year. In addition, the law exempted all H-1B non-immigrants who work for universities and nonprofit research facilities from these limits. The 2000 law also changed how H-1B fees were used for education and training, notably earmarking a portion of DOL training funds for skills in information technology shortage areas and adding to the National Science Foundation portion a K-12 math, science and technology education grant program. Separate legislation to increase the H-1B fee from $500 to $1,000 (P.L. 106-311, H.R. 5362) passed in October 2000.

Title IV of P.L. 108-447 (H.R. 4818), the Consolidated Appropriations Act for FY2005, exempted up to 20,000 aliens holding a master’s or higher degree from an American university from the capped number of H-1B visas. It reinstates:

- The attestation requirement concerning non-displacement of U.S. workers applicable to H-1B dependent employers and willful violators;
- The filing fee applicable to H-1B petitioners and the Secretary of Labor’s authority to investigate an employer’s alleged failure to meet specified labor attestation conditions.

The 2005 Act also requires the Secretary of Homeland Security to impose a fraud prevention and detection fee on H-1 or L visas (intra-company business personnel) petitioners for use in combating fraud and carrying out labor attestation enforcement activities.

As the U.S. economy (particularly computer-related industries) slowed in the early 2000’s, demand diminished for H-1B visa workers. The 108th Congress enacted legislation which lowered the H-1B ceiling to 65,000, but began including H-1B provisions and exemptions in new trade agreements.

The Guest Worker Workforce

THE GUEST WORKER WORKFORCE

GENERAL INFORMATION ON H-1B VISA HOLDERS

The last publicly available comprehensive assessment of H-1B visa holders was the 2005 USCIS report “Characteristics of H-1B Visa Holders.” In September 2009, however, DPE obtained publicly unavailable copies of the "Characteristics of H-1B Visa Holders" for fiscal years 2006-08. According to data reported by the USCIS, in FY2008 there were a total of 276,252 H-1B visa recipients.29 In FY2008, 49.6% of H-1B visa holders were employed in computer-related occupations. However, H-1B visa holders worked in a variety of other occupations: 10.9% were engineers, architects, and surveyors; 10.5% were educators; and 8.5% were employed in administrative services.30 In FY2008, 43% of H-1B visa holders had at least a bachelor's degree or the equivalent, 41% had a master's degree, and 16% had a professional degree or doctorate.31

GUEST WORKERS IN STEM OCCUPATIONS

- In FY2008, there were an estimated 137,010 H-1B visa recipients (also known as "beneficiaries") in computer-related occupations, making up 49.6% of all H-1B visa recipients with known occupations.32
- The second largest number of H-1B visa recipients were employed in engineering, architecture, and surveying occupations. This occupational group included 30,062 beneficiaries, making up 10.9% of all visa recipients with known occupations.33
- In addition, systems analysis and programming and computer-related occupations were among the top occupations (first and third) for visa recipients. In FY2008, there were 120,673 H-1B visa recipients in systems analysis and programming and 11,826 in computer-related occupations. Computer systems design and related services was the top industry recipient of H-1B workers.

STEM guest workers usually come to the U.S. on an H-1B or L-1 visa. Like the H-1B visa, the L-1 visa is a temporary visa and is renewable for up to seven years. Unlike the H-1B visa, however, L-1 visas do not require the sponsoring employer to pay the prevailing wage and do not have a cap number.34 The H-1B and L-1 visa programs are popular with STEM employers as these programs afford employers access to a skilled workforce at a lower cost than domestic workers in the U.S. Additionally, using a third party recruitment firm or "body shop" as the employer of record decreases a domestic employer's risk of violating guest worker rights. In FY2008, the top four employers of H-1B visa recipients were so-called 'body shops':35

<table>
<thead>
<tr>
<th>Top Four Firms Employing H-1B Visa Holders</th>
<th>Number of H-1B Visa Petitions Approved in FY2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Infosys Technologies Limited</td>
<td>4,559</td>
</tr>
<tr>
<td>2. Wipro Limited</td>
<td>2,678</td>
</tr>
<tr>
<td>3. Satyam Computer Services Limited</td>
<td>1,917</td>
</tr>
<tr>
<td>4. Tata Consultancy Services Limited</td>
<td>1,539</td>
</tr>
</tbody>
</table>

30. Ibid, 12.
32. Ibid, 11-12.
33. Ibid, 11-12.
Many firms that request H-1B visas for workers in the STEM fields do not or rarely sponsor guest workers for green cards, which illustrates a lack of commitment to and investment in their guest worker workforce. Instead, the H-1B and L-1 labor pool is used to decrease employer labor costs with little to no concern for the impact on workers.36

<table>
<thead>
<tr>
<th>H-1B Rank in FY08</th>
<th>Company</th>
<th>H-1B Petitions FY08</th>
<th>Permanent Applications Certified FY08</th>
<th>Immigration Yield</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Infosys Technologies Ltd.</td>
<td>4,559</td>
<td>263</td>
<td>6%</td>
</tr>
<tr>
<td>2</td>
<td>Wipro Limited</td>
<td>2,678</td>
<td>38</td>
<td>1%</td>
</tr>
<tr>
<td>6</td>
<td>Intel Corp</td>
<td>731</td>
<td>15</td>
<td>2%</td>
</tr>
<tr>
<td>10</td>
<td>IBM India</td>
<td>381</td>
<td>0</td>
<td>0%</td>
</tr>
</tbody>
</table>

In addition to the numerous restrictions that often put H-1B and L-1 visa holders in unsafe and abusive situations, the guest worker visa system displaces domestic workers. The Department of Labor’s Strategic Plan through 2011 notes, “...H-1B workers may be hired even when a qualified U.S. worker wants the job, and a U.S. worker can be displaced from the job in favor of a foreign worker.”37 A cottage industry of worker displacement legal firms has sprouted to assist companies with shifting work from domestic workers to those on visas, affording greater employer control over the worker.

### How to Game the System

The below screen captures are taken from “fair use” segments of law firm Cohen and Grigsby’s Seventh Annual Immigration Law Update, held May 15, 2007. The remarks made by Cohen and Grigsby’s Vice President of Marketing, Lawrence M. Lebowitz, sum up the purpose of such seminars succinctly: “Our goal is clearly not to find a qualified U.S. worker... our objective is to get this person a green card... so certainly we are not going to try to find a place where applicants would be most numerous.”

The purpose of seminars such as the one hosted by Cohen and Grigsby is to help firms meet the base requirements of U.S. labor and immigration law with no intent of actually hiring a domestic worker. Workers on H-1B visas, who should be paid the “prevailing wage” for their position, are often paid far less than a domestic counterpart would be and are tied to the firm regardless of work and safety conditions.

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THE ABC'S: EDUCATION AND GUEST WORKER VISAS

Many people automatically associate H-1B visas with the IT or STEM workforce; however, these visas are increasingly being used to bring educators to the United States. Education has become the third largest occupational group for H-1B visa recipients. According to USCIS, in FY2008 there were 28,880 H-1B visa recipients in education occupations, making up 10.5% of all known H-1B visa holders.38 According to USCIS, 20,139 visa holders were employed in college and university education, 3,418 in secondary school, and 3,482 in preschool, primary school, and kindergarten education.39 College and university occupations were granted the second highest number of H-1B visa petitions accounting for 7.3% of H-1B visa recipients, while secondary and primary education occupations accounted for 1.3% and 1.2% of visa recipients, respectively.40

While USCIS provides an overview of H-1B recipients in education, it does not provide detailed information about the guest worker workforce in the education sector. For that information, we look at a 2003 study by the National Education Association (NEA), in which researchers estimated that there were 14,943 foreign-trained teachers teaching in the United States in 2002. Of these teachers, an estimated 10,012 were thought to be teaching in public schools. In 2009, the American Federation of Teachers (AFT), using the same calculations employed by the NEA study, estimated that there was a 25% increase in the number of foreign-trained teachers from 2002 to 2007.41 AFT's report estimated that in 2007, there were 19,329 foreign-trained teachers teaching in the US.42

![Total Potential Number of Overseas Trained Teachers Working in the U.S. on H-1B and J-1 Visas](chart.png)

Table is taken from "Importing Educators: Causes and Consequences of International Teacher Recruitment," a report by the American Federation of Teachers. Table Data calculated based on Randy Barber's methodology. Figure for 2002 calculated by Barber. Figures for 2003-07 calculated by American Federation of Teachers.

41. Importing Educators: Causes and Consequences of International Teacher Recruitment, 10.
42. Ibid, 10.
WHERE ARE FOREIGN-TRAINED TEACHERS WORKING?

According to the NEA study, public school authorities, including individual public schools, districts, and state education agencies are the largest importers of foreign-trained teachers.\(^43\) In 2008, five school districts were among the top 100 firms to petition USCIS for H-1B visas. Two school systems, Prince George's County and Baltimore City Public Schools, both in Maryland, were among the top 20 overall employers petitioning for H-1B visas.

<table>
<thead>
<tr>
<th>Top 5 school districts petitioning for H-1B visas</th>
<th>Ranking among top 100 employers of H-1B visa holders</th>
<th>Number of H-1B visa petitions approved in FY08</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prince George's County Public Schools</td>
<td>18</td>
<td>239</td>
</tr>
<tr>
<td>Baltimore City Public School System</td>
<td>19</td>
<td>229</td>
</tr>
<tr>
<td>East Baton Rouge Parish School System</td>
<td>25</td>
<td>205</td>
</tr>
<tr>
<td>Dallas Independent School District</td>
<td>78</td>
<td>105</td>
</tr>
<tr>
<td>New York City Dept. of Education</td>
<td>91</td>
<td>96</td>
</tr>
</tbody>
</table>

H-1B AND J-1 VISAS BRING FOREIGN-TRAINED TEACHERS TO THE UNITED STATES

Foreign-trained teachers primarily come to teach in the United States on H-1B or J-1 visas. Current figures are difficult to obtain. However, according to the NEA, in 2002 there were an estimated 6,000-7,000 teachers in the United States teaching on H-1B visas and an additional 3,000 teaching on J-1 visas. In 2002, twenty-two states had developed extensive H-1B recruitment for educators, while ten school districts had obtained official designation as J-1 visa sponsors.\(^44\)

Number of H-1B and J-1 Visas Issued to Primary and Secondary Teachers

![Graph showing the number of H-1B and J-1 visas issued to primary and secondary teachers from 2001 to 2007.]


Table is taken from "Importing Educators: Causes and Consequences of International Teacher Recruitment," a report by the American Federation of Teachers.

44. Ibid, 2-3.
Teachers and other educators often qualify for exemptions from the H-1B visa cap because institutions of higher education, non-profits, and government research institutions are exempted from the H-1B visa cap, as are institutions related to or affiliated with them. An example of a school district which utilizes foreign recruitment is Prince George’s County in Maryland. Prince George’s County has established a large H-1B visa program in which the school system brings foreign-trained teachers to teach in the county for a period of three years. Prince George’s County will often sponsor foreign-trained teachers for a green card or permanent residency if they have taught in the county over three years. It is important to note that these programs differ from county to county and may not exist in some locations at all.

The J-1 visa is part of the Exchange Visitor Program of the U.S. Department of State. In 2001, the Department of State had a list of 70 sponsors for J-1 visas in the teacher category. Of these sponsors, 22 were state education departments, 11 city or county school boards, and others were foundations, specialty schools, and non-profits. An example of a school district which uses J-1 visas to address staffing shortages is the Los Angeles Unified School District. For the District to sponsor a teacher on a J-1 visa, the teacher must pass basic skills tests and interviews, as well as fulfill California teaching credentials and have 3-5 years of teaching experience in public schools.

Like the H-1B visa, the J-1 visa is a nonimmigrant visa. It allows visa holders to apply for temporary, renewable visas which last one year and may be renewed up to three years. After three years, the visa holder is required to return to his home country for two years to fulfill the residency requirement. However, while the H-1B visa is explicitly designed to allow employers to recruit workers in specialty occupations, the J-1 visa’s primary purpose is cultural exchange, with employment only tangential, making the use of this program in such a way a violation of the program’s original intent. In addition, there is no specific provision requiring employers to pay J-1 visa holders the ‘prevailing wage’ as there is under H-1B regulations.

46. Barber, 2-3.
48. Barber, 2.
49. Ly, op. cit.
LACK OF GOVERNMENT OVERSIGHT AND GUEST WORKER VISA PROGRAMS

NO SINGLE GOVERNMENT BODY IS RESPONSIBLE FOR EMPLOYMENT-BASED VISA PROGRAMS IN THEIR ENTIRETY.

