



# Gaming the System

## 2012

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Guest Worker Visa Programs and  
Professional and Technical  
Workers in the U.S.





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# **Gaming the System 2012**

## **Guest Worker Visa Programs and Professional and Technical Workers in the U.S.**

### **About the Department for Professional Employees, AFL-CIO**

The Department for Professional Employees, AFL-CIO (DPE) comprises 22 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.

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## Executive Summary

An array of skilled worker visas, including the H-1B, L, and J, is available to employers seeking guest workers. In FY2010 alone, over 350,000 guest worker visas, as well as OPT, were approved for employers hiring skilled workers. For the last 30 years, employers have expanded their access to guest workers through intense lobbying of Congress. This lobbying has created a system that largely benefits employers and harms workers.

Skilled visas are highly susceptible to fraud and abuse by unscrupulous employers. The victims are the foreign and domestic workers who are largely powerless against employers who created a system that favors their interests. Because powerful employers benefit from the system, Congress has been unwilling to work toward comprehensive immigration reform legislation that would curb employer abuses and protect workers.

Guest workers can find themselves in working conditions akin to indentured servitude. Workers hoping to be sponsored for permanent residency typically find themselves bound to one employer for the duration of the visa, which can be up to six years. However, the vast majority of visa holders will not be sponsored for permanent residency, because it would mean greater rights and protections for the workers. Guest workers who complain about their salaries or working conditions can be threatened with termination, which would require that they immediately leave the country.

U.S. citizens and permanent residents also have few protections against employers who game the system. In the vast majority of cases, employers are not required to determine if a qualified U.S. citizen or permanent resident is available for the job filled by the guest worker. U.S. workers can even be fired and replaced by guest workers. Employers actually have an incentive to hire guest workers because the required prevailing wage is below the market wage and in many cases there is no prevailing wage requirement. This system is unlike guest worker programs in other industrialized countries.

Comprehensive reform is imperative to protect workers and rein in employers. Unfortunately, instead of comprehensive reform, Congress regularly seeks to add on to the already broken visa system. Numerous legislative changes have been proposed in recent years, but they are largely designed to appease business interests who seek even more access to low-cost labor.

We can do better than piecemeal changes. We can have a skilled guest worker system that makes it easy for employers to bring in talented and highly skilled workers while not creating incentives to displace U.S. citizens and permanent residents. Fixing the system requires comprehensive reform, and most importantly the creation of an independent commission that would assess and manage future flows of labor.



## **CHAPTER 1: GUEST WORKER VISA PROGRAMS FOR SKILLED OCCUPATIONS**

A myriad of guest worker visas is available for employers who seek to hire skilled nonimmigrant workers, often referred to as guest workers. While there are over 20 different kinds of guest worker visas, the focus of this report is the H-1B, L-1, and J visas. The report will also discuss the B-1 visa, which is not a work visa, but increasingly used by employers as such.

This chapter provides an overview and history of the visas. Subsequent chapters explore how employers have been able to game skilled guest worker visa programs through the exploitation of guest workers and manipulation of regulations.

