

WebMemo



Published by The Heritage Foundation

No. 1875
March 31, 2008

Increasing the Cap for H-1B Visas Would Help the Economy

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Starting on April 1, any foreigner in the world who has a specialized skill with a college degree or higher will have only one day to apply for a U.S. work visa for fiscal year (FY) 2009. After that, many experts predict that the cap for H-1B visas will be met, requiring foreigners to wait another 12 months before applying again and leaving American companies without needed workers. H-1B visas are given to highly educated foreigners who are sponsored by American employers. As the law currently stands, a maximum of 65,000 visas is given each fiscal year.

Admitting such a low number of qualified workers hurts the high-tech industry in the United States and pushes the smartest people to work in competing countries like China. Some U.S. companies that are desperate for workers, like Microsoft, have moved certain branches to Canada and Mexico.

Representatives Gabrielle Giffords (D-AZ) and Lamar Smith (R-TX) have recognized the gravity of the problem and have introduced similar bills raising the cap for H-1B visas. Raising the cap is a necessary first step, but more should be done to make H-1B visas flexible. Their number should reflect the economy's need for high-tech workers—not arbitrary limits set by Congress.

H-1B Visas. As with other work visas, employers must navigate highly complicated procedures to hire workers on an H-1B visa. The application process involves several U.S. departments and is often a bureaucratic nightmare. Despite these obstacles, the visas are popular with employers.

Congress has tried to fix the H-1B cap before, but these fixes were temporary and largely ineffective. The cap was raised to 115,000 visas in 1999 and to 195,000 visas in 2001. Because of the pitfalls of navigating the application process, combined with the economic slowdown of 2002, not all of the visas authorized were issued in FY 2003. As a result, an excess of 117,000 visas was discarded at the end of the year.

Congress lowered the cap back to 65,000 for FY 2003. Since that year, employers have used every authorized visa. Employers have also exhausted the annual H-1B visa supply at a faster rate. In 2007, employers used up the entire quota less than a day after U.S. Citizen and Immigration Services (USCIS) started accepting applications, and USCIS conducted a lottery to determine which workers would receive visas.¹

Not all H-1B visas are counted against the cap. The first 20,000 H-1B visas issued to workers with a master's degree or higher are not deducted from the 65,000 cap. Employees of universities are similarly exempt. On the other hand, Singapore and Chile have a guaranteed 6,800 visas, which are counted against the 65,000 cap.

This paper, in its entirety, can be found at:
www.heritage.org/Research/Labor/wm1875.cfm

Produced by the Center for Data Analysis

Published by The Heritage Foundation
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Insourcing Jobs. Increasing the cap on H-1B visas creates new jobs for American workers, not just H-1B immigrants. Employees do not compete for a fixed number of jobs so that when more H-1B workers come to the United States, an equal number of Americans lose their jobs. Instead, businesses create jobs when they grow and shed jobs when they shrink.

Currently, the economy has a severe shortage of workers for many high-skilled positions. The unemployment rate in computer and mathematical occupations, like computer programming, was 2.1 percent in 2007—essentially full employment after accounting for workers between jobs.² There are not enough high-tech workers in America to fill the jobs that employers want them to do. By increasing the H-1B cap, Congress would allow companies to fill vital positions and enable them to expand within the United States, which avoids the problem of companies outsourcing work or moving overseas.

Take the example of an engineering software company that hires an engineer and a software developer on H-1B visas. Without those key workers, the company could not expand. Because it hired those key workers, however, the company grows and creates many new domestic jobs: software programmers, software salesmen, and technical support staff.

A study by the National Foundation for American Policy found that the average S&P 500 company creates five new domestic jobs for each highly skilled H-1B visa employee it hires.³ By raising the H-1B cap, Congress “insources” jobs, allowing companies to fill vital positions and expand their operations in America instead of moving overseas. This benefits both American workers and the U.S. economy.

Getting It Right. Representative Smith’s bill, the Strengthen United States Technology and Innovation Now (SUSTAIN) Act (H.R. 5642), and Representative Gifford’s bill, the Innovation Employment

Act (IEA, H.R. 5630), would raise the H-1B cap. The SUSTAIN Act would only temporarily raise the cap to 195,000 for FY 2008 and FY 2009, while the Innovation Employment Act would initially raise the cap to 130,000 and allow the cap to increase the following year if it is reached.

The H-1B visa program is unlike other temporary worker programs because the visas apply to highly skilled workers only, and it thus has separate concerns and benefits. The regulations for low-skilled work visas should not apply for H-1Bs. Raising the cap for a fixed number of years fixes this problem only temporarily and would require Congress to revisit the issue in the coming years. Instead, Congress should:

- **Return the cap to its previous amount of 195,000.**
- **Make the cap flexible.** Congress should ensure that the caps are based on the needs of the marketplace. If the caps are met, there should be an increase the next year. In addition, any unused visas from the previous fiscal year should be carried over to at least the next fiscal year.

Conclusion. H-1B visas are used by America’s high-tech industries to hire skilled foreigners to work in the United States. The ability of these companies to hire employees should not be dictated by an arbitrary number passed by Congress. The current cap is too low, and Congress is not able to change it quickly enough to match the economic trends. Reforms in H-1B visas must be made to ensure that the best and the brightest are working in the United States. No good could possibly come from keeping them out.

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1. U.S. Citizen and Immigration Services, “USCIS Update: USCIS Reaches FY 2008 H-1B Cap,” April 3, 2007, at www.immigration.com/newsletter/H-1B%202007%20Quota.pdf.
2. U.S. Department of Labor, Bureau of Labor Statistics, “Household Data Annual Averages, Table 25,” at <ftp://ftp.bls.gov/pub/special.requests/lfaaat25.txt>.
3. National Foundation for American Policy, “H-1B Visas and Job Creation,” *Policy Brief*, March 2008, at www.nfap.com/pdf/080311h1b.pdf (March 27, 2008).