Under current law, at least four different U.S. government agencies and various parties may be involved in the visa application process. The following process illustrates the complexity of just one of these guest worker visa programs, the H-1B:

1. An employer interested in hiring a worker on an H-1B visa must first file a Labor Condition Application (LCA) with the DOL. This and subsequent steps in the process are often done on the employer’s behalf by a third party vendor, often referred to as "job shops," "body shops," "staffing firms," or "recruitment agencies";

2. Once the conditions of an LCA have been approved by the DOL, a certified copy will be sent to the employer, who then must file a petition for an H-1B visa through USCIS;

3. If the prospective employee is outside the United States, the U.S. Department of State must be notified via the appropriate consulate office;

4. The Department of Homeland Security is responsible for the maintenance of the H-1B visa once approved, but not for ensuring visa recipients update their information or depart once their visas expire;

5. Petitions are accepted for a given fiscal year (for example, 2010) in April of the preceding year (April 2009). H-1B recipients are not allowed to enter the U.S. for employment until October of that same year (in our example, October 2009);

6. Additionally, the number of H-1B visas is determined by Congress, not by any of the previously mentioned bodies;

7. The maintenance of documentation to defend the validity of statements about wages, working conditions and location made in an LCA rests with the employer. This must be made available to the DOL upon request, although such requests are extremely rare. Employers are also responsible for advertising their intent to hire an H-1B worker via a U.S. government site, a provision that did not exist in the law until early 2009.50

GOVERNMENT INFORMATION AND STATISTICS ARE NOT READILY AVAILABLE ON H-1B VISA WORKERS

Despite several government agencies charged with monitoring and administering the H-1B visa program, the U.S. government does not readily provide the public with detailed information about the use of H-1B visas. For example, USCIS is required by law to release comprehensive reports on the number of H-1B visas issued and renewed annually. The Department of Homeland Security (DHS), of which USCIS is a part, has written these documents but not publicly released a fully updated report since 2005.51

The lack of information available from the government makes it difficult to determine where H-1B visa holders are working in the U.S.; which countries these workers are coming from; what sex, age, occupation, or educational level H-1B visa holders have; and how long these visa workers stay and how many become permanent residents. The GAO study recommended in this report (pg. 35) would rectify these gaps in reporting data and provide a more comprehensive understanding of the H-1B visa program and those workers participating in it.

"Much of the information policymakers need to effectively oversee the H-1B program is not available because of limitations in the Department of Homeland Security’s (DHS) current tracking systems. Without this information, policymakers don’t know if the current program is meeting employers’ needs for highly skilled temporary workers in the current economic climate or how to adjust policies that may affect labor market conditions over time, such as the H-1B visa cap.” (GAO Report #03-883. 2003.)

**PROBLEMS WITH ENFORCEMENT**

The H-1B program lacks proper implementation and oversight. According to former Secretary of Labor Ray Marshall, the current system of employment-based immigration is “rigid, cumbersome, and inefficient; do[es] too little to protect the wages and working conditions of workers (foreign or domestic); do[es] not respond very well to employers’ needs; and give[s] almost no attention to adapting the number and characteristics of foreign workers to domestic labor shortages.”

In 2006, the GAO issued a report entitled “H-1B Visa Program: Labor Could Improve Its Oversight and Increase Information Sharing with Homeland Security.” This report focused on the need for quality assurance controls within the program. The GAO report stated that:

- “[The Department of] Labor’s oversight of the H-1B program is limited, even within the scope of its existing authority. [The Department of] Labor’s review of employers’ H-1B applications is limited by law to identifying omissions and obvious inaccuracies, but we found that it does not consistently identify all obvious inaccuracies […] For example, although the overall percentage was small, we found 3,229 applications that were certified even though the wage rate on the application was lower than the prevailing wage for that occupation in the specific location.”

- “Additionally, [the Department of] Labor does not identify other errors that may be obvious… We found 993 certified applications with invalid employer identification number prefixes. In other programs, Labor matches the application’s employer application number with valid employer identification numbers. However, they do not formally do this match with H-1B applications because it is an attestation process, not a verification process.”

52. H-1B Foreign Workers: Better Tracking Needed to Help Determine H-1B Program’s Effects on U.S. Workforce, 4.
55. Ibid, 1.
56. Ibid, 15.
57. H-1B Foreign Workers: Better Tracking Needed to Help Determine H-1B Program’s Effects on U.S. Workforce, 32.
THE H-1B CAP: INSUFFICIENT TO PROTECT WORKERS OR JOBS

As mentioned in the “What is an H-1B visa?” section of this report, there is currently an annual cap of 65,000 for new H-1B visas, with exemptions to that cap detailed below. H-1B visa caps have been as high as 195,000* in the recent past, however, and large numbers of these visa holders continue to renew their visas. These visa renewals make the number of people in the U.S. on high-skilled guest worker visas much higher than it would appear just by looking at annual cap numbers. Additionally, there are several major exceptions to the cap:

- There is no numerical limit for H-1B visas for institutions of higher education or non-profit organizations. In other words, these visas are not counted under the cap.59
- Second, an additional exemption created in 2004 provides 20,000 annual H-1B visas to U.S.-educated foreign workers with advanced degrees. More than 31,000 applications were received in 2009 for H-1B visas under this exemption.60

With these exemptions the USCIS grants far more than the specifically enumerated 85,000 H-1B petitions each year. In 2008, USCIS granted a total of 276,252 H-1B petitions. The chart below demonstrates the increased number of H-1B petitions granted as a result of cap exemptions.61

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<tbody>
<tr>
<td>267,131</td>
<td>270,981</td>
<td>281,444</td>
<td>276,252</td>
</tr>
</tbody>
</table>

The United States has also entered into two free-trade agreements (FTAs)- the U.S.-Chile and U.S.-Singapore FTAs - with guest worker visa provisions providing 6,800 visas under the H-1B1 program each fiscal year. The U.S.-Chile and U.S. Singapore FTAs create provisions for professionals to temporarily work in the United States. Under these agreements, business visitors, traders and investors, intra-company transferees, and other professionals can be granted temporary entry into the US. Each year, 1,400 Chilean professionals and 5,400 professionals from Singapore62 are eligible to enter the United States under their country’s FTA. If these visas are unused, they are made available for H-1B use for the next fiscal year.63

BY THE NUMBERS

Although there are caps on the number of H-1B visas available, exemptions and visa renewals create a much larger number of H-1B visa workers than the limits suggest.

- According to the Congressional Research Service (CRS), the number of H-1B visas increased throughout the 1990's and peaked in FY 2001 when the government approved 331,206 H-1B visa petitions. Approved H-1B visa petitions decreased slightly thereafter, falling to 267,131 approved H-1B visa petitions in FY 2005.64
- According to the CRS, most H-1B visa petitions are now exempt from the cap. For example, USCIS data indicates that 217,340 H-1B petitions were approved in FY2003, but only about 78,000 were subject to the cap of 195,000.65
- Furthermore, since the “temporary” H-1B visa is good for up to six years, according to government data over 167,000 H-1B visa applications were renewed in FY2008, over 161,000 in both FY2006 and FY2007, and over 150,000 in FY2005. Each year more H-1B visa applications for continuing employment were renewed than for initial employment.66

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66. *Congress enacted legislation to increase the annual ceiling to 195,000 for three years (P.L.106-313, S. 2045, and P.L. 106-311, H.R. 5362).
In many ways the FTA professional worker visa requirements parallel the H-1B visa requirements, including similar educational requirements and a requirement to pay guest workers the prevailing wage. The H-1B visa, however, specifies that the occupation require highly specialized knowledge, while the FTA professional worker visa specifies that the occupation require only specialized knowledge.67

Under the FTA's, a professional worker is counted against the H-1B cap the first year he or she enters and a new attestation must be filed every three years. Although the foreign national holding the FTA professional worker visa would remain a temporary resident who would only be permitted to work for any employer who had met the labor attestation requirements, he could legally remain in the United States indefinitely.68 The program mandates only that after five renewals, any subsequent renewal for the FTA H-1B1 professional be counted against the H-1B cap.

Fraud in the H-1B system

The H-1B visa program is rife with fraud. A 2008 study conducted by the USCIS found that 13% of H-1B petitions filed by employers were fraudulent and another 7% had some form of violation.69 According to another report drafted by USCIS’ Office of Fraud Detection and National Security, an estimated 21% of H-1B visa petitions are in violation of H-1B regulations. These violations include: businesses which do not pay the prevailing wage, non-existent job locations, fraudulent and forged documents, and applications filed by non-existing businesses.70 This study, drafted by USCIS to inform Congress of violations within the program, has no direct ability to change policy. The key findings of this study are:

- Out of the 256 sample cases studied, the government office found that 51 cases (21%) violated H-1B regulations. If applied to the overall H-1B population, the office estimates that over 20,000 visa petitions may be fraudulent or have technical violations. Of these estimated cases, 13,000 would represent cases of fraud, while approximately 7,000 would represent cases of lesser technical violations.71
  - In 27% of cases showing a violation, the employer was not paying the visa beneficiary the prevailing wage according to H-1B regulations. In some cases, the employer recouped losses from the visa fees by deducting them from visa worker salaries.72
  - In 20% of cases showing a violation, the government found fake degrees, forged signatures and documents, and documents that misrepresent the eligibility of the visa worker.73
  - In 14% of cases showing violations, the business filing for H-1B petitions did not exist, could not support the number of employees it claimed, or the employer did not intend to fill a job with a visa worker.74
  - In 51 sample cases where violations were present, the government office conducted site visits and found that in 55% of the cases the visa recipient was no longer working or had never worked at the site identified in the visa application.75

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68 Ibid.
69 Ibid.
70 Ibid.
71 Ibid.
72 Ibid.
73 Ibid.
74 Ibid.
75 Ibid.
MANIPULATING THE JOB MARKET: THE CASE OF THE SCIENCE, TECHNOLOGY, ENGINEERING AND MATHEMATICS (STEM) SECTOR

SCIENCE, TECHNOLOGY, ENGINEERING AND MATHEMATICS (STEM): WHAT SHORTAGE?

Visa programs, like the H-1B visa program, are intended to bring skilled foreign workers to the United States to fill positions that are not being met by the domestic workforce. In the 1980’s the National Science Foundation (NSF) began to predict "looming shortfalls" of scientists and engineers.77 Fears of a skilled labor shortage continued in the 1990’s as the computer-related industry began to boom and unemployment remained low.78 Numerous reports issued warnings about labor shortages and how shortages could slow economic growth. As a result, the H-1B visa program was developed from the longstanding H-1 visa program to address the STEM industry’s purported employment needs. Over the years, however, several rigorous, independent studies have found no evidence of a STEM worker shortage and critiqued earlier warnings of labor shortages.

One such study was conducted in 2003 by RAND. In analyzing data from the National Science Foundation, the Bureau of the Census, the Bureau of Labor Statistics, the National Research Committee and others, the RAND report concluded that, "neither earnings patterns nor unemployment patterns indicate [a science and engineering] shortage."79 Additionally, a Congressionally-mandated study by the National Research Council, the principal operating arm of the National Academy of Sciences and the National Academy of Engineering, found "no analytical basis on which to set the proper level of H-1B visas, and that decisions to reduce or increase the cap on such visas are fundamentally political."80

BY THE NUMBERS

Job growth does not outpace the number of workers entering the STEM workforce.

- The U.S. DOL estimates that between 2006 and 2016 computer and mathematical science occupations will add 820,000 jobs and grow the fastest out of eight main professional subgroups.81 Therefore, approximately 82,000 new jobs are expected to be created annually in computer and mathematical sciences.

- Between 2006 and 2007, the U.S. Department of Education and the Computing Research Association show that colleges and universities graduated more than 203,000 students with bachelor’s, master’s or Ph.D.s in the core disciplines of computer and information sciences, math and engineering and engineering technology.

- Yet in FY 2006 more than 130,000 H-1B applications for computer-related occupations were reviewed and certified. In FY 2007 and FY 2008 this trend continued with over 139,000 and 137,000 H-1B visas, respectively, approved in computer-related occupations.82

- Expert studies have shown that globalization has caused a leveling off of IT job growth with this trend continuing across the sector, making job growth in computer and mathematical science occupations difficult to predict.83 In addition, DOL expects that job growth in the computer industry will decline as the software industry matures and moves overseas.

77. Briggs, op. cit.
80. Building a Workforce for the Information Economy, 8-9.
A major study by the Urban Institute concluded that industry claims of widespread and pervasive shortages of qualified workers in STEM fields are untrue. The Urban Institute found that labor market indicators did not demonstrate a shortage of supply and that there are plenty of applicants who meet the educational requirements for open positions in those fields. In fact, the Urban Institute found that the overall science and engineering field workforce was about 4.8 million, while 15.7 million workers hold science or engineering degrees. The Urban Institute also concluded that evidence suggesting the need for more H-1B workers in STEM fields is anecdotal and that managerial complaints about an inability to hire qualified workers do not rest in a lack of qualified applicants, but in unrealistic expectations to hire workers who have significant specific work experience.