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### **H-1B Visas**

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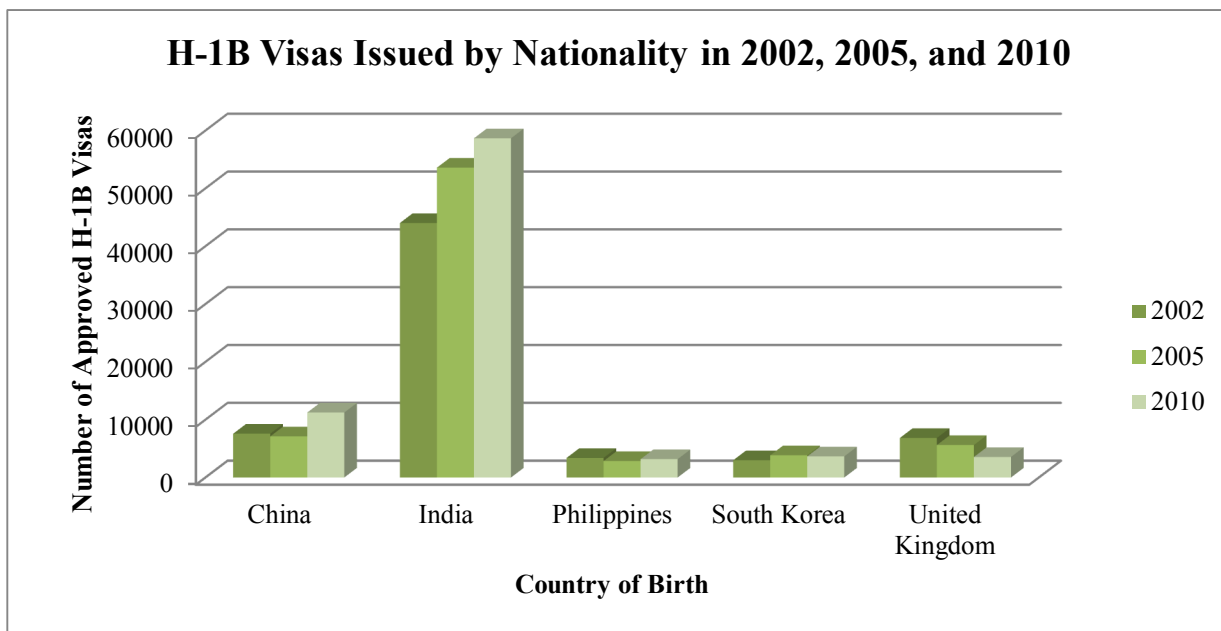
The H-1B visa is a nonimmigrant visa used by guest workers employed temporarily in a specialty occupation or field, defined by the U.S. Citizenship and Immigration Services (USCIS) as an occupation requiring the “theoretical and practical application of a body of specialized knowledge along with at least a bachelor’s degree or its equivalent.”<sup>1</sup> The H-1B visa is issued for up to three years but may be renewed for another three years.<sup>2</sup>

The number of H-1B visas is limited, although the cap has fluctuated throughout the program’s existence.<sup>3</sup> Today, the cap is set at 65,000 visas per fiscal year (FY)—for the U.S. government, October 1st to September 30th. H-1B applications are accepted starting in April of each FY. Yet, not all H-1B visa applicants are subject to this annual cap. An additional 20,000 visas are made available for employers to hire guest workers holding a Master’s degree or higher from a U.S. institution. Institutions of higher education, their affiliated non-profit entities, non-profit research organizations, and government research organizations have no limit on the number of H-1B visas they may use.<sup>4</sup> FY2010 saw a 10 percent reduction in the number of approved H-1B petitions, from 214,270 in FY2009 to 192,990.<sup>5</sup>

H-1B visas are intended to respond to employer needs; to obtain work, a guest worker must have an employer sponsor the visa application. Thus, under the H-1B and similar visas, skilled migrants have little power in the overall visa process and must rely on their potential employers, rather than being evaluated for a visa on the basis of their skills. If approved, the H-1B guest workers must remain in the employ of the employer, who actually holds the visa. Generally, if the H-1B employee’s employment is terminated, then they are out of status and must leave the U.S. This leaves the H-1B employee vulnerable to



employer abuse. Unlike most other industrialized countries, the U.S. does not have a skill-based points system for approving visas and evaluating applicants.<sup>6</sup>



Source: U.S. Department of State. Nonimmigrant Visa Statistics, Nonimmigrant Visa Issuances by Visa Class and Nationality, *FYs2010; 2005; and 2002 NIV Detail Table*.

