

WebMemo



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Tackling Fraud in H-1B: Work Visas Need Sensible Oversight

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In September, USCIS released the “H-1B Benefit Fraud and Compliance Assessment,” where it found that 51 of the 246 sampled H-1B petitions (about 21 percent) were fraudulent. Some examples of fraud are petitions from businesses that do not exist, employers paying less than the required prevailing wage, or visa holders working a different job than what was stated in the petition.

H-1B visas allow U.S. employers to hire foreign workers for specific periods in certain specialty occupations. Ensuring the integrity of our visa programs is a critical aspect of reforming the existing legal avenues available to foreigners coming to the United States. Getting employers the workers they need to grow the economy while addressing legitimate security concerns and ensuring the integrity of the non-immigrant visa system is vital.

Congress and the Administration must work together to improve the management of the H-1B visa program and adopt reforms that will allow the program to better meet the nation’s workforce needs.

Finding and Fighting Fraud. The H-1B visa for highly skilled temporary workers is a very popular program for non-immigrant workers. Workers participating in the program can work only for a specific sponsoring employer. Terms of employment are limited to six years. For the past several years, the cap for H-1B visas has been 65,000 a year, and each year USCIS reaches the cap within days. This low cap is the biggest concern for the H-1B program. Businesses are finding it difficult to find enough Americans to fill certain jobs and have been

leaning on H-1B visas for help. However, with the low number of available visas, some companies have decided to open their doors in other countries. Microsoft, for example, has established facilities in Canada and Mexico, finding it easier to bring skilled workers there than to the United States.

Additionally, the low caps may actually be driving an increase in fraud as more employers and workers compete for the limited number of legitimate visas available. Though necessary, simply raising the cap will not eliminate fraud.

The Need for Internal Enforcement. The percentage of fraudulent petitions demonstrates the need for government to increase its oversight of visas. This should be done in a sensible way that does not jeopardize the ease for applicants to receive a visa.

Currently, employers file for a labor certification with the Department of Labor (DOL), followed by a petition for H-1B visas with USCIS. Once the petition is approved, the non-immigrant applies for a visa and begins his or her employment in the U.S.

This system’s major flaw is its heavy emphasis on verification during the application process, which is offset by the complete lack of oversight once a person has entered the country. This is concerning

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because most fraud does not become apparent until after the H-1B recipient has begun employment in the United States. That is, there is no way to check that the employee and employer are abiding by the rules, paying the prevailing wage, or working the job described in the petition and in the correct location until the employee has entered the U.S. and begun working.

The “H-1B Benefit Fraud and Compliance Assessment” report found that site visits were extremely effective in discovering fraudulent petitions. This, in addition to other measures, would greatly enhance the ability of the government to catch fraudulent cases and bar those employers from the program.

Promoting the Integrity of H-1B. While this program is necessary for many companies in the United States, if there is rampant fraud occurring, then major expansion cannot take place. The H-1B program is still one of the better visas available in the U.S. What it needs is proper oversight. To that end, Congress should take the following actions:

- **Increase oversight during the visa holder’s stay.** Government should maintain oversight of H-1B recipients during their employment in the U.S. Since most of the fraud becomes apparent only after the application process, there should be more effort to ensure that employers and employees are following the rules. This can be done by having random site visits of employers.
- **Create interoperable databases.** Catching fraudulent applications can also become much easier if both the DOL and the Department of Home-

land Security were able to share information about employers and H-1B recipients. Currently the departments are firewalled from viewing applications submitted to the other department, making it difficult to find inconsistencies in applications.

- **Create a voluntary exit system.** If either the visa recipient or his or her employer is willing to lie to have that person work in the U.S., there is no guarantee that the worker will leave once the visa has expired. Visa programs should require that employers post bonds to ensure that visa recipients leave the country prior to their visa expiration dates. Visa recipients should go through exit systems at certain points of entry to prove that they have left the country. If they do not exit prior to the expiration dates, they are no longer eligible for U.S. visas.

Helping Employers and Employees. Reforming the legal avenues available to foreign workers is a major factor in immigration reform. The government must find ways to make these programs legitimate and secure while meeting the needs of both employers and employees.

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