**Domestic Education Programs are Keeping Pace with Job Openings**

Several reports have been issued claiming that the United States is not producing enough science, math, and engineering graduates and will experience hiring shortfalls in the future. A 2005 report, “Tapping America’s Potential,” supported by 15 business groups, including the Business Roundtable, called for increased science and engineer immigration and a doubling of science graduates by 2015. The report cited anticipated hiring shortfalls. Another report by the National Academies, “Rising Above the Gathering Storm”, called for increased science and engineer immigration, citing impending shortfalls. Starting in 2007, however, a wide variety of professional studies were released critiquing and refuting the claims of educational gaps in science and engineering and shortfalls in the available domestic workforce:

- Harold Salzman, Ph.D., The Urban Institute: “the United States’ education system produces a supply of qualified [science and engineering] graduates in much greater numbers than jobs available.”

- Michael S. Teitelbaum, Vice President, Alfred P. Sloan Foundation: “First, no one who has come to the question with an open mind has been able to find any objective data suggesting general ‘shortages’ of scientists and engineers.”

- Urban Institute study *Into the Eye of the Storm*: “Recent policy reports claim the United States is falling behind other nations in science and math education and graduating insufficient numbers of scientists and engineers. Review of the evidence and analysis of actual graduation rates and workforce needs does not find support for these claims.”

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* Case numbers I-0736-3787387, I-07354-3783037, and I-08254-4480087.
Statistics indicate that the current supply of U.S. college graduates is sufficient to satisfy current and future STEM industry needs.

According to the DOL, a bachelor’s degree is the most significant source of postsecondary education or training for many high-tech workers. Among computer software engineers (both applications and systems software) and computer systems analysts, completion of a bachelor’s degree is generally a minimal requirement and more essential than an associate degree, master’s degree, or on-the-job training.\footnote{90} According to information available from the U.S. Department of Education and the Computing Research Association, between 2006 and 2007 U.S. colleges and universities graduated more than 203,000 students with bachelor’s, master’s or Ph.D. degrees in the core disciplines that are critical to this industry—computer and information science, math, and engineering and engineering technology. At current graduation rates, the supply of graduates will exceed the DOL’s projections for average yearly high-tech job creation over the next eight years.\footnote{91}

However, these graduation statistics do not include any of the tens of thousands of community college students who either: 1) graduate with two-year, Associate degrees in IT disciplines, which numbered nearly 60,000 in 2006–07,\footnote{92} or 2) are enrolling in IT-certification courses, as well as other continuing education curricula designed to help them transition into high-tech careers. Both of these talent pools would certainly seem to qualify for employment in a significant number of professional, entry-level high-tech jobs, yet they appear to be largely ignored by the industry.

Undergraduate and graduate enrollment in computer science programs has remained strong despite fluctuations in the economy and job market. The supply of U.S. graduates qualified to work in high-tech occupations has declined from its peak, but has remained strong over the past five years. The pattern of bachelor’s degrees conferred shows a sustained interest in the field, despite the “bust” of the technology sector bubble in the early 2000’s\footnote{93} and student concern over the availability of jobs after graduation.\footnote{94} The number of engineering degrees declined slightly (1%) between 1996–97 and 2001–02; however, these rates rose 10% between 2001–02 and 2006–07. Similarly, degrees in mathematics declined 16% between 1996–97 and 2001–02 and increased 11% between 2001–02 and 2006–07.\footnote{95} Meanwhile, degrees in computer and information sciences first increased 25% from 1993–94 and 1998–99 and then grew by 98% from 1996–97 to 2001–02. The number of degrees in computer

\begin{itemize}
\item Between 2006 and 2007, U.S. colleges and universities graduated more than 203,000 students with bachelor’s, master’s or Ph.D.’s in the core disciplines that are critical to the STEM industry—computer and information science, math, and engineering and engineering technology.\footnote{96}
\item Additionally 60,000 students graduated from two-year associate’s degree programs in IT fields between 2006 and 2007.\footnote{97}
\item In fall of 2008, there were more than 12,000 new undergraduate students enrolled in computer science programs in the U.S.\footnote{98}
\item In 2009, enrollment in U.S. computer science programs was 6.2% higher than in the 2006-07 school year.
\item In 2009, degree production at the Ph.D. level increased by 5.7% from 2006-07.\footnote{99}
\end{itemize}
and information sciences decreased 16% between 2001–02 and 2006–07.\textsuperscript{100} In the fall of 2008, there were more than 12,000 new undergraduate students enrolled in computer science programs across the U.S.\textsuperscript{101}

Ph.D. production and enrollment in computer science have increased. U.S. Ph.D. production and Ph.D. enrollment in computer science have also drastically increased between 2002 and 2008.\textsuperscript{102} In 2009, the annual Taulbee Survey of Computing Degree and Enrollment Trends shows that enrollment in U.S. computer science programs is 6.2% higher than the 2006–07 period. Degree production at the Ph.D. level is also up 5.7% from 2006–07.\textsuperscript{103} According to Michael S. Teitelbaum, Vice President of the Alfred P. Sloane Foundation, the “postdoc[toral] population, which has grown very rapidly in U.S. universities and is recruited increasingly from abroad, looks more like a pool of low-cost research lab workers with limited career prospects than a high-quality training program for soon-to-be academic researchers. Indeed, if the truth be told—only a very small percentage of those in the current postdoc[toral] pool have any realistic prospects of gaining a regular faculty position.”\textsuperscript{104}

The H-1B program is making the situation worse, not better. A study by Rutgers University released in October 2009 found that while the U.S. is still producing enough skilled graduates in core STEM disciplines to fill industry needs, many highly qualified U.S. students in STEM fields leave the "pipeline" from STEM college major to STEM career possibly based on perceptions that STEM careers are highly susceptible to offshoring.\textsuperscript{105}

**UNEMPLOYMENT IS INCREASING ‘SHORTAGE’ OCCUPATIONS**

During the recession, unemployment has increased for workers in professional occupations, particularly those in the STEM workforce. In the third quarter of 2009, the average unemployment rate for professional occupations was 5.6%. Yet, several STEM occupations are reporting unemployment rates higher than the professional average. In the third quarter of 2009, the unemployment rate for engineers hit 5.9% making it higher than the professional average.\textsuperscript{106} The unemployment rate for engineers at that time surpassed the sector’s highest unemployment rate of 4.3% in 2003 and represented the highest unemployment rate for this occupation since at least 1972.\textsuperscript{107}

<table>
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<tr>
<th><strong>UNEMPLOYMENT RATE, THIRD QUARTER 2009</strong></th>
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<tr>
<td>Mechanical Engineers</td>
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<td>9.5%</td>
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Other STEM occupations are suffering from higher than average unemployment rates. The unemployment rate for computer and mathematical professionals reached 6% in the third quarter of 2009, surpassing 2003’s all-time high of 5.7%.\textsuperscript{108} The unemployment situation is even graver for mechanical engineers, who have seen their unemployment rate rise from 5.6% in the second quarter of 2009 to 9.5% in the third.\textsuperscript{109}

\begin{itemize}
  \item \textsuperscript{100} "Digest of Education Statistics: 2008." op. cit.
  \item \textsuperscript{101} Annual Taulbee Survey; 2007-2008. op. cit.
  \item \textsuperscript{102} ibid.
  \item \textsuperscript{103} The H-1B program is making the situation worse, not better. A study by Rutgers University released in October 2009 found that while the U.S. is still producing enough skilled graduates in core STEM disciplines to fill industry needs, many highly qualified U.S. students in STEM fields leave the "pipeline" from STEM college major to STEM career possibly based on perceptions that STEM careers are highly susceptible to offshoring.
  \item \textsuperscript{104} "Digest of Education Statistics: 2008." op. cit.
  \item \textsuperscript{105} "Digest of Education Statistics: 2008." op. cit.
  \item \textsuperscript{107} ibid.
  \item \textsuperscript{108} ibid.
  \item \textsuperscript{1011} ibid.
  \item \textsuperscript{1012} Current Population Survey, op. cit.
\end{itemize}
Large firms that hire scientists and engineers and that often claim a lack of qualified applicants are actually laying off professionals. For example, U.S. tech and telecom companies, which are some of the largest employers of engineers, cut 155,570 jobs in 2008 and another 118,108 in the first half of 2009.110 Established companies like Boeing, Dell, GE, Intuit, Lockheed Martin, and Textron have all laid off large numbers of employees in 2009.111

TESTIMONY OF DAVID HUBER BEFORE THE HOUSE JUDICIARY COMMITTEE, SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CLAIMS
MARCH 30, 2006

I am a University of Chicago-educated IT professional with more than fifteen years of experience, specializing in high-end, complex networking deployments, and network management/operations. I have been hands-on, directly responsible for about $1.4 Billion in technology investments and business operations. Currently, I am working with a network architecture team on a new computing data center build-out project.

During the 1990's I held several increasingly difficult and important jobs. In 1999, I was hired as a consultant to work as the lead LAN/WAN network engineer for NASA's X-33 space shuttle project (ground launch network) at Edwards Air Force Base. This was a joint $1 billion Skunkworks/NASA project which I took over and managed, successfully implementing a new IP addressing system to integrate the launch network with NASA's intranet. I am highlighting this to demonstrate that I was, and still am, among the top network engineers in the country. When you discuss America's need for highly-trained, highly-skilled innovative workers and thinkers, I am one of them. Or, at least I was until 2002.

In early 2002, I approached Bank One (now JP Morgan Chase) about working in Network Operations or Planning in Chicago. After receiving assurances that I was within the salary range 3 for experienced technologists, an HR director in Delaware told me that the job I was interested in paid about 30K less than what I had discussed with his colleague in Ohio. I was totally perplexed by this sudden and unexpected reduction in wages. It took me a year to find out why the Bank One job didn't work out. It turns out that the company had filled the position with a non-American worker, hired through a job-shop.

I have since learned more about Bank One. The Labor Condition Applications (LCAs) filed by the bank show that they were hiring in mid-2002, just not hiring American citizens. In 2002 Bank One received permission from the Department of Labor to hire 33 H-1B workers, 14 of whom were to work in Chicago where I would have worked. These included Technology Project Managers and Applications Development Analysts – jobs that I was, and am, qualified to do. At about the same time I was offered a job for $30,000 less than market rates, Bank One was telling the U.S. government that they could not find qualified Americans to do the type of work I was already doing. One year later, Bank One got the go-ahead from the Department of Labor to hire another 120 H-1B workers, most in technology positions, again in jobs that I am qualified to do. They still had my resume on file.

In May 2003 I was hired as a network consultant at Commonwealth Edison, the power utility company responsible for the electrical grid covering most of the Chicago metropolitan area. I was hired to manage their communications network, including the systems in their headquarters in downtown Chicago. This was not an entry-level position, but a senior-level systems network management position. Three months after being hired, I was replaced. ComEd brought in three new employees to run their network, replacing myself. I met my replacements and helped train one of them. I do not blame them for what happened. From talking to them, I learned that none of them were U.S. citizens. Nor were they employed by ComEd. Two were from InSource Partners, a job shop located in Houston that specializes in placing foreign technical workers at American firms. One of them confirmed that the three had been hired for about one-third less than my salary. In both instances at Bank One and ComEd those hires were less qualified than I was. They had less experience and had never managed a project before.

Between the summer of 2002 and January 2006, I had only worked for a total of about 6.5 months. I fully depleted my savings, and was nearly homeless on two or three occasions. I am a highly-qualified network administrator with decades of professional experience and skills that are as current as anyone in the country. Yet for nearly three years, I was unemployable. During this period, Congress allowed companies to hire over 300,000 foreign workers on H-1B visas because companies claimed they could not find qualified Americans.

There are thousands of unemployed Americans with the skills, drive and creativity needed to thrive in the current marketplace. I know, because I was one. Yet too many of us cannot find jobs because companies are turning to H-1B workers as a first choice, before even advertising open positions to American workers. The H-1B program allows companies to hire 85,000 cheap, disposable workers each year before even looking for Americans. The real H-1B program has more to do with providing companies with cheap labor, and little to do with making America more competitive."

110. Deagon, op. cit.

Gaming the System: Guest Worker Visa Programs and Professional and Technical Workers in the U.S.
H-1B visa workers earn lower salaries and fewer benefits than domestic workers in the same occupations.

The H-1B visa program depresses wages across the STEM workforce. Studies and experts suggest IT wages have not been rising as would be expected if there was a genuine labor shortage. In a Congressionally-mandated study released soon after Congress passed S. 2045, the National Research Council—the principal operating arm of the National Academy of Sciences and the National Academy of Engineering—found that “the current size of the H-1B workforce relative to the overall number of IT professionals is large enough to keep wages from rising as fast as might be expected in a tight labor market.”