When petitioning for an H-1B visa, an employer is only required to attest to the Department of Labor (DOL) that:

1. The employer will pay the prospective guest worker the prevailing wage;
2. The employer will provide working conditions for the guest worker which do not adversely affect other employees;
3. There is no strike or lock-out at its workplace; and
4. The bargaining representative in the occupation area in which the guest workers will be employed was notified when the Labor Condition Application was filed. If there is no bargaining representative, notice was posted in at least two noticeable locations.<sup>7</sup>

Employers categorized as H-1B dependent must adhere to additional DOL requirements. However, an employer is only classified as H-1B dependent if: 1) it has 25 or fewer full-time U.S. workers and employs more than seven H-1B workers; 2) has 26-50 full-time employees in the U.S. and employs more than 12 H-1B workers; or 3) has at least 51 U.S. workers and 15 percent of its workforce is H-1B workers.<sup>8</sup> Only H-1B dependent employers must attest that they attempted to recruit domestic workers and that they have not laid off, or displaced domestic workers in the 90 days prior to the application.<sup>9</sup>

The DOL is responsible for examining all employer applications and determining if they are accurate. If the employer fails to comply with DOL regulations, it is subject to fines or other penalties, and may be denied future H-1B visas. However, employers utilizing the H-1B visa program are not bound by any annual reporting requirements.<sup>10</sup>

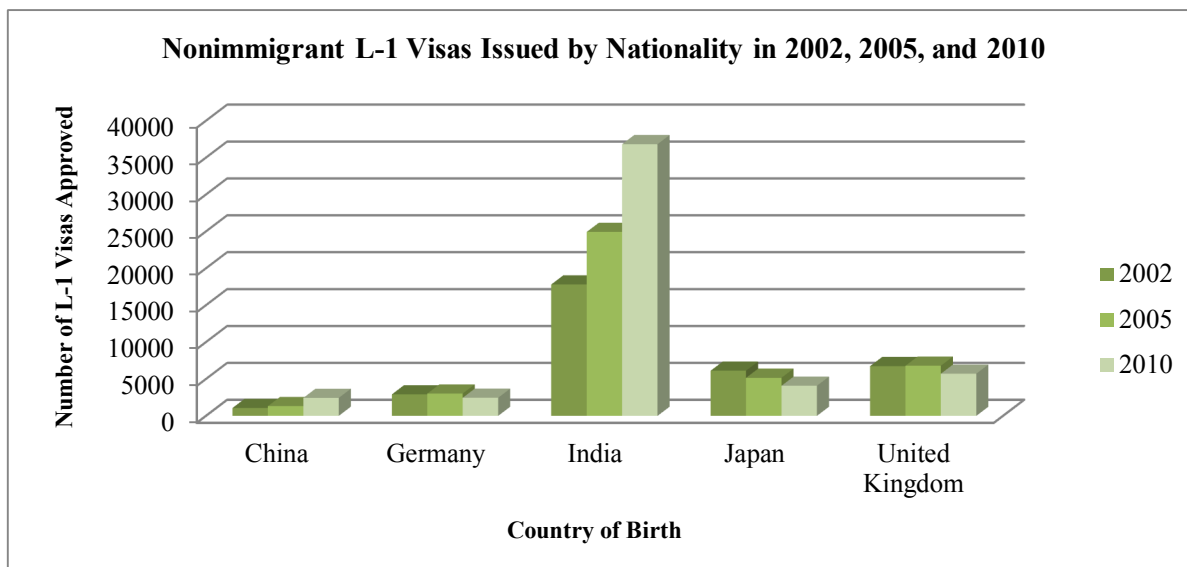
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## L Visas

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The L-1 visa is for intra-company transferees who, within the three preceding years, have been continuously employed abroad by a company for at least 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.

There are two types of L-1 visas. The L-1A visa is for persons employed at a managerial or executive level and is issued for a period of up to three years and renewable for a maximum of seven years. The L-1B visa is for intra-company transferees who have specialized knowledge in the field; it is issued for a period of up to three years and is renewable for up to five years. L-2 visas are issued to spouses of L-1 visa holders, allowing them to reside and work in the U.S. for the duration of the L-1 visa. There are no annual caps on L-1 or L-2 visas and there are no restrictions on the types of businesses that can sponsor an L visa, nor are employers required to pay the prevailing wage to L visa beneficiaries.<sup>11</sup>



Source: DOS. FY2010 NIV Detail Table; FY2005 NIV Detail Table; and FY2002 NIV Detail Table.

