

The H-1B Visa Debate

BY CYNTHIA SCANLON

Some say Congress should raise current limits on foreign workers in the United States; others disagree. But proposed changes to the law may satisfy both sides.



In today's fiercely competitively marketplace, the need for highly skilled, educated workers has never been greater. Companies looking to fill positions, particularly in the manufacturing and high-tech industries, have been looking overseas to hire people. To do this legally, they must hire foreign workers with an H-1B visa.

The H-1B visa allows foreign workers with bachelor's and advanced degrees to work in "white collar" jobs in the United States for up to six years. In addition to working in manufacturing and high-tech sectors, foreign workers holding H-1B visas include scientists, university professors, accountants, medical technicians, and engineers. "There are H-1Bs in hundreds of occupations in dozens of industries," says Rodney Malpert, director of U.S. immigration for the law firm of Littler Mendelson, P.C. (Littler Global).

But deciding who gets these visas has become a contentious issue. Current law limits the number of H-1B visas to 65,000 per year, with an additional 20,000 exemptions for advanced degree holders. For fiscal year 2007 — which began on October 1, 2006 and runs through September 30, 2007 — the

65,000 visas were gone by May 2006, the earliest the cap has ever been reached. This has made additional hiring of immigrants by U.S. firms impossible until the next fiscal year; employers wanting H-1B visas for 2008 may not begin applying until April 1, 2007.

"We've reached a situation where we're running out of visas months before the fiscal year begins," says Lynn Shotwell, executive director for the American Council on International Personnel and spokesperson for Compete America. "The situation has become much more desperate than it has been in years past." Compete America, a coalition of more than 200 corporations, universities, research institutions and trade associations, has been a strong supporter for raising the H-1B cap limit.

RAISING THE CAP

For many manufacturers, as well as other tech and non-tech companies, securing enough H-1B visas has become an arduous and time-consuming endeavor. The process requires significant paperwork and application fees for what may turn out to be wasted effort. Shotwell and the organizations she represents believe the United States needs a

more streamlined immigration policy, particularly where the H-1B visa is concerned. "Companies need to have access to the talent they need when they need it," she says. "They need to hire the best person for the job when the position arises, not 18 months in advance because there's an arbitrary quota on visas available."

To get around the problem, some manufacturers find it is easier to set up shop overseas, with a labor force at the ready, rather than trying to cut through

longer count on receiving the H-1B before their student visas expire. Shotwell argues that if this situation is allowed to continue, U.S. universities will be less attractive to foreign nationals. "Since 9/11, we've seen a decline in foreign student enrollment because of problems getting student visas, and we've seen other countries take advantage of that," she says.

In essence, those who advocate for raising the H-1B visa cap maintain that there is a shortage of qualified American

shortages in manufacturing when we keep shutting down plants and laying off people?" asks Richard Tax, president of the American Engineering Association. "They say we can't get programmers, but programmers are being laid off. And in many cases, these people have to train their own replacements."

Companies that maintain they can't find qualified American workers with the right skills say they are forced to look overseas, but Tax takes exception to that. "Some of these companies are looking for a five-pound butterfly," he says. "If they can't find a five-pound butterfly, they say there is a shortage of butterflies. They make their specifications so specific as to exclude almost anyone here who could do the job."

What everyone wants is an equitable immigration policy that will treat all workers fairly, while allowing companies using H-1B workers to do business competitively.

visa red tape. Boeing, for example, has manufacturing plants across the world, and the company's need for technically skilled workers is great. "All of our design work is on computers," says Bob Jorgensen, spokesperson for Boeing. "It's a maze of computers throughout our factories." While Boeing does operate manufacturing plants in the United States, Jorgensen says the company is able to sidestep many visa challenges by locating plants in other countries. He cites a major design center in Russia as just one example.

STUDYING ABROAD

Foreign students trying to attend U.S. universities also find themselves trapped in H-1B limbo. These students find they must first scale immigration barriers to get into U.S. universities, and then they must confront barriers in securing H-1B visa to work in the United States after graduation. "We've invested from four to 10 years into educating these people, and we want to have the benefit of that training and talent, rather than having them leave [to go back] overseas," says Malpert.

Typically, foreign students graduating from U.S. universities are granted a one-year student work visa. In the past, that has provided enough time for them to apply for and receive their permanent H-1B visa. But now that H-1B visa caps are being filled quickly, students can no

workers to fill technical jobs — positions that foreign workers can readily fill. "We're all competing around the globe for a limited talent pool," says Shotwell, "and we know that enough people haven't been born to fill all these jobs."

KEEPING THE CAP

But not everyone agrees with that sentiment. Critics of the H-1B argue that plenty of qualified workers are available in the United States, and hiring foreign workers will only take jobs away from Americans. "Right now, the cap is the only thing that's protecting U.S. workers," says Rob Hira, vice president for IEEE-USA, an organization that promotes the careers and public policy interests of engineers, scientists, and allied professionals. "If we got rid of the cap, I think it would be a disaster for the U.S. labor market, especially in science and engineering."

Proponents of the H-1B visa contend that U.S. companies must first look for an American worker before hiring a foreign worker, so American workers are protected, but Hira says that's untrue. "You can hire an H-1B without ever looking for a U.S. worker," he says. "There's no regulation for that." Those who are against raising the cap also point to the number of workers, particularly in manufacturing, who have lost their jobs. "How can there be labor

ENFORCEMENT GUIDELINES

Wages and work conditions seem to be at the center of much of the debate over hiring H-1B workers. Those against raising the cap insist that H-1B visa holders are forced to take lower wages than their American counterparts. Those lobbying for a cap increase dispute that, pointing out that employers hiring H-1Bs are required by law to pay a prevailing wage. "But a prevailing wage is not the same as a market wage," says Hira argues. "Companies can still be within the prevailing wage requirements, while paying below market wages."