An ongoing 2009 study shows that H-1B admissions at current levels are associated with about a 5-6% drop in wages for computer programmers and systems analysts. However, if there was a genuine shortage of qualified workers, no wage decrease should be seen.

Decreased wages occur despite provisions requiring that H-1B visa holders be paid the prevailing wage. Phiroz Vandrevala, an executive at Indian IT firm Tata Consultancy Services (TCS) remarked in an interview that "our wage per employee is 20-25 percent less than US wage for a similar employee." Under current law, employers are given three options for determining an H-1B visa holder's wage: request a determination from the State Workforce Agency; use a survey conducted by an independent source; or use another legitimate source of information. Employers 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.

BY THE NUMBERS:
Wage data from the Department of Labor shows very small wage increases in IT fields, inconsistent with a labor shortage.

- Between 2000 and 2008, the median weekly earnings for computer systems analysts and scientists increased from $1,102.52 to $1,242 (all values in 2008 dollars). This represents an annual average increase of 1.4%. This slight increase in median weekly earnings is not indicative of a labor shortage.
- For computer operations and systems researchers and analysts—an occupational category that was 52% female in 2008—the median wages increased from $1,161.54 weekly to $1,259 between 2000 and 2008. After adjusting for inflation, this is an annual average increase of less than 1%. While the current numbers increased overall during this period, the rate was unstable and fluctuated considerably. Such a small increase, with fluctuations taken into account, is not indicative of a labor shortage.
- For computer programmers, the average weekly wage increased from $1,180.29 in 2000 to $1,218 in 2008, which after adjusting for inflation amounts to only a 3% change over eight years.
- Median wages for newly arrived H-1B visa workers have failed to increase when adjusting for inflation. In FY2001, the median annual earnings for initial employment for H-1B visa holders in computer-related occupation was $50,000, or $60,785.71 in 2008 dollars. In FY 2008, the median annual earning for initial employment in computer-related occupation was $60,000. When inflation is taken into account, wages for H-1B visa holders decreased by 1.3% between 2001 and 2008.

112. Building a Workforce for the Information Economy, 187.
116. Ibid.
117. Ibid.
118. Waseem (2007), 10; Characteristics of Specialty Occupation Workers (H-1B) 2008, op. cit.
Employers are often able to avoid consequences for their unlawful behavior because of a lack of government oversight. The DOL checks the LCA's through an automated system, and therefore does not provide sufficient oversight. Second, if the DHS finds a discrepancy between the wage on the LCA and the one listed on the W-2, DHS has no way of reporting this discrepancy to the DOL.119

The high turnover caused by the industry’s extensive use of short-term personnel requires workers to constantly move from job to job. This churning in the workforce creates reports of job openings that are cited as proof of shortages. But most of these reported job opportunities remain open for only short periods of time before they are filled. As discussed earlier in this report, such employment strategies also serve to keep wages artificially low and stymie workers from maturing in their career.

H-1B visa holders are often employed in non-shortage areas, counter to the principles the program was founded on. H-1B visas are meant to bring workers to the United States to work in high-needs, specialized occupations. However, DOL has approved LCAs for guest workers to work in fields not undergoing labor shortages and lacking specialized skills. The following chart displays several examples of this in the form of LCAs filed as part of H-1B applications in 2008:

<table>
<thead>
<tr>
<th>Employer</th>
<th>Job Title</th>
<th>Location</th>
<th>Wage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional Staffing Services of America</td>
<td>Medical Records Administrator</td>
<td>Riverside, CA</td>
<td>$10.00/ Hour*</td>
</tr>
<tr>
<td>Mabernah, Inc.</td>
<td>Web Developer</td>
<td>Ocoee, FL</td>
<td>$11.20/ Hour</td>
</tr>
<tr>
<td>St. Joan of Arc Roman Catholic Church</td>
<td>Manager and Housekeeper</td>
<td>Sloatsburg, NY</td>
<td>$10.00/ Hour</td>
</tr>
<tr>
<td>The Pediatric Associates</td>
<td>Director of Medical Information Technology</td>
<td>Montrose, CO</td>
<td>$11.90/ Hour</td>
</tr>
<tr>
<td>California Home for the Adult Deaf</td>
<td>Translator/Interpreter</td>
<td>Arcadia, CA</td>
<td>$10.00/ Hour</td>
</tr>
</tbody>
</table>

Source: Foreign Labor Certification Data Center Online Wage Library, 2008 H-1B Efite Data

**GAMING THE SYSTEM: EMPLOYER ABUSE OF GUEST WORKER VISA PROGRAMS IN THE STEM INDUSTRY**

"We and others have previously reported that [the Department of] Labor's review of the labor condition application is limited and provides little assurance that employers are fulfilling their H-1B responsibilities." (GAO Report #06-720, June 2006. Pg. 16)120

Many employers have become strong advocates for raising the cap on H-1B workers allowed in the United States, despite what research shows as reality in their sector. The failure of the U.S. government to provide adequate oversight of this program has allowed many employers to use guest worker visas as a way to import cheap, temporary labor and often abuse the rights of workers. Despite the lack of evidence and problems with guest worker programs, business leaders, particularly in the STEM fields, continue to lobby to increase H-1B visa caps instead of genuinely looking to recruit in the domestic workforce.


• In 1996, high-tech companies established the “American Business for Legal Immigration” (now known as Compete America) to push their pro-H-1B agenda.\textsuperscript{121}

• Compete America and other business interests used Information Technology Association of America (ITAA) reports claiming mass shortages of IT workers to push for an increase in the H-1B cap. However, these reports were based on the monitoring of job openings rather than economic indicators.\textsuperscript{122} In 1998, the GAO criticized the ITAA reports citing weak methodology and lack of empirical data.\textsuperscript{123}

• In 2000, an ITAA report cited 843,000 unfilled jobs in the IT field. The business community used this report to advocate tripling the size of the H-1B visa cap despite continued GAO criticism of the ITAA conclusions.\textsuperscript{124}

• The business community has continually utilized unscientific evidence to advocate for increased H-1B visas, rather than basing the number of visas on actual market demand.

Guest worker visa programs have allowed companies to outsource jobs. Half of the top 20 companies that used L-1 visas in 2006 were IT outsourcing firms based in India, many of whom are also among the top users of the H-1B program.\textsuperscript{125} Senator Richard Durbin (D-IL) has called for reform of both the L-1 and H-1B visa programs saying these visa programs are “plagued with fraud and abuse and [are] now a vehicle for outsourcing that deprives qualified American workers of their jobs.”\textsuperscript{126} This scenario supports earlier warnings that the H-1B and similar programs were forcing U.S. workers to “train their replacements”\textsuperscript{127}, as trained guest workers return to their home countries. The U.S. tech industry has, in large part, followed these workers overseas where the standard of living and expected compensation for professionals are far lower. Many of the largest and most powerful supporters of guest worker programs, such as Microsoft, Intel and GE, now have research and development centers abroad in countries such as China and India and across Eastern Europe.

\textsuperscript{121} Compete America: The Alliance for a Competitive Workforce. http://www.competeamerica.org/
\textsuperscript{122} Information Technology Association of America (ITAA). http://www.itaa.org/
\textsuperscript{124} ITAA. Bridging the Gap: Information Technology Skills for a New Millennium. Arlington, VA: ITAA, 2000. [No longer available online]
Employers who game the system often use "H-1B Only" job postings, where a preference for hiring workers holding an H-1B employer sponsored visa is suggested or expressly stated. In 2006, the dubious legality of this practice led the Programmers Guild, on behalf of IT workers, to file 300 separate discrimination complaints with the U.S. Department of Justice (DOJ), claiming such ads were in violation of the citizenship discrimination provisions in the U.S. Immigration and Nationality Act. In 2008, the DOJ fined one firm $45,000 for discrimination and investigations into the others are ongoing.\footnote{128} The DOJ expressly states that job postings, "may not express a preference for H-1B candidates or other individuals requiring sponsorship or employment visas."\footnote{129} Although the language employed has changed and become more sophisticated since this issue first came to light, a quick search turns up numerous ads like the two below* that make clear what U.S. job seekers face when looking for employment:

**Title:** C++ Developer  
**Skills:** C++, C#, .Net, WinC  
**Date:** 5-14-2009  
**Description:**  
Please respond with your resume in word format, contact details and salary expectations ASAP to ****@alphasoftservices.com  
**Title:** C++ Developer  
**Location:** Seattle, WA  
**Duration:** Permanent/Full Time  
**Salary:** $40K-$50K/Year--DOE  
**H1B TRANSFER WILL BE REQUIRED.**  
Strong C++ development knowledge/experience.  
Clear understanding of algorithms.  
Knowledge/experience on c#, .net is plus.  
WinC experience is huge plus.  
Excellent written and verbal communication skills.  
Degree from a reputed educational institution required.  
AlphaSoft Services  
**Web:** http://www.alphasoftservices.com

**Title:** H1B Transfer with project/Change of Billing  
**Skills:** ORACLE, SQL, JAVA, J2EE, PERL/PHP, C#, .NET, UNIX, SAP, BQ, BI, C++  
**Date:** 6-4-2009  
**Description:**  
In our efforts to build up our consulting division we are seeking IT professionals having 3 or more years of experience in any technology/language, that are looking to work on challenging and cutting edge projects. **WE OFFER ONE OF THE MOST COMPETITIVE SALARY/BENEFIT PACKAGES WHICH INCLUDE H1B/ GREEN CARD SPONSORSHIP.** If you are looking for a job or already have a job but want to be with a stable product/ project based company with exceptionally good revenues and profitability, then we are the right company for you. **WE ALSO WELCOME CANDIDATES LOOKING FOR H1B TRANSFER/CHANGE OF BILLING/ GREEN CARD PROCESSING.** What we offer:  
*Direct Deposit of paycheck and no payment delays *Timely start of Green Card Process *Health (medical) insurance package for self and dependents (Our Insurance partner is Blue Shield HMO, again a renowned insurance service provider in US). *Dedicated Team of Sales and Marketing personnel for our consultants.  
We are looking for consultants who are close to getting a project and start billing! Intellect Technologies  
**Web:** http://www.intellecttech.com


*Job postings were found by searching industry-specific job boards like Dice, Inc. and general use job search engines like Indeed.com. Emphasis added.
MISTREATMENT OF THE WORKFORCE: VISA RECRUITERS AND THE EDUCATION SECTOR

TEACHER SHORTAGES AND FOREIGN-TRAINED TEACHER RECRUITMENT

The American Federation of Teachers (AFT) estimates that 200,000 new teachers need to be hired annually and 70,000 are needed in high-poverty urban areas. Unlike the STEM workforce, there is little debate that there are legitimate teacher shortages, particularly in hard-to-staff inner city and rural communities, as well as in high-need subjects like math, science, and special education. These shortages differ from state to state, school district to school district, and even within school districts. Teacher retention rates are also important when examining the teacher shortage. According to the National Education Association (NEA), 20% of all new hires leave the classroom after three years. In urban districts, this number is close to 50% in the first five years.

Foreign-trained teachers fill staffing shortages

Some schools, particularly those located in urban inner-cities and rural school districts, have difficulty recruiting and retaining teachers. Some school systems are recruiting outside the United States. As mentioned in the “Characteristics of H-1B Visa Holders” section, most educators are brought to the U.S. on H-1B and J-1 visas. For example, urban school districts like Los Angeles Unified School District hire foreign trained teachers to fill staffing shortages. In 2009, LA Unified School District hired 600 foreign-trained teachers on J-1 visas. Prince George's County in Maryland has attempted to fill its staffing shortage through extensive foreign teacher recruitment. The county began its recruitment program in 2004, bringing 30 Filipino teachers to the United States on H-1B visas. By 2007, the school system employed about 400 Filipinos, including at least 30 who had transferred from school systems in other states. In 2007, foreign-trained teachers comprised less than 1% of the school system's teaching staff, but they had made a significant difference by remaining in their positions. Just 11 Filipino teachers had left the district despite serving in hard-to-staff schools.

Does recruiting abroad solve the teacher shortage at hard-to-staff schools?

"We must emphasize that while the hiring of overseas-trained teachers may be a Band-aid treating the symptom of the U.S. teacher shortage, it is in no way a cure for the conditions that caused the shortage in the first place." - American Federation of Teachers, Importing Educators: Causes and Consequences of International Teacher Recruitment, Page 26

Recruiting educators from abroad offers only a short-term solution to the staffing problems facing many hard-to-staff schools. By recruiting foreign teachers, school systems fail to address the issues that make these schools undesirable workplaces. Some schools are considered hard-to-staff because:

- They are unsafe and have student discipline problems;
- They have ineffective and unsupportive leadership;
- Teachers become frustrated with classroom challenges;
- They are not properly equipped with teaching materials;
- Teachers are not provided adequate professional development or planning time;
- Teachers are subject to excessive classroom intrusions;
- They have eroding or unsafe school buildings.