The standards for obtaining an L visa are so broadly defined that visa adjudicators feel compelled to approve the vast majority of petitions.<sup>12</sup> In recent years, the Department of State (DOS) has taken a harder look at L visa requests. In FY2010, the DOS denied

16,367 out of 91,086 L visa requests.<sup>13</sup> The DOS attributed the higher rate of denials to an increase in the number of unqualified applicants from India seeking admission on the basis of “specialized knowledge.”<sup>14</sup>

The DOS issued 143,950 L visas in 2010. Among those, 74,719 were L-1 visas and 69,233 were L-2 visas. While L-1 visas were issued in over 160 countries most of the visas, 36,821, went to workers born in India.<sup>15</sup> Other than the number of visas issued, there is little to no information about the workers, including where they work, how much they are paid, the type of work they perform, or their qualifications.

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## **B-1 Visas**

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The B-1 visa is designated the “temporary visitors for business” visa and is meant for business-related travel (i.e. conventions, conferences, consultations, training) to the U.S. Some business activity is acceptable—such as servicing non-U.S. machinery for a U.S. company—so long as the accrual of profit, if any, is in a foreign country. It explicitly does not permit local employment, or labor for hire.<sup>16</sup>

B visas are the most common nonimmigrant visas and are obtained by completing an application and interview at the prospective visitor’s local U.S. embassy. Employer sponsorship of the application is not required. Oftentimes, visitors come to the U.S. on a B-1/B-2 visa, which allows for both business-related travel and travel for “pleasure, tourism, or medical treatment.” In FY2010, the DOS issued 44,197 B-1 visas and 3,278,782 B-1/B-2 visas.<sup>17</sup> B visas may be issued for up to a maximum of six months and can be extended for another six months. There is no designated oversight for B visas, but the U.S. Department of Homeland Security is responsible for enforcing U.S. immigration laws.

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## **J Visas**

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The J-1 Exchange Visitor Program is a DOS initiative designed to “increase mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchange.” Through Fulbright scholarships, it facilitates the sharing of scientific and cultural knowledge by allowing non-U.S. citizens to study, research, and teach in the U.S. The visa also applies to an array of other exchange programs, and the vast majority of J visa holders participate in the workforce. In FY2009, the J visa allowed 1,224 teachers, 1,997 physicians, 40,492 university students, 26,509 secondary school students, 16,054 interns, 13,297 au pairs, and approximately 215,000 other international visitors to work in the U.S. for varying amounts of time, depending on the

specific exchange program. For example, primary and secondary school teachers may work for up to three years, while trainees and interns may remain for 12 or 18 months. The Summer Work Travel (SWT) program, the largest program covered by the J-1 visa, allows students to work (most likely in unskilled occupations but sometimes in skilled occupations as well) for four months and travel for a month.<sup>18</sup>

U.S.-based corporations, non-profits, local, state, and federal government agencies, and international organizations of which the U.S. is a member state may apply to become sponsors of exchange visitors; the DOS website currently lists over 3,000 sponsors. Unlike most other guest worker programs, which are overseen by the DOL or the USCIS, the Exchange Visitor program is monitored almost exclusively by the DOS. However, in the case of J-1 visas, administration of the program is often delegated to employer sponsors, making the J-1 visa recipients susceptible to abuse. In terms of annual admissions, the J-1 Visitor Exchange program is the largest U.S. guest worker program<sup>1</sup>, covering nearly 300,000 visitors in full and part-time positions.<sup>19</sup>

### Recent Trends: Nonimmigrant Visas Issued 2005-2010

Visa Approved	FY2005 <sup>20</sup>	FY2006 <sup>21</sup>	FY2007 <sup>22</sup>	FY2008 <sup>23</sup>	FY2009 <sup>24</sup>	FY2010 <sup>25</sup>	Top Country of Origin (FY2010) <sup>26</sup>
H-1B	267,131	270,981	281,444	276,252	214,270	192,990	India
L-1	65,458	72,613	84,532	84,078	64,696	74,719	India
B-1; B-1/B-2	2,762,117	3,110,088	3,380,263	3,537,912	2,966,629	3,278,782	China
J-1	275,161	309,951	343,946	359,447	313,597	320,805	China

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### Optional Practical Training (OPT)

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OPT offers students on F-1 visas to obtain temporary employment in their fields of study, for up to 12 months at each education level (i.e. 12 months for a bachelor’s degree and 12 months for a master’s degree). Under a new rule established in 2008, students working in Science, Technology, Engineering, or Mathematics (STEM) fields are eligible for a 17-month extension at the end of the initial 12-month period, with the option of later applying for an H-1B visa.<sup>27</sup> In 2008, U.S. Immigration and Customs Enforcement (ICE) estimated that approximately 12,000 students took advantage of the STEM extension. Approximately 70,000 students participated in OPT in 2008 and, of those, about 23,000 were studying in STEM fields.<sup>28</sup> ICE has not released any additional data on OPT utilization.

