



Department for Professional Employees, AFL-CIO

March 16, 2015

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Immigration Reforms Needed to Protect Skilled American Workers

Dear Chairman Grassley and Ranking Member Leahy:

On behalf of the 22 national and international unions in the Department for Professional Employees, AFL-CIO (DPE), I strongly urge reform of our skilled guest worker visa programs, including the H-1B, L-1, B-1 in lieu of H-1B, and OPT. Misuse of these programs occurs particularly in computer and engineering occupations where the majority of skilled guest workers are employed. Reforms are badly needed to ensure protection of U.S. workers as well as for the temporary guest workers.

The U.S. should be supporting policies that protect the investment our country has made in its skilled workforce and ensure that opportunities are available for the young adults we have urged to enter science, technology, engineering, and mathematics (STEM) professions. Our guest worker programs have virtually no mechanisms to ensure that employers are not using guest workers as cheap alternatives to U.S. workers. Virtually all other advanced countries provide this protection to their native professionals.¹ Reform of all skilled guest worker programs is the only way to end the abuse and exploitation of domestic and foreign workers.

H-1B Visas are Crippling America's STEM Workforce

Nearly 130,000 H-1B visas were approved for initial employment and another 159,000 were approved for continuing employment in FY 2013. Computer and engineering occupations accounted for 69 percent of all H-1B visas in FY 2013. H-1B visas are issued regardless of stagnant wages, high unemployment, and robust college graduation rates in relevant fields. This is simply bad public policy.

¹ U.S. guest worker programs are an outlier among advanced countries. Australia, Canada, and the European Union, for example, require evidence of labor shortages before visas are granted for skilled workers. See: <http://www.loc.gov/law/help/guestworker/index.php>

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Employer abuse of the H-1B visa program is well documented and usually boils down to employers seeking to cut costs at the expense of current and future U.S. workers. Generally, there are three ways this can be done: 1) Hire a temporary guest worker, which will save the employer 20-25 percent in wages²; 2) Contract out work previously performed by U.S. workers to H-1B visa beneficiaries; and 3) Facilitate the transfer of in-house professional and technical jobs to a lower-cost foreign country as documented in the Southern California Edison³ and Disney World⁴ cases.

The Immigration Innovation Act (S. 153), sponsored by Senator Orrin Hatch (R - UT) and others, if passed, would further devastate America's STEM workforce. I urge opposition to any changes to the H-1B program without the reforms suggested below.

L-1 Visa Reforms are needed to Curb Abuse

The L-1 visa allows multinational employers to bring employees of a foreign subsidiary to work in the U.S. In FY 2013, the U.S. Department of State, Bureau of Consular Affairs reported issuing nearly 67,000 L-1 visas. The L-1 visa has no prevailing wage requirement and employers are not required to determine if qualified Americans are available.

Essentially, the L-1 visa allows employers to legally pay well below the market wage, offshore work, and replace U.S. workers. Employers only suffer consequences when they fail to meet the lowest of labor standards. In late 2013, Electronics for Imaging, was fined by the U.S. Department of Labor and ordered to pay back wages to guest workers who were paid just \$1.21 per hour to install computer systems.⁵ The employees were likely on L-1 visas. Since there is no prevailing wage requirement, Electronics for Imaging was only required to pay its foreign employees the U.S. minimum wage. The L-1 visa clearly creates an incentive to favor temporary guest workers over U.S. workers.

Like the H-1B, the L-1 visa is used to facilitate the transfer of work in the U.S. offshore. Offshore outsourcing firms send workers from their foreign offices to the U.S. to be trained by the U.S. worker they are replacing. The foreign worker, then takes his newly acquired knowledge and the work with him offshore. U.S. law should not facilitate the loss of jobs for U.S. workers so multinational corporations can maximize their profits.

OPT and B-1 Visa Provisions need Reforms and Transparency Requirements

In 2013, over 100,000 current or former students were granted employment authorization through the Optional Practical Training (OPT) program. OPT does not have a wage requirement

² Sean McLain and Dhanya Ann Thoppil, "U.S. Visa Bill 'Very Tough' for Indian IT," *The Wall Street Journal*, April 18, 2013; Ron Hira and Anil Hira. "Outsourcing America." New York. *Amacom*, 2005. Print. 87-88.

³ Michael Hiltzik, "A loophole in immigration law is costing thousands of American jobs," *L.A. Times*, February 20, 2015.

⁴ Greg Fox, "Walt Disney World information technology workers laid off," *WESH Orlando*, January 30, 2015.

⁵ George Avalos, "Workers paid \$1.21 an hour to install Fremont tech company's computers," *San Jose Mercury News*, October 22, 2014.

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and employers are generally not required to pay Medicare or Social Security taxes for OPT beneficiaries. The OPT program does not require that employers test the labor market before hiring an OPT beneficiary. The OPT program allows students to work for 12 months after graduation and students with a degree in a STEM field to work another 17 months for a total of 29 months.

In FY 2013, a little over 100,000 foreign graduates received post-graduation OPT work authorization and another 25,000 graduates received work authorization through the OPT STEM extension program. The number of OPT STEM extension approvals doubled from 2011 to 2013. In 2013, according to the American Community Survey, there were 1.25 million U.S. citizens with a STEM bachelor's degree under the age of 26 in the U.S. workforce. Among those 1.25 million recent graduates, nearly 115,000 were looking for work. Over 360,000 U.S. citizens and permanent residents graduated with a bachelor's degree or higher in a STEM field in the 2012-13 school year.⁶ We need honor the investment we have made in our students and create as many pathways to employment as possible. The OPT program, left unchecked will force new graduates to leave STEM professions and dissuade new students from entering.

Finally, the B-1 visa in lieu of H-1B is a guest worker program often utilized by employers when H-1B visas are not available. This visa must also be reformed to prevent its misuse. Further, no data exists on where OPT or B-1 in lieu of H-1B beneficiaries work or their earnings, making thoughtful analysis of the OPT and B-1 in lieu of H-1B programs impossible.

Conclusion

Our high-skilled guest worker visa programs are clearly broken and must be reformed. The current system is easily manipulated by employers, which harms workers across industries and national boundaries.

DPE supports the following six reforms be made to all skilled guest worker programs (H-1B, L-1, B in lieu of H-1B, and OPT), which would ensure that skilled guest workers are used to complement, rather than displace U.S. workers. If there is a shortage of qualified U.S. workers and employers are already paying market wages as many claim, then employers should not fear these reforms. DPE recommends:

- 1) Evidence of a labor shortage before employers are authorized to seek guest workers;
- 2) Requiring all employers to advertise and offer jobs to U.S. workers who are equally or better qualified than the temporary guest worker sought;
- 3) An increase in the prevailing wage standard for guest workers to the 75th percentile of the prevailing U.S. wage, so that employers do not have an incentive to hire temporary guest workers. This would also create an incentive for employers to invest in training U.S. workers;
- 4) Establishment of reasonable caps for all guest worker visa programs;

⁶ National Center for Education Statistics, *Digest of Education Statistics*, Table 318.45, 2014 Tables and Figures.

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- 5) Allowing guest workers to self-petition for green cards after two years of employment; and
- 6) Regular audits of top skilled guest worker visa users to ensure compliance with the above provisions.

Finally, the lack of data on these guest worker programs allows employers to evade scrutiny. The public should be provided with all available data, including how many guest workers are in the country, occupation and employer information, and how much they are actually being paid.

With thanks for your time and consideration –

Sincerely,



Paul E. Almeida
President