131. Ibid, 7.
134. Ly, op. cit.
135. Ibid.
GAMING THE SYSTEM: RECRUITER ABUSE OF GUEST WORKERS

STEM businesses are not alone in their misuse of guest worker visa programs. As previously noted, school systems around the country have sought an immediate staffing fix by importing foreign teachers instead of addressing issues which promote more long-term, stable staffing. One Baltimore official was quoted as saying that recruiting educators in the United States was a waste of time. To encourage employers to hire foreign-trained teachers, some recruiting agencies provide free trips and other incentives to human resources departments. For example, in order to drum up business, the teacher recruitment firm Teachers Placement Group (TPG) offered all expenses paid trips for school officials to India to interview and hire prescreened candidates. While TPG charged each school district $4,000 per teacher, each recruit was charged $5,000 plus a portion of their pay over the next three years placing a greater financial burden on the foreign-trained teachers than the domestic recruiters.

In addition, employers and recruiters attempt to 'save' money by recruiting foreign-trained teachers. Wage discrepancies between foreign and domestic teachers are less common than in the STEM fields; however, those teachers in the US on J-1 visas have no protection to be paid the “prevailing wage.” Florida Atlantic University (FAU), for example, brought 16 highly qualified math and science teachers from India to St. Lucie County, Florida, for a cultural exchange program. They were to serve as interns and teach in local schools. Their status as “interns” meant the school district paid only $18,000 per teacher for their services, well below prevailing wage. Those wages were then paid to FAU, which paid the teachers only $5,000 for a year of work. In some instances, foreign teachers are exempted from parts of the employment contract which would provide benefits, like health insurance. In addition, school systems are held harmless if their foreign-trained teachers are not provided health insurance.

### Top 10 States Submitting Labor Condition Applications for Teachers, 2007

<table>
<thead>
<tr>
<th>States</th>
<th>Number of LCAs filed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Texas</td>
<td>4,556</td>
</tr>
<tr>
<td>Georgia</td>
<td>4,434</td>
</tr>
<tr>
<td>New York</td>
<td>2,195</td>
</tr>
<tr>
<td>Maryland</td>
<td>2,012</td>
</tr>
<tr>
<td>California</td>
<td>2,008</td>
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<tr>
<td>New Jersey</td>
<td>930</td>
</tr>
<tr>
<td>Florida</td>
<td>627</td>
</tr>
<tr>
<td>North Carolina</td>
<td>404</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>393</td>
</tr>
<tr>
<td>Virginia</td>
<td>349</td>
</tr>
</tbody>
</table>

Table is taken from "Importing Educators: Causes and Consequences of International Teacher Recruitment," a report by American Federation of Teachers

137. Importing Educators: Causes and Consequences of International Teacher Recruitment, 8.
139. Ibid, 15.
140. Ibid, 18.
141. Ibid, 19.
"I, and some 200 teachers in the district where I serve now, and many others all over the USA, left my country in good faith and high hopes of greener pasture in the land of the free… which we came to realize is not necessarily true.

We were all brought here after undergoing rigid legal process, from interview, evaluation, visa processing among others. We checked with our government and in the net as well to verify the status of the agencies we were dealing with before we left. We paid our agency upfront around $15,000 to $20,000 each to be here, loaning the amount from financial institutions, relatives and friends or selling houses and properties causing us to be chained by debt bondage. We gambled to invest our money, time and being away from family to work and earn more than what we earned back home. It was a painful decision that we need to do.

Let me present to all of you in brief details the common experiences we had under an exploitative and greedy agency, and all these happened when we arrived here in the US.

On the first day we’ve stepped foot in this country, I can still remember how hurting it was to sign a one-sided contract under duress stipulating another round of placement fees, fees to be paid to the agency if we are fired, prohibitions of having other people review our contract and some other provisions favorable only to the agency. Anyone who tries to question the contract is threatened to be sent immediately back home and considering that we had almost nothing to go back to, we were left with no choice but to sign. Now we are suffering the inflated monthly rent, payment of our debts and interest rates and the fact that very meager amount is left for us to send our families. I can’t also forget being housed in sub-standard and overcharged apartment unit with housemates you cannot even choose, which lease for a year was signed by the agency without our knowledge.

We were also constantly threatened to be sent back home if you will question, much more go against the agency’s will. In fact, I for one and some other teachers were sued by the agency for standing up. We were also dictated not to mingle or be friends not only with our fellow countrymen who are residents of the US but with the locals as well. We received harassing phone calls from our recruiter and some of our fellow teachers were directed to spy on us and any reported activities against the agency would be confronted and dealt with by threats and intimidation. The agency even forced the teachers not to join any organizations at all particularly [any teacher’s associations]. We were confined in a way, divided, helpless and scared.

This should end and it should end now because the agency is not only exploiting the migrant workers but likewise manipulating and circumventing the US laws to its advantage. The agency managed to bring in recruits under the H1B visa even if jobs are not available for them, there are still some of us who are waiting for jobs. More recruits are still coming in since the agency is still legally operating up to this date."
Unethical recruiting agencies and employers not only game the system, but often abuse the workers they recruit to come to the United States.

**At-Will Employees**

"According to a Labor official, H-1B workers may be vulnerable to abuse since their dependency upon their employers may lead to reluctance to complain, not unlike those workers protected under [Fair Labor Standards Act] FLSA." (GAO Report #00-157. 2000. Pg. 21)\(^{142}\)

One factor that enables employers to take advantage of H-1B visa holders is that visa holders can lose their legal status and be forced to return to their home country if they are fired by their employer. Therefore, H-1B visa holders effectively become "at-will" employees. Unethical employers hold the threat of termination over the H-1B visa workers as leverage, making the power dynamic between the H-1B visa worker and the employer vastly unequal. Often the power to terminate an employee is given to the recruiting agency.

For example, the recruiting agency Visiting International Faculty (VIF) required teachers in San Jose Unified School District to sign a contract that authorized the recruiting agency "to unilaterally terminate teacher’s participation in the program should teacher perform in a manner that is deemed contrary to the VIF Program’s objectives, rules and regulations." The contract further stipulates that if VIF terminates a teacher’s employment, the teacher’s visa will be terminated as well. Moreover, "VIF may terminate teacher’s visa at any time for any or no reason and without notice."\(^{143}\)

**Buying visas and the burden of debt**

Another significant problem is that recruiters often illegally charge workers for their visa, take payment from their wages, or burden new recruits with high debts. While some international teacher recruiting agencies work to fulfill the needs of employers and their foreign recruits, others have taken advantage of the system abusing their authority and burdening their recruits with so much debt that they essentially become indentured servants.

For example, in 2004, three recruiting agencies, Omni Consortium, Multicultural Professionals and Multicultural Education Consultants, were indicted on charges of conspiracy to commit alien smuggling, visa fraud, mail fraud and money laundering.\(^{144}\) As part of their scheme, these recruiters required teachers to pay as much as $10,000 in placement and visa fees. Because most teachers could not afford this sum, the recruiter provided loans to the teachers. These predatory loans were for 18 months, with a 5% interest rate which compounded monthly. This translates to a 60% annual interest rate. In addition, the recruitment firms tacked on additional late fees of 15% on the interest rate for late payments.\(^{145}\)

143. Barber, 15.
144. Ibid, 17.
THE ROLE OF Visa RECRUITERS

As a growing number of states and school systems have opted to recruit foreign-trained teachers, a cottage industry of recruiters has sprung up. These for-profit firms seek to make money by recruiting teachers outside the United States and encouraging school systems to look abroad to fill their staffing needs. The precise number of recruiting agencies is not known; however, the American Federation of Teachers estimates that there are 33 international recruiting agencies working with US schools.\(^{146}\) The packages provided by the recruitment agencies differ and the recruiter may make a profit by charging the school system or potential teacher a fee, or by charging fees to both. Foreign-trained teachers are required to pay fees normally ranging from $3,000 to $13,000, however some recruiting agencies charge more, to recruiters in exchange for services like: screening their qualifications, setting up interviews, securing their visa, booking their flight, and arranging for housing and orientation programs.\(^{147}\)

A prime example of a school system working with visa recruiters to hire foreign-educated teachers is Prince George's County in Maryland. In 2008, the Filipino teachers recruited by Prince George's County worked with the recruiting agency, Arrowhead Manpower Resources. Each teacher paid a $12,000 fee in return for setting up interviews at schools, filing visa applications, arranging plane tickets, picking the teachers up from the airport, a tour of Washington, DC, and setting them up in furnished apartments.\(^{148}\) While the new recruits in Prince George's County will be earning $43,481, about ten times what they would make in the Philippines, increased living expenses and debt to the recruiting agency can be burdensome.\(^{149}\)

**A Case Study of an Abusive Visa Recruiter: Teachers Placement Group**

The teacher recruitment firm Teachers Placement Group (TPG) recruits teachers from India to work in US schools and has attempted to charge their teachers unethical, illegal fees and even threatened to revoke their visas.

- In May 2002, 15 foreign-trained teachers in Newark, N.J., asked the Newark Teachers' Union to help invalidate their contracts which they were forced to sign and required the teachers to pay TPG 25% of their wages. To intimidate the new teachers, TPG threatened to revoke their visas if they did not sign the contract.\(^{150}\) The case was investigated by the Department of Labor's Wage and Hour Division and TPG was initially required to pay $187,546 in back wages and was fined $120,000 for discrimination, failure to pay wages, and non-compliance with immigration law. However, TPG contested the decision and the charges were dropped. In the end, TPG paid a reduced fine of $3,050 per teacher.\(^{151}\)

- In Cleveland, the school district used TPG to hire new teachers from abroad in 2001. Under their contract, the Cleveland school system was the employer of record and the new teachers were able to join the Cleveland Teachers' Union (CTU).\(^{152}\) The CTU was outraged by what was in the terms of the new teacher contracts with the recruiter. The TPG contract required teachers to pay the company $15,000 if they returned to India in the first year of the contract, $10,000 if they returned in the second year and $7,500 in the third. In response, the school district required that that clause be removed from the contract and also forced TPG to assist the teachers in bringing their families to the United States.\(^{153}\)

- Despite its unlawful conduct, in 2006 TPG began developing a visiting teacher program with the Connecticut Department of Education.\(^{154}\)

\(^{146}\) Importing Educators: Causes and Consequences of International Teacher Recruitment, 17.
\(^{147}\) Ibid, 15.
\(^{148}\) Ibid, op. cit.
\(^{149}\) Ibid.
\(^{150}\) Importing Educators: Causes and Consequences of International Teacher Recruitment, 16.
\(^{151}\) Ibid 16.
\(^{152}\) Ibid, 15.
\(^{153}\) Ibid, 15-16.
\(^{154}\) Ibid, 16.
Inadequate Living Conditions

In addition to assisting newly recruited teachers with their job placements, recruiting agencies often help new teachers find housing. Many new teachers recruited by agencies live in dorm-like living arrangements. For example, many of the Filipino teachers in Prince George's County were placed in Lake Arbor apartment complexes by their recruiting agency. In that arrangement, four teachers shared a two-bedroom, two bathroom apartment. While it is often easier for teachers new to the area or country to have assistance finding housing, some recruiters take advantage of the situation and provide inadequate and over-priced housing.

PARS International Placement Agency and Universal Placement International are two recruiting agencies owned by the same family. These agencies recruit teachers from the Philippines to teach in many U.S. schools, including the East Baton Rouge Parish School System. Without consent from the teachers, the recruiting agency entered into lease agreements with an East Baton Rouge landlord. The teachers were given no choice in their residency and forced to live in low quality, pest-infested housing. A reporter noted that, “on a recent visit to one unit [of the recruiter-provided housing], roaches dotted tile shower stalls and scattered inside a kitchen cabinet when a teacher opened it.”

In addition to the poor quality of housing, recruited teachers were often overcharged for their living arrangements. The apartments in Louisiana, for example, were listed with a rent of $800 a month. Individual teachers in that facility were each charged $310 for rent, with 4 to 8 occupants in the apartment at any one time. To keep teachers in these apartments, the recruitment agency threatened to sue teachers who sought to find better housing and intimidated those that sought assistance from friends or the broader Filipino community.

"We left not only our families back home, but our careers as well...We aren’t asking for any special treatment. We just want it to be fair" - A foreign-trained teacher working on an H-1B visa.

Culture Shock and Lack of Support

Finally, foreign recruited teachers often have difficulty adjusting to their new jobs and lives in the United States. Foreign-trained teachers often face the pressures of debt to their recruiting agency, homesickness, and culture shock. Many are unprepared for the discipline problems and low academic preparedness levels of their often impoverished students.