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<sup>1</sup> Recall that the B visa is a visitor visa, not a guest worker visa.

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## A Brief History of Guest Worker Visas

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Today's guest worker visa programs developed over time in response to varied lobbying efforts, legislative agendas, and employer demands, which have warped the original intentions of many of the visa programs. The Immigration and Nationality Act of 1952 created the H-1 visa program for "aliens of distinguished merit and ability."<sup>30</sup>

These visas were given to workers filling temporary high-skilled jobs, while maintaining residency in a foreign country. In 1970, Congress established the L visa, largely in response to unintended consequences stemming from the Immigration and Nationality Act of 1965, which made it more difficult for multinational corporations to transfer top-level personnel to offices in the U.S.<sup>31</sup> In the 1980s, lobbyists began to clamor for a

more open system for skilled migrants, as the National Science Foundation (NSF) predicted "looming shortfalls" of scientists and engineers, through a series of ultimately inaccurate studies.<sup>32</sup> Congress and the Federal Reserve Board became concerned that labor scarcity, particularly in computer-related fields, would slow the period of stable economic growth and took action to make it easier to employ guest workers.

Responding to these concerns, Congress split the H-1 visa program into two categories, establishing the H-1B category in its current form and the H-1A for nursing. The subsequent Immigration Act of 1990 established the H-1B visa program as it currently exists, designed to bring skilled guest workers to the U.S. on a temporary basis to fill "shortages" of qualified workers in critical fields. The Immigration Act of 1990 changed the language of the 1952 Act from a program for guest workers of "distinguished merit and ability" to those with "specialty occupations."<sup>33</sup>

Also as part of the 1990 Immigration Act, Congress made several additional changes to the L visa program, extending the time limits on L visas to allow managers and executives holding L visas to stay for up to seven years and those having specialized knowledge to stay for up to five years. The standard for receiving an L-1B visa was lowered from requiring the beneficiary to have an "advanced level of expertise and

**The "Best and Brightest" Myth:** Despite the claims from some tech CEOs and pro-tech industry think tanks, skilled worker visas generally do not bring in the "best and brightest." Dr. Norm Matloff has presented a series of regression analyses which demonstrate that H-1B beneficiaries are relatively similar to the U.S. workforce; some are brilliant, some average. He also found very little difference in the number of patents filed, articles published, or awards won, per capita, between H-1B workers and other workers. The H-1B is fundamentally about cheap labor; if H-1B workers were truly the best and brightest, then their wages would reflect that.<sup>29</sup>

proprietary knowledge not available in the United States labor market” to having just “specialized knowledge.”<sup>34</sup>

In response to increased demand from employers, Congress increased the H-1B cap in FYs 1999 – 2003 from 65,000 to a high of 195,000.<sup>35</sup> As economic growth, particularly in computer-related industries, slowed in the early 2000s, Congress let the cap revert to an annual allotment of 65,000 despite lobbying from business interests.<sup>36</sup> However, Congress began making exceptions to the H-1B cap, including exemptions in new trade agreements.<sup>37</sup> For example, the Visa Reform Act of 2004 allowed for an additional 20,000 visas for employers to employ graduates holding a master’s degree or higher from a U.S. university. The American Competitiveness in the Twenty-first Century Act of 2000 exempted institutions of higher education or a related nonprofit entity and nonprofit and governmental research organizations from the annual cap.<sup>38</sup> The 107<sup>th</sup> Congress allowed for working-age L-2 visa beneficiaries to work while they are in the U.S. with the L-1 visa beneficiary.<sup>39</sup>