Currently, H-1B visa holders who feel they are being treated unfairly can file a claim with the Department of Labor, or a third party can write a letter to the Secretary of Labor outlining the suspected abuse. The secretary then has the discretion to order an investigation. IEEE-USA wants Congress to enact an auditing system for the H-1B holders, which they feel would strengthen the program's integrity and ensure the non-exploitation of foreign workers.

LEGISLATIVE RELIEF

Congress is currently looking into the H-1B visa situation. The House of Representatives and Senate have both introduced H-1B legislation: S. 2691/H.R. 5744, better known as the SKIL Bill, which may provide some necessary reforms that many are looking for. This wide-ranging immigration reform bill, now being debated by the

Senate Judiciary Committee, would increase the H-1B visa cap from 65,000 to 115,000 per year and eliminate any cap for advanced degree holders. Additionally, the bill also proposes to speed up the green card process for foreign advanced degree holders and increase the number of green cards available, which is now capped at 140,000 per year.

Initially designed as a temporary work visa, the H-1B has now become a stepping stone to a permanent visa, but leaves people stuck in H-1B status for years waiting for their green cards. They can't wait forever. After an H-1B expires, the foreign worker is required to leave the United States for one year before another H-1B petition can be approved by the U.S. Citizenship and Immigration Services (USCIS).

This new legislation may help alleviate many H-1B concerns on both sides. "If the SKIL Bill passes, I think the business immigration community feels they would have many problems resolved," says Malpert. Shotwell agrees. "The SKIL Bill is a great bill," she says. "It provides a lot of the relief we need by providing more H-1B visas and providing more green cards. It streamlines processes and takes people more directly from student to green card status, skipping the H-1B altogether." Even Hira is pleased that the SKIL Bill addresses the current lack of green cards: "If companies were able to give green cards instead of going through the H-1B process, those workers could move from company to company much more easily; that would force companies to pay market wages."

GOING FORWARD

In the end, what everyone wants is an equitable immigration policy that will treat all workers fairly, while allowing companies using H-1B workers to do business competitively. However, if we are not able to achieve this equilibrium, many warn that the future repercussions for the United States could be great.

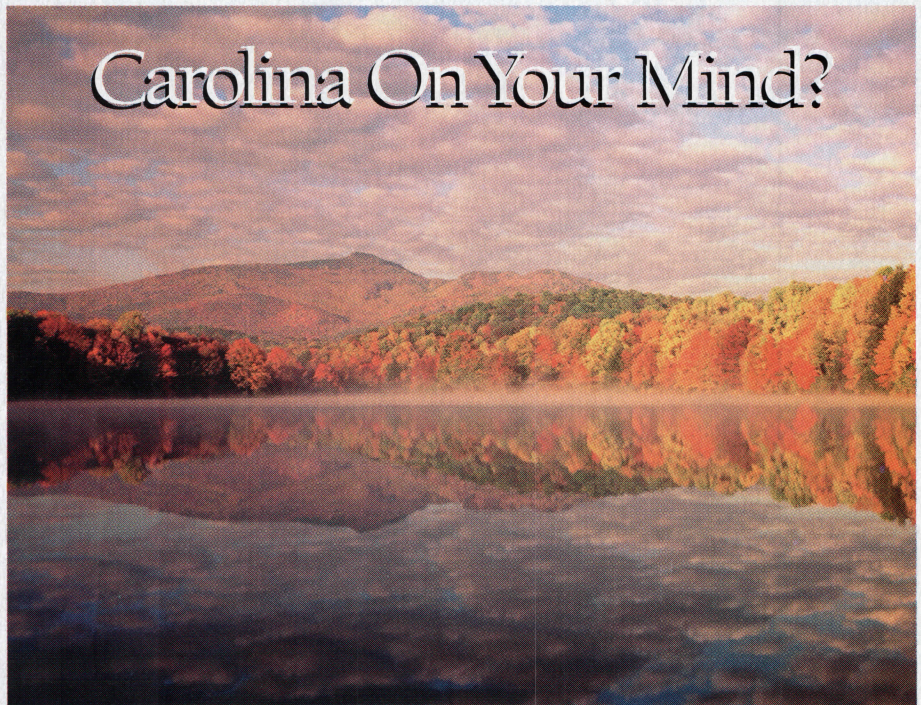
"If Congress doesn't get this fixed this year, we will run out of visas in the first month or two [of the new fiscal year]," says Shotwell. "If that happens, I think you'll see [American] companies making the decision that they can't

depend on getting workers here, and they will look at alternatives to get their work done." She adds that the United States has been a great place to innovate and do research, but cautions that other countries are catching up quickly by putting effort into developing niche industries and attracting skilled workers of their own. She uses Ireland, Scotland, China, and India as examples

Shotwell believes the first step in turning this trend around is to change our immigration policies to be more welcoming of foreign workers while helping our own companies to remain

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competitive, and that legislation will be the driving force in creating a sustainable solution. "As our economy has grown and changed, our laws haven't kept up," she says. "We're operating under a system that was established in 1965, and the world is now vastly different."



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