The pressure can be difficult. In 2007, two Baltimore teachers working in the U.S. on H-1B visas committed suicide. Both teachers had showed signs of depression, but did not utilize the Employee Assistance Program available to them. Like all new teachers, foreign-trained teachers require mentoring and professional development to aid in their adjustment to their new environment and working in high-need schools.

155. Ly, op. cit.
158. Ibid.
159. "Pinoy teachers in U.S. use blog to air grievances vs recruiter," op. cit.
160. Case Information: Exploitation and Abuse of Filipino Migrant Teachers in Louisiana, op. cit.
161. Ly, op. cit.
WHERE TO GO FROM HERE?

A first, crucial step in remediating the overly complicated and highly corruptable guest worker visa system in the U.S. would be for the U.S. Congress to direct the General Accounting Office (GAO) to undertake a systematic study of H-1B visa holders to determine their work profile over the past ten years (1998 - 2008). This study should include several key features:

To insure a complete picture of one of the most hotly debated guest worker programs, the GAO survey should include all visas granted under the H-1B program, H-1B1 visas (those visas issued under the Singapore and Chile Free Trade Agreements), those visas not counted under the H-1B visa cap as a result of non-profit and higher education exemptions, and those who received visas under the master's and Ph.D H-1B cap exemptions.

L-1 visa holders should also be surveyed at the same rate and over the same time as the H-1B survey, given the close connection of the two programs. This should include L-1A visa holders (execs and managers), L-1B visa holders (specialized knowledge), and L-2 visa holders (spousal visas for L-1 visa holders).

- The size of the group to be surveyed should be determined so that statistically valid inferences could be drawn on the important characteristics (variables like occupation, etc).
- The study should be done with a confidence level of no less than 95% and a sampling error tolerance of plus or minus 3%.
- The survey should at a minimum answer the following questions about the H-1B and L visa programs and those workers and firms taking part in them:

1. The total number of visas issued under each part of the program (including the number under each exemption category);
2. The visa holder's country of origin;
3. The visa holder's education level and where education was obtained;
4. The visa holder's occupation and job title at each stage and place of employment;
5. At the time of entry, the location (city and state) of the employer and position description. The "location" in question refers to the actual, physical location where employment took place. When employment agencies sponsor H-1B visas, the location and address listed on LCAs have been known to differ from the physical location of employment;
6. At the time of interview, the location (city and state) of the employer and position description (see above);
7. The length of time with each employer (if employed by multiple firms), the position title, and length of contract in each circumstance;
8. A salary profile throughout a visa holder's employment in the U.S. (including entry salary level and all adjustments). This salary profile should be validated by IRS W-2 filings;
9. The conditions of employment for a visa holder while in the U.S. (for each employer) covering employer-sponsored benefits. This should include:
   * Was health insurance (individual or family) provided? If so, what type?
   * Were contributions to pension or retirement funds made? If so, how much and with what frequency?
   * Was sick leave offered to visa holders?
   * Was paid vacation time offered to visa holders?
   * Were bonuses provided to visa holders? If so, how much and under what conditions were they given?
   * Were all relevant taxes paid by the visa holder? If so, how much and was this an accurate amount?
   * Were all relevant taxes paid by the employer?
10. The current visa status of visa holders in question, including transition from one visa type to another or departure from the U.S. and information on any renewals while in the U.S.;
11. The number of dependents who accompanied a visa holder to the U.S.;
12. The amount of money collected from visa fees annually (since instituted), what educational programs it was put towards, and how much money remains in that pool.

This information will be valuable in determining the full scope of these programs as well as their impact on all workers in the U.S., regardless of origin.
In 2009, the Economic Policy Institute released "Immigration for Shared Prosperity: A Framework for Comprehensive Reform," by former Secretary of Labor Ray Marshall. Similar reform structures were endorsed by the AFL-CIO and Change to Win labor federations and the commission framework at the core of Secretary Marshall's plan has been endorsed by organizations such as the Migration Policy Institute. The clear failings of current policies and programs clearly illustrate that effective employment-based immigration reform is necessary.

The framework in "Immigration for Shared Prosperity" has five major interconnected pieces:

1. An independent commission to assess and manage future flows, based on labor market shortages that are determined on the basis of actual need;
2. A secure and effective worker authorization mechanism;
3. Rational operation and control of the border;
4. Adjustment of status for the current undocumented population; and
5. Improvement, not expansion, of temporary worker programs, limited to temporary or seasonal, not permanent, jobs.

The following is excerpted from Secretary Marshall's report and outlines five policy options which the Department for Professional Employees, AFL-CIO, wholeheartedly supports and sees as a viable remedy to the problems with guest worker visa programs:

"Immigration reform is a component of a shared prosperity agenda that focuses on improving productivity and quality; limiting wage competition; strengthening labor standards, especially the right of workers to organize and bargain collectively; and providing social safety nets and high quality lifelong education and training for workers and their families. To achieve this goal, immigration reform must fully protect U.S. workers and reduce the exploitation of immigrant workers, and reduce the employers' incentive to hire undocumented workers rather than U.S. workers. The most effective way to do that is for all workers- immigrant and native born- to have full and complete access to the protection of labor, health and safety, and other laws. Comprehensive immigration reform must complement a strong, well resourced and effective labor standards enforcement initiative that prioritizes workers' rights and workplace protections. This approach will ensure that immigration does not depress wages and working conditions or encourage marginal low-wage industries that depend heavily on substandard wages, benefits, and working conditions."
"This approach to immigration reform has five major interconnected pieces: (1) an independent commission to assess and manage future flows; (2) a secure and effective worker authorization mechanism; (3) rational operational control of the border; (4) adjustment of status for the current undocumented population; and (5) improvement, not expansion, of temporary worker programs, limited to temporary or seasonal, not permanent, jobs.

"Family reunification is an important goal of immigration policy and it is in the national interest for it to remain that way. First, families strongly influence individual and national welfare. Families have historically facilitated the assimilation of immigrants into American life. Second, the failure to allow family reunification creates strong pressure for unauthorized immigration, as happened with Immigration Reform and Control Act of 1986's amnesty provisions. Third, families are the most basic learning institutions, teaching children values as well as skills to succeed in school, society, and at work. Finally, families are important economic units that provide valuable sources of entrepreneurship, job training, support for members who are unemployed and information and networking for better labor market information.

"The long term solution to uncontrolled immigration is to stop globalizing policies and encourage just and humane economic integration, which will eliminate the enormous social and economic inequalities at both the national and international levels. U.S. immigration policy should consider the effects of immigration reforms on immigrant source countries, especially Mexico. It is in our national interest for Mexico to be a prosperous and democratic country able to provide good jobs to most of its adult population, thereby ameliorating strong pressures for emigration. Much of the emigration from Mexico in recent years resulted from the disruption caused by North American Free Trade Agreement, which displaced millions of Mexicans from subsistence agriculture and enterprises that could not compete in a global market. Thus, an essential component of the long term solution is a fair trade and globalization model that uplifts all workers, promotes the creation of free trade unions around the world, ensures the enforcement of labor rights, and guarantees all workers core labor protections.

1) FUTURE FLOW

"One of the great failures of our current employment-based immigration system is that the level of legal work-based immigration is set arbitrarily by Congress as a product of political compromise- without regard to real labor market needs- it is rarely updated to reflect changing circumstances or conditions. This failure has allows unscrupulous employers to manipulate the system to the detriment of workers and reputable employers alike. The system for allocating employment visas- both temporary and permanent- should be de-politicized and placed in the hands of an independent commission that can assess labor market needs on an ongoing basis and – based on a methodology approved by Congress- determine the number of foreign workers to be admitted for employment purposes, based on labor market needs. In designing the new system, and establishing the methodology to be used for assessing labor shortages, the Commission will be required to examine the impact of immigration on the economy, wages, the workforce and business.

2) WORKER AUTHORIZATION MECHANISM

"The current system of regulating the employment of unauthorized workers is defunct, ineffective and has failed to curtail illegal immigration. A secure and effective worker authorization mechanism is
one that determines employment authorization accurately while providing maximum protection for workers, contains sufficient due process and privacy protections, and prevents discrimination. The verification process must be taken out of the hands of employers, and the mechanism must rely on secure identification methodology. Employers who fail to properly use the system must face strict liability including significant fines and penalties regardless of the immigration status of their workers.

3) **RATIONAL OPERATIONS CONTROL OF THE BORDER**

"A new immigration system must include rational control of our borders. Border security is clearly very important, but not sufficient, since 40 to 35 percent of unauthorized immigrants did not cross the border unlawfully, but overstayed visas. Border controls therefore must be supplemented by effective work authorization and other components of this framework. An "enforcement-only" policy will not work. Practical border controls balance border enforcement with other components of this framework and with the reality that 30 million valid visitors cross our borders each year. Enforcement therefore should respect the dignity and rights of our visitors, as well as residents in border communities. In addition, enforcement authorities must understand that they need cooperation from communities along the border. Border enforcement is likely to be most effective when it focuses on criminal elements and engages immigrants and border community residents in the enforcement effort. Similarly, border enforcement is most effective when it is left to trained professional border patrol agents and not vigilantes or local law enforcement officials- who require cooperation from immigrants to enforce state and local laws.

4) **ADJUSTMENT OF STATUS FOR THE CURRENT UNDOCUMENTED POPULATION**

"Immigration reform must include adjustment of status for the current undocumented population. Rounding up and deporting the 12 million or more immigrants who are unlawfully present in the U.S. may make for a good sound bite, but it is not a realistic solution. And if these immigrants are not given adequate incentive to "come out of the shadows" to adjust their status, we will continue to have a large pool of unauthorized workers whom employers continue to exploit in order to drive down wages and other standards, to the detriment of all workers. Having access to a large undocumented workforce has allowed employers to create an underground economy, without the basic protections afforded to U.S. citizens and lawful permanent residents, and where employers often misclassify workers as independent contractors, thus evading payroll taxes, which deprives federal, state, and local governments of additional revenue. An inclusive, practical and swift adjustment of status program will raise labor standards for all workers. The adjustment process must be rational, reasonable, and accessible and it must be designed to ensure that it will not encourage future illegal immigration.

5) **IMPROVEMENT, NOT EXPANSION, OF TEMPORARY WORKER PROGRAMS**

"The United States must improve the administration of existing temporary worker programs, but should not adopt a new "indentured" or "guest worker" initiative. Our country has long recognized that it is not good policy for a democracy to admit large numbers of workers with limited civil and employment rights."
# Appendix A: A Guide to Guest Worker Visas

<table>
<thead>
<tr>
<th>Visa</th>
<th>Description</th>
<th>Quota Restrictions</th>
<th>Initial Duration</th>
<th>Renewal</th>
</tr>
</thead>
<tbody>
<tr>
<td>E-1</td>
<td>The E-1 treaty trader visa is a nonimmigrant visa which allows foreign nationals of a treaty nation (i.e., a nation which maintains a treaty of commerce and navigation or bilateral agreement with U.S.) to enter into the U.S. and carry out substantial trade.</td>
<td>There are no quota restrictions for E-1 visas.</td>
<td>2 years.</td>
<td>Up to 2 yrs. per extension. No max. no. of extensions.*</td>
</tr>
<tr>
<td>E-2</td>
<td>The E-2 investor visa allows an individual to enter and work inside of the U.S. based on an investment he or she will be controlling, while in the U.S.</td>
<td>There are no quota restrictions for E-2 visas.</td>
<td>2 years.</td>
<td>Up to 2 yrs. per extension. No max. no. of extensions.*</td>
</tr>
<tr>
<td>E-3</td>
<td>The E-3 visa is a visa for citizens of Australia to work temporarily in the U.S. in a specialty occupation.</td>
<td>A max. of 10,500 E-3 visas per FY. Family of visa holders and those renewing visas do not count towards cap.</td>
<td>2 years.</td>
<td>Up to 2 yrs. per extension. No max. no. of extensions.</td>
</tr>
<tr>
<td>H-1B</td>
<td>The H-1B visa applies to persons in a specialty occupation which requires the theoretical and practical application of a body of highly specialized knowledge requiring completion of a specific course of higher education.</td>
<td>Cap of 65,000 per FY. An exemption of 20,000 for those with a Master's degree or higher from a U.S. university. Exemptions for nonprofits and institutions of higher ed.</td>
<td>Up to 3 years.</td>
<td>Increments of up to 3 yrs. Total stay limit 6 yrs.</td>
</tr>
<tr>
<td>H-1B1</td>
<td>The US has entered into free trade agreements (FTAs) with Singapore and Chile which took effect on January 1, 2004. Both FTAs contain provisions that will allow the temporary entry of businesspersons into the U.S.</td>
<td>6,800 visas per FY (set aside from 65,000 H-1B cap.)</td>
<td>Up to 3 years.</td>
<td>Up to 1 year, per extension. No max. no. of extensions.</td>
</tr>
<tr>
<td>H-1B2</td>
<td>The H-1B2 visa applies to persons performing services of an exceptional nature relating to a cooperative research and development project administered by the U.S. Dept. of Defense.</td>
<td>100 for Dept. of Defense.</td>
<td>Up to 5 yrs.</td>
<td>Increments of up to 5 yrs. Total stay limit 10 yrs.*</td>
</tr>
<tr>
<td>H-1B3</td>
<td>The H-1B3 visa applies to a fashion model who is nationally or internationally recognized for achievements, to be employed in the U.S.</td>
<td>Counts under 65,000 H-1B cap.</td>
<td>Up to 3 years.</td>
<td>Increments of up to 3 yrs. Total stay limit 6 yrs.*</td>
</tr>
</tbody>
</table>