Congress has attempted to put more controls on the visa programs. The Visa Reform Act required H-1B dependent employers to attest that no U.S. worker had been displaced, reinforced the DOL’s authority to investigate failures to meet specified labor conditions, and required the Secretary of Homeland Security to impose a fraud prevention and detection fee on H-1 and L visa petitioners to use in combating fraud and carrying out enforcement measures.<sup>40</sup>

Unlike the H-1B and L visas, which were originally designed for the employment of skilled guest workers, a number of other programs have evolved to cover skilled guest labor, in many cases subverting their original intent. J visa programs, B visas, and OPT are increasingly used by employers to circumvent immigration restrictions and reduce costs.

Today’s J visa programs have their roots in a scientific international exchange program enacted by Congress in 1939 to promote hemispheric cooperation with other American governments. In 1948, student exchange programs were expanded beyond the Americas and were broadened to include certain educational, cultural, and technical exchanges. The current J-1 Exchange Visitor Program was created under the Fulbright-Hays Act of 1961, as a formal diplomatic tool of the DOS. As such, the DOS has regulatory powers over the visa program and may develop ad hoc programs at will. For example, the current SWT program operated as a temporary work program for nearly 50 years without any specific congressional authorization, only receiving official recognition from Congress in a 1998 appropriations bill.<sup>41</sup>

OPT, intended to allow F-1 student visa holders to gain valuable experience in the labor force before returning home, is reportedly being used in many cases to circumvent the annual numerical limit on H-1Bs, especially in the STEM workforce. OPT visas were

extended to 29 months in 2008, without any oversight or approval from Congress. Obscure colleges that provide workers to outsourcing industries are among the largest beneficiaries of this extension. There is no wage floor for OPT and recipients may earn as little as 40 percent of what U.S. workers earn.<sup>42</sup>

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<sup>1</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services. *What is a Specialty Occupation?* Web. Mar. 6, 2012.

<sup>2</sup> United States Government Accountability Office. *H-1B Visa Program, Reforms Are Needed to Minimize the Risks and Costs of Current Program*. Washington: GAO, 2011, 5.

<sup>3</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services. *Characteristics of H-1B Specialty Occupation Workers, Fiscal Year 2010 Annual Report*. Washington: DHS, 2011, 2-4. Print.

<sup>4</sup> *Ibid.* 3-4.

<sup>5</sup> *Ibid.* ii.

<sup>6</sup> See Marshall, Ray. *Value-Added Immigration, Lessons for the United States from Canada, Australia, and the United Kingdom*. Washington: Economic Policy Institute. 2011.

<sup>7</sup> DHS, *Characteristics of Specialty Occupation Workers: Fiscal Year 2010*, 2.

<sup>8</sup> 8 USCS § 1182(n)(3) (2011).

<sup>9</sup> 8 USCS § 1182(n)(1) (2011).

<sup>10</sup> GAO. *H-1B Visa Program, Reforms Are Needed to Minimize the Risks and Costs of Current Program*. 47-49.

<sup>11</sup> U.S. Department of State, Bureau of Consular Affairs. *Temporary Worker Visas*, 2011. Web; Hira, Ron. *The H-1B and L-1 Visa Programs Out of Control*. Washington: Economic Policy Institute. 2010, 1. Print.

<sup>12</sup> Wasem, Ruth Ellen. United States. Congressional Research Service. *Immigration Policy for Intracompany Transfers (L Visa): Issues and Legislation*. Washington: The Library of Congress, 2006. Print.

<sup>13</sup> U.S. Department of State. *Nonimmigrant Visa Statistics: NIV Workload by Visa Category FY2010*. Web. March 6, 2012.

<sup>14</sup> National Foundation for American Policy, *L-1 Visa Approvals Decline Significantly at U.S. Posts in India in 2011*. NFAP Policy Brief. 2011.

<sup>15</sup> U.S. Department of State. *Nonimmigrant Visa Statistics: Nonimmigrant Visa Statistics: Nonimmigrant Visa Issuances by Visa Class and by Nationality FY 2010*. Web. March 6, 2012.

<sup>16</sup> U.S. Department of State, "Visitor Visas: Business and Pleasure." Web. March 6, 2012.

<sup>17</sup> DOS. *Nonimmigrant Visa Statistics: Nonimmigrant Visa Issuances by Visa Class and by Nationality FY 2010*.

<sup>18</sup> Costa, Daniel. EPI Briefing Paper: *Guest Worker Diplomacy: J Visas Receive Minimal Oversight Despite Significant Implications for the U.S. Labor Market*. Washington: Economic Policy Institute. 2011; U.S. Department of State, Bureau of Consular Affairs, "Exchange Visitor Visas," 2011. Web.

<sup>19</sup> *Ibid.*

<sup>20</sup> U.S. Department of State. *Nonimmigrant Visa Statistics: NIV Workload by Visa Category FY-2005*; U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services. *Characteristics of H-1B Specialty Occupation Workers, Fiscal Year 2006 Annual Report*. Washington: DHS, 2006, 11-12. Print.

<sup>21</sup> U.S. Department of State. *Nonimmigrant Visa Statistics: NIV Workload by Visa Category FY-2006*; U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services. *Characteristics of H-1B Specialty Occupation Workers, Fiscal Year 2007 Annual Report*. Washington: DHS, 2007, 11-12. Print.

<sup>22</sup> U.S. Department of State. *Nonimmigrant Visa Statistics: NIV Workload by Visa Category FY-2007*; U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services. *Characteristics of H-1B Specialty Occupation Workers, Fiscal Year 2008 Annual Report*. Washington: DHS, 2008, 11-12. Print.

<sup>23</sup> U.S. Department of State. *Nonimmigrant Visa Statistics: NIV Workload by Visa Category FY-2008*; U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services. *Characteristics of H-1B Specialty Occupation Workers, Fiscal Year 2008 Annual Report*. Washington: DHS, 2009, 11-12. Print.

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- <sup>24</sup> U.S. Department of State. *Nonimmigrant Visa Statistics: NIV Workload by Visa Category FY-2009*; U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services. *Characteristics of H-1B Specialty Occupation Workers, Fiscal Year 2009 Annual Report*. Washington: DHS, 2010, 11-12. Print.
- <sup>25</sup> U.S. Department of State. *Nonimmigrant Visa Statistics: NIV Workload by Visa Category FY-2010*; DHS. *Characteristics of H-1B Specialty Occupation Workers, Fiscal Year 2010 Annual Report*, 11-12.
- <sup>26</sup> U.S. Department of State. *Nonimmigrant Visas Issued FY 2010*, Table XVII (Part I).
- <sup>27</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement. *Practical Training*. Web. March 6, 2012.
- <sup>28</sup> U.S. Department of Homeland Security, U.S. Citizen and Immigration Services. *Questions and Answers: Extension of Optional Practical Training Program for Qualified Students*. 2008. Web.
- <sup>29</sup> Matloff, Norm. *How Widespread is the Use of the H-1B Visa for Reducing Labor Costs?* ISIM Conference on Dynamics of the S&E Labor Market. Georgetown University. Washington. July 11, 2011. Lecture.
- <sup>30</sup> Immigration and Nationality Act, 1952, Vol. 66, 82nd Cong., p. 163-282.
- <sup>31</sup> Wasem. *Immigration Policy for Intracompany Transfers (L Visa): Issues and Legislation*. 1
- <sup>32</sup> Toppo, Gregg and Dan Vergano. "Scientist Shortage? Maybe Not," *USA Today*, July 9, 2009. Web. March 6, 2012.
- <sup>33</sup> Government Accountability Office, *H-1B Visa Program: Labor Could Improve Its Oversight and Increase Information Sharing with Homeland Security*. Washington: GAO, 2006. 5.
- <sup>34</sup> Department of Homeland Security, Office of Inspector General. *Review of Vulnerabilities and Potential Abuses of the L-1 Visa Program*. Washington: DHS, 2006; Wasem. *Immigration Policy for Intracompany Transfers (L Visa): Issues and Legislation*.
- <sup>35</sup> Wasem, Ruth Ellen, Congressional Research Service. *Immigration: Legislative Issues on Nonimmigrant Professional Specialty (H-1B) Workers*. Washington: CRS, 2007. 1; DHS. *Characteristics of H-1B Specialty Occupation Workers, Fiscal Year 2010 Annual Report*, 3-4.
- <sup>36</sup> Wasem. *Immigration: Legislative Issues on Nonimmigrant Professional Specialty (H-1B) Workers*., 1.
- <sup>37</sup> Hira, Ron. *Bridge to Immigration or Cheap Labor? The H-1B & L-1 Visa Programs Are a Source of Both*. Economic Policy Institute, 2010, 12. Print.
- <sup>38</sup> DHS, *Characteristics of H-1B Specialty Occupation Workers, Fiscal Year 2010 Annual Report*, 3-4.
- <sup>39</sup> Wasem. *Immigration Policy for Intracompany Transfers (L Visa): Issues and Legislation*. 2
- <sup>40</sup> Ibid. 18.
- <sup>41</sup> Costa. *Guest Worker Diplomacy: J Visas Receive Minimal Oversight Despite Significant Implications for the U.S. Labor Market*. 3-5.
- <sup>42</sup> Hira, Ron. "H-1B Visas: Designing a Program to Meet the Needs of the U.S. Economy and U.S. Workers." Subcommittee on Immigration Policy and Enforcement. 2141 Rayburn House Office Building, Washington. March 31, 2011. Testimony.