* With some exceptions
<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Limitations</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>H-1C</td>
<td>The H-1C visa applies to foreign nurses coming to perform nursing services in medically underserved areas for a temporary period up to three years.</td>
<td>500 H-1C visas per FY nationally. Numerical limitations for each state based on their population.</td>
<td>Up to 3 years. Total stay limited to 3 yrs.</td>
</tr>
<tr>
<td>H-2A</td>
<td>The H-2A visa applies to temporary or seasonal agricultural workers.</td>
<td>There is no annual cap on visas for H-2A workers.</td>
<td>Same as labor certification (up to 1 yr). Total stay 3 yrs.</td>
</tr>
<tr>
<td>H-2B</td>
<td>The H-2B visa applies to temporary or seasonal nonagricultural workers.</td>
<td>The H-2B numerical limit set by Congress is 66,000 per FY. Allocated 33,000 each 1/2 of FY.</td>
<td>Same as labor certification, with max. of 1 yr. Total stay 3 yrs.</td>
</tr>
<tr>
<td>H-3</td>
<td>The H-3 visa applies to trainees other than medical or academic. This classification also applies to practical training in the education of handicapped children.</td>
<td>50 visas per fiscal year allocated to H-3 aliens participating in special ed. training programs.</td>
<td>Special Ed. Training-up to 18 months. Other- up to 2 yrs. Special Ed. Trainee-total stay 18 mos. Others- 2 yrs.</td>
</tr>
<tr>
<td>J-1</td>
<td>The J-1 exchange visitor visa is for educational and cultural exchange programs designated by the Department of State, Bureau of Educational and Cultural Affairs.</td>
<td>There is no annual cap on J-1 visas.</td>
<td>One year. May be renewed up to 3 yrs.</td>
</tr>
<tr>
<td>L-1A</td>
<td>The L-1A visa is for persons employed at a managerial/ executive level for at least 1 of the previous 3 yrs. at a non-U.S. firm, who will come to the U.S. to work, in a managerial/executive position, at related entity U.S. firm or oversee the opening of a new entity which is affiliated with the non-U.S. entity.</td>
<td>There is no annual cap on L-1 visas.</td>
<td>Existing office-up to 3 yrs. New office-up to 1 yr. Increment of up to 2 yrs. Total stay 7 yrs.</td>
</tr>
<tr>
<td>L-1B</td>
<td>The L-1B visa is for persons employed for at least 1 yr. of the previous 3 yrs. at a non-U.S. firm, corporation, or other legal entity, who will come to the U.S. to work at its related entity in the U.S. as an employee who has specialized knowledge.</td>
<td>There is no annual cap on L-1 visas.</td>
<td>Existing office-up to 3 yrs. New office-up to 1 yr. Increment of up to 2 yrs. Total stay 5 yrs.</td>
</tr>
<tr>
<td>O-1</td>
<td>The O-1 category is available to foreign nationals who have extraordinary ability in science, art, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation.</td>
<td>There is no annual cap on O visas.</td>
<td>Up to 3 years. Increments of up to 1 yr.</td>
</tr>
<tr>
<td>O-2</td>
<td>The O-2 visa applies to persons accompanying an O-1 alien to assist in an artistic or athletic performance for a specific event or performance.</td>
<td>There is no annual cap on O visas.</td>
<td>Up to 3 years.</td>
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<tr>
<td>P-1</td>
<td>The P-1 entertainment visa is a nonimmigrant visa which allows foreign nationals who are athletes, artists and entertainers to enter into the U.S. for a specific event, competition or performance.</td>
<td>There is no annual cap on P visas.</td>
<td>Individual athlete-up to 5 yrs. Athletic &amp; Ent. groups-up to 1 yr.</td>
</tr>
<tr>
<td>P-2</td>
<td>The P-2 visa is for individuals who are entertainers or a part of a performance group that performs on a reciprocal exchange program with U.S. organizations.</td>
<td>There is no annual cap on P visas.</td>
<td>Individual athlete-up to 5 yrs. Athletic &amp; Ent. groups-up to 1 yr.</td>
</tr>
<tr>
<td>P-3</td>
<td>The P-3 visa is a nonimmigrant visa which allows foreign nationals to enter into the U.S. to perform, teach or coach as artists or entertainers, individually or as part of a group, under a program that is culturally unique.</td>
<td>There is no annual cap on P visas.</td>
<td>Individual athlete- up to 5 yrs. Athletic &amp; Ent. groups-up to 1 yr.</td>
</tr>
<tr>
<td>Q-1</td>
<td>The Q-1 visa is for certain international cultural exchange programs designed to provide practical training and employment, and sharing of the history, culture, and traditions of participants' home country in the U.S.</td>
<td>There is no annual cap on Q visas.</td>
<td>Up to 15 months.</td>
</tr>
<tr>
<td>R-1</td>
<td>The R-1 visa is for members of legitimate religious organizations to live and work legally in the U.S. for a specific period of time.</td>
<td>There is no annual cap on R visas.</td>
<td>Up to 30 months.</td>
</tr>
<tr>
<td>R-2</td>
<td>The R-2 visa is a nonimmigrant visa which allows the spouses and unmarried children of R-1 religious workers to enter into the U.S. and reside with their family.</td>
<td>There is no annual cap on R visas.</td>
<td>Up to 30 months.</td>
</tr>
</tbody>
</table>

2. Ibid.
4. Ibid.
6. Ibid.
7. Ibid.
8. Ibid.
APPENDIX B: GLOSSARY

**Dual Intent:** an intention to immigrate at some time in the future while properly maintaining a nonimmigrant status in the present.

**Fiscal Year (FY):** Currently, the twelve-month period beginning October 1 and ending September 30.

**Guest Worker:** An individual permitted to work in a country. Guest workers do not hold citizenship and are working on a temporary basis.

**H-1B Beneficiaries:** Aliens on whose behalf a U.S. employer has filed an H-1B petition for such aliens to receive immigration benefits from the U.S. Citizenship and Immigration Services.

**H-1B Dependent Employer:** an employer that meets one of the three following standards, which are based on the ratio between the employer's total work force employed in the U.S. (including both U.S. workers and H-1B non-immigrants, and measured according to full-time equivalent employees) and the employer's H-1B non-immigrant employees (a "head count" including both full-time and part-time H-1B employees) – 1) The employer has 25 or fewer full-time equivalent employees who are employed in the U.S. and employs more than seven H-1B nonimmigrants; 2) The employer has at least 26 but not more than 50 full-time equivalent employees who are employed in the U.S.; and employs more than 12 H-1B nonimmigrant; or 3) The employer has at least 51 full-time equivalent employees who are employed in the U.S. and employs H-1B nonimmigrants in a number that is equal to at least 15 percent of the number of such full-time equivalent employees.

**H-1B Visa Holders:** Those workers in the United States on H-1B visas.

**H-1B Workers:** Those workers in the United States on H-1B visas.

**Hard-to-Staff Schools:** Hard-to-staff schools are chronically challenged in their ability to attract and retain teachers with adequate skills and expertise.

**Labor Condition Application (LCA):** A requirement for U.S. employers seeking to employ certain persons whose immigration to the United States is based on job skills or non-immigrant temporary workers coming to perform services for which qualified authorized workers are unavailable in the United States. LCAs are issued by the Secretary of Labor and contain attestations by U.S. employers as to the numbers of U.S. workers available to undertake the employment in question, the conditions under which the non-immigrant temporary worker will be employed, and the effect of the non-immigrant temporary worker’s employment on the wages and working conditions of U.S. workers similarly employed. Determination of labor availability in the United States is made at the time of a visa application and at the location where the applicant wishes to work.
**Non-immigrant Visas**: The type of visas available for aliens seeking temporary entry to the United States for a specific purpose. The alien must have a permanent residence abroad (for most classes of admission) and qualify for the non-immigrant classification sought. There are more than twenty-five general categories of non-immigrant visas.* Most are targeted at a person's particular purpose in visiting the U.S. and the terms of those visas will vary according to the category. Most non-immigrants can be accompanied or joined by spouses and unmarried minor (or dependent) children.

**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. For example, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts are specialty occupations.

**STEM Industry**: Science, Technology, Engineering, and Mathematics (STEM) fields

**Temporary Worker**: An alien coming to the United States to work for a temporary period of time. The Immigration Reform and Control Act of 1986 and the Immigration Act of 1990, as well as other legislation, revised existing classes and created new classes of nonimmigrant admission. Non-immigrant temporary worker classes of admission are as follows: H-1A, H-1B, H1-C, H-2A, H-2B, H-3, O-1, O-2, O-3, P-1, P-2, P-3, P-4, Q-1, Q-2, Q-3, R-1, and R-2.

**Visa**: A U.S. visa allows the bearer to apply for entry to the U.S. in a certain classification. A visa does not grant the bearer the right to enter the United States. The Department of State (DOS) is responsible for visa adjudication at U.S. Embassies and Consulates outside of the U.S. The Department of Homeland Security (DHS), Bureau of Customs and Border Protection (BCBP) immigration inspectors determine admission into, length of stay and conditions of stay in, the U.S. at a port of entry.

**Visa Recruiters**: Are firms which recruit potential employees abroad to come to the United States for temporary employment. These firms often coordinate hiring between domestic employers and foreign workers and administer the process of applying for nonimmigrant visas.

* Only non-immigrant visas with direct connections to work in some form were included in the visa chart in Appendix A. Therefore, not all non-immigrant visa types appear in Appendix A. Please see www.uscis.gov for a complete listing.
APPENDIX C
A LEGAL AND POLITICAL OVERVIEW OF THE H-1B GUEST WORKER VISA PROGRAM
Research Memorandum, AFL-CIO Office of the General Counsel, 2009

THE H-1B PROGRAM

In general, the H visas¹ allow employers to petition for the admission of temporary alien employees. 8 U.S.C. § 1101 (a) (15) (H) (2006). Under this broad employer-sponsored system, the H-1B visa is a classification for the temporary admission of nonimmigrant aliens: (1) who are employed in specialty occupations; or (2) who are fashion models of distinguished merit; or (3) who perform certain Department of Defense work. Id. § 1101 (a) (15) (H) (i) (b). H-1B is thus something of a hodgepodge, not unlike the rest of the immigration code. Nevertheless, H-1B deals primarily with and is most well known for the admission of the first class of aforementioned aliens, those employed in so-called specialty occupations. Therefore, this appendix discusses the program as applied to individuals seeking admission for employment in specialty occupations, also known as “beneficiaries.”

The law provides for the issuance of up to 65,000 new H-1B visas each year. 8 U.S.C. § 1184 (g) (1) (A) (vii). Admission is authorized for six years under the H-1B visa. Id. § 1184 (g) (4). The numerical limits do not apply to an H-1B visa holder who is employed at an institution of higher education or a nonprofit research organization. Id. § 1184 (g) (5). Moreover, an exemption from the numerical limit is provided for up to 20,000 beneficiaries who have graduated with a Master’s or higher level degree from American institutions of higher education. Id. Thus, the number of individuals otherwise admitted under H-1B will typically exceed the statutorily imposed numerical limit.

The H-1B process is initiated when a U.S. employer sponsors an individual for H-1B status. 8 U.S.C. § 1184 (c). There are basically two forms that govern this process: a labor condition application, filed with the Department of Labor, that essentially identifies a need for H-1B workers in a certain occupation, and a petition filed with the Citizen and Immigration Services on behalf of an individual worker.

First, the employer must file a labor condition application (LCA) with the Department of Labor that agrees or attests to the following items, see generally 8 U.S.C. 1182 (n), see also Form ETA 9035, available at http://www.foreignlaborcert.doleta.gov/pdf/eta9035v50.pdf:

(1) Wages: Pay nonimmigrants at least the local prevailing wage or the employer’s actual wage, whichever is higher, and pay for non-productive time. Offer nonimmigrants benefits on the same basis as U.S. workers.

(2) Working Conditions: Provide working conditions for nonimmigrants which will not adversely affect the working conditions of workers similarly employed.