## **CHAPTER 2: PROBLEMS WITH GUEST WORKER VISAS**

According to former Secretary of Labor Ray Marshall, the current system of employment-based immigration is “rigid, cumbersome, and inefficient; [does] too little to protect the wages and working conditions of workers (foreign or domestic); [does] not respond very well to employers’ needs; and give[s] almost no attention to adapting the number and characteristics of guest workers to domestic labor shortages.”<sup>1</sup> Indeed, while many business interests argue that specialty guest worker programs allow U.S. firms to remain “innovative,” and recruit and retain the “best and the brightest,” the U.S. system, unlike Canada, Australia, and many other nations in Europe and Asia, does not have a skill-based points system or other means of assessing the abilities of visa candidates.<sup>2</sup>

This chapter will explore general critiques of U.S. guest worker visa programs. It will begin with a discussion of the lack of oversight and enforcement in guest worker programs; it will then identify problems with Congress’s role in guest worker programs. The chapter will conclude by outlining numerous regulatory loopholes and problems with fraud that plague guest worker visas and threaten the domestic workforce.

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### **Lack of Oversight and Enforcement of Guest Worker Programs**

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Skilled guest worker programs are disorganized and lack sufficient protections for domestic and foreign labor. In January 2011, the Government Accountability Office (GAO) issued the report, “H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program,” which identified numerous shortcomings, including poor fraud and abuse controls and limited qualification standards for guest workers. The GAO also found that data systems among the various agencies that process guest workers are not linked, so workers cannot readily be tracked. In particular, H-1B workers are not assigned a unique identifier that would allow for tracking them over time.<sup>3</sup> The GAO’s critiques could reasonably be extended to all visa categories mentioned in Chapter 1, as oversight of these programs is lacking as well. In fact, the limited worker protections mandated in the H-1B program do not apply to L and J visas.

A further look at the lack of coordination among the government bodies responsible for the administration and enforcement of guest worker programs reveals the ineffective and meek regulatory framework of U.S. specialty-visa programs.

#### *H-1B*

There are several U.S. government agencies charged with issuing and monitoring H-1B visas, including the Department of Homeland Security (DHS), DOS, and DOL.

The DHS role is to review the H-1B petition materials (the Labor Condition Application (LCA) and I-129) to check for inconsistencies. However, DHS does not receive reports of problems or concerns from DOL, because DOL, according to the GAO, “does not have a formal mechanism for sharing such information with DHS.”<sup>4</sup>

The DOS interviews and may approve H-1B visas when the visa beneficiary is living outside of the U.S. at the time of application. By the time the DOS gets involved in the process, the LCA and I-129 have already been filed and completed. The DOS gives great deference to the decision by DHS to approve or deny the