(3) Strike, Lockout, or Work Stoppage: No strike or lockout in the occupational classification at the place of employment.

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1. There are five H visas, including the H-1B: H-1C (nurses), H-2A (agricultural or seasonal laborers), H-2B (other temporary laborers), H-3 (trainees or special education exchange participants). See generally 8 C.F.R. § 214.2.
(4) Notice: Notice to union or to workers at the place of employment. A copy of this form to the nonimmigrant worker(s).

Form ETA 9035 requires employers who file an LCA to make a copy of the application available for public inspection at its principal place of business or worksite. 8 U.S.C. § 1182 (n).

Employers who are “H-1B dependent,” meaning H-1B workers make up at least 15% of their workforce, must further attest: (1) the employer has not “displaced” a U.S. worker during the period commencing 90 days before the filing of an H-1B petition and ending 90 days after the filing of the petition; (2) the employer has taken “good faith steps” to recruit U.S. workers for the job for which nonimmigrants are suited; and (3) the employer has offered the job to any U.S. worker who applies and is equally or better qualified for the job than the nonimmigrant whom the employer seeks to hire. 8 U.S.C. § 1182 (n).

An employer may file a labor condition application in an occupational classification for multiple beneficiaries, and petitions for newly identified beneficiaries may be filed at any time during the validity of the labor condition application using photocopies of the same application. 8 C.F.R. § 214.2 (h) (4) (i) (B) (3). However, once all of the petitions for the total number of workers specified in the labor condition application have been approved, substitution of aliens is not permitted. Id. § 214.2 (h) (4) (i) (B) (4). A new labor condition application is required, and the process is restarted. Id.

The employer must then file the certified LCA with a Form I-1292 petition. Id. § 214.2 (h) (2) (i) (A). The I-129 identifies the beneficiary of the petition and details her work experience and qualifications, immigration status history, and provides further details about the proposed employment. Once the petition is filed, the USCIS determines whether (1) the application involves a specialty occupation and (2) the particular alien for whom H-1B classification is sought qualifies to perform services in the specialty occupation.

The H-1B visa applies to positions within specialty occupations. A specialty occupation is an occupation that requires: “(A) theoretical and practical application of a body of highly specialized knowledge, and (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.” 8 U.S.C. § 1184 (i) (1). The statute also sets forth requirements pertaining to licensure and providing for due recognition of experience and expertise. See id. § 1184(i)(2). The regulations define specialty occupation as:

"an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States."

8 C.F.R. § 214.2 (h) (4) (ii). The regulations set four standards to determine that a position requires the equivalent of a baccalaureate degree.³

For the most part, this concludes the H-1B application process, assuming no further changes in the nonimmigrant’s status. Employers who fail to abide by the administrative requirements summarized herein and set out in full in title 8, U.S.C. § 1182 (n), may be subject to civil monetary penalties and have their ability to petition for nonimmigrants suspended.⁴

To sum up, an employee may petition for an H-1B visa when it attests to a need for such a worker and the position ostensibly requires an undergraduate degree or its equivalent.

H-1B’S LEGISLATIVE HISTORY

The current incarnation of the H-1B machinery has a long legislative history, coextensive in part, at least in principle, with all of the major immigration legislation of the twentieth-century. See generally Austin T. Fragomen, Jr. et al., H-1B Handbook (Westlaw 2009) (discussing how the antecedents of the H-1 program, the predecessor of H-1B, date to at least the Immigration Act of 1917, and tracing the law’s development throughout its history). Because of this, it is helpful to give a snapshot of the program’s entire history before addressing the 1990 and 1998 changes.

The H-1B program has its roots in the exceptions or provisos of the Immigration Act of 1917, 64 Pub. L. No. 301, 39 Stat. 874 § 3, 874-78 (1917), which otherwise prohibited the importation of foreign contract labor, known as the “anti-contract labor” law, a prohibition which arose in response to the corporate use of foreign labor as a tool to break strikes and otherwise injure the domestic workforce. See H-1B Handbook § 1:2. Two of the 1917 Act’s exceptions are relevant here.⁵ First, a proviso required the Secretary of Labor to determine, upon the application of any interested person, whether a lack of skilled labor in the domestic labor market required compensation by way of imported labor. 39 Stat. 874, 877. This determination is the historical root of the current labor certification process. Second, the Act’s imported labor ban was inapplicable to several classes of individuals, mostly related to the arts, but also including “persons belonging to any recognized learned profession.” Id. at 877–88. This “recognized learned profession” category would eventually give rise to H-1B’s current “specialty occupation” provisions. Under the 1917 exception for certain professions, no prior certification with regard to the availability of U.S. workers was required. See id.; H-1B Handbook § 1:2. Though “recognized learned profession” was left virtually undefined, “[t]he few pre-1952 administrative cases dealing with the fifth proviso all involved its application to aliens in the entertainment

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³. Section 214.2 provides that “to qualify as a specialty occupation, the position must meet one of the following criteria”:

1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3) The employer normally requires a degree or its equivalent for the position; or
4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.
8 C.F.R., § 214.2 (h) (4) (iii) (A).

⁴. For a case dealing with complaints against an H-1B dependent employer who allegedly failed to abide by the regulations pertaining to the attestation requirements, and the various steps in the administrative enforcement process, see, e.g., Cyberworld Enter. Techs. v. Napolitano, 2009 U.S. Dist. LEXIS 25570 (D. Del. Mar. 25, 2009).
field.” H-1B Handbook § 1:2. “Despite the application of the H-1 category to alien professionals, the category was predominantly used by alien artists and entertainers for a very important reason: prior to 1970, the H-1 category was limited to the admission of aliens for temporary periods to perform services of a temporary nature only.” H-1B Handbook § 1:4. Thus: “[because] professional-level positions at most companies are permanent, employers could not make use of the H-1 category to fill those positions with alien workers.” Id.

At mid-century, Congress undertook the most significant overhaul of the nation’s immigration laws in its history. In the legal immigration context, Congress discarded the old anti-contract prohibition and its various provisos in favor of a general two-part scheme for quota-immigrants and employment-based nonimmigrants: “Those provisions in existing law relating to the exclusion of contract laborers…are omitted from the bill in view of the adoption of a principle of selectivity in the allocation of quota numbers on the basis of the need for the labor and services of aliens.” 82 S. Rpt. No. 1137, 11 (1952). The exception for various artists, entertainers, and other “persons belonging to any recognized leamed profession” from the 1917 law was subsumed into the H-1 category for nonimmigrants of “distinguished merit and ability.” Immigration and Nationality Act, 82 P.L. 414, 66 Stat. 163 (1952), codified as amended, 8 U.S.C. § 1101 et seq. The new category H-1 category provided:

“The term ‘immigrant’ means every alien except an alien who is within one of the following classes of nonimmigrant aliens…[including] an alien…who is of distinguished merit and ability and who is coming temporarily to the United States to perform temporary services of an exceptional nature requiring such merit and ability.”

Id. § 101 (A) (15) (H) (i).

As mentioned previously, the H-1 category was significantly expanded in 1970 when the law was amended “to permit the entry of aliens into the United States for temporary periods to perform services which may be temporary in nature or permanent in nature.” H. Rpt. 91-851 (1970) (emphasis added) as reprinted in 1970 U.S.C.C.A.N. 2750, 2752. The pre-existing requirement that the position be temporary was “a source of friction with universities, hospitals, international organizations, and other potential employers of distinguished or specially qualified aliens[,]” and while “[t]he need for change [was] particularly acute in academic circles[,]” ultimately the change served a much broader purpose: “[t]he elimination of this restriction in the law would be of great value to the United States, for there are exceptionally skilled aliens such as professors and doctors, whose temporary services are needed in the United States, but who are ineligible for temporary admission because the nature of the position is permanent.” Id. This change substantially increased the number of imported H-1 nurses. See H-1B Handbook § 1:5.

5. The 1917 Act stated as follows:

That the following classes of aliens shall be excluded from admission into the United States…persons hereinafter called contract laborers, who have been induced, assisted, encouraged, or solicited to migrate to this country by offers or promises of employment, whether such offers or promises are true or false, or in consequence of agreements, oral, written or printed, express or implied, to perform labor in this country of any kind, skilled or unskilled…Provided…That skilled labor, if otherwise admissible, may be imported if labor of like kind unemployed can not [sic] be found in this country, and the question of the necessity of importing such skilled labor in any particular instance may be determined by the Secretary of Labor upon the application of any person interested, such application to be made before such importation, and such determination by the Secretary of Labor to be reached after a full hearing and an investigation into the facts of the case: Provided further, That the provisions of this law applicable to contract labor shall not be held to exclude professional actors, artists, lecturers, singers, nurses, ministers of any religious denomination, professors for colleges or seminaries, persons belonging to any recognized learned profession, or persons employees as domestic servants[.]

The transformation of the H-1 category into its modern form was nearly complete with the 1990 amendments. Congress removed artists, athletes, and nurses from its ambit, and the new H-1B category became essentially a vehicle for the importation of professional corporate labor. See Immigration Act of 1990, 101 P.L. 649, 104 Stat. 4978 (1990). The legislative history indicates that Congress believed the United States economy would benefit from increased immigration of skilled workers, and sought to generally ease restrictions that limited the number of imported skilled labor. See generally H. Rpt. No. 101-723 (I) (1989). The House Report stated that “[t]he supply of foreign temporary workers has not kept up with the demands of American business in the international marketplace.” Id. at 43. As the legislative history explains, “[t]he H-1 visa...[had] been the most controversial nonimmigrant visa because entry [was] not conditioned on any domestic labor market test and because admissions levels under this category [had] been escalating...and aliens with nothing more than a baccalaureate degree [had] been deemed ‘distinguished.’” Id. at 44.

The 1990 Act was the result of a decade-long immigration reform effort with a view toward “closing the back door to undocumented/illegal immigration, [and] opening the front door a little more to accommodate legal migration in the interests of this country,” id. at 33 (alteration in original), which culminated in what was essentially compromise legislation, sponsored in the Senate, 101 S. 358 (1989), by Sens. Edward R. Kennedy (D-Ma) and originally cosponsored by Alan Simpson (R-Wy); the Senate bill was later cosponsored by Sens. Patrick Moynihan (D-Ny), Chris Dodd (D-ct), and Al D’Amato (R-Ny). The major House version of the bill, H.R. 4300 (1989), was introduced and shepherded by Bruce A. Morrison (D-ct).

The Workforce Improvement Act of 1998 (ACWIA), 105 S. 1723 (1998),6 enacted as part of the omnibus funding bill for 1999, 105 P.L. 277, 112 Stat. 2681 (1998), was introduced by Senator Spencer Abraham (R-Mi) and was cosponsored by Sens. Orrin Hatch (R-Ut), John McCain (R-Az), Mike DeWine (R-Oh), Arlen Specter (R-Pa), Rod Grams (R-Mn), Sam Brownback (R-Ks), Rick Santorum (R-Pa), Strom Thurmond (R-Sc), John Ashcroft (R-Mo), Gordon Smith (R-Or), Chuck Hagel (R-Ne) Bob Bennett (R-Ut), Connie Mack (R-Fl), and Paul Coverdell (R-Ga). See generally 105 S. Rpt. 186 (1998). The bill’s major effects were to nearly double the caps on the number of H-1B visas, and to require additional attestations by so-called “H-1B dependent” employers. See id. Senators Joe Lieberman (D-ct) and Bob Graham (D-fl) cosponsored the bill from the other side of the aisle. Id. Senator and Minority Leader Tom Daschle provided what was very likely key support for the bill as well.7 House Speaker Newt Gingrich also supported the cap increases. Id.

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The quota increase was the result of an extensive lobbying effort by the technology industry, which received criticism for overstating the shortage of skilled domestic labor in order to cut costs via cheaper imported labor.  

Senator Kennedy sought at one point to maintain then-existing cap levels, but to give priority to certain industries. Senators Kennedy and Feinstein submitted numerous amendments that would have strengthened the bill’s employer attestation and certification requirements, shortened the permissible term of employment, and given broader enforcement authority to oversight agencies. 105 S. Rpt. 186, 1998 Committee Reports, May 1, 1998, 25-31 (1998). Senator Tom Harkin (D-IA) led efforts to mitigate the bill’s impact on American workers: “The passage of the bill, which died several deaths in the wake of initial Clinton administration opposition and last-minute blockage by Sen. Tom Harkin...left bruised egos and some dire warnings from opposition leaders such as IEEE-USA president John Reinert, who fears that employers will delve into the H-1B pool instead of hiring U.S. engineers.”

**CONCLUSION**

The admission of employer-sponsored, nonimmigrant, temporary employees began as a vehicle for the admission of a limited class of individuals, mainly artists and entertainers. With time, Congress expanded the pool of eligible H visa beneficiaries and allowed workers to assume temporary employment in otherwise permanent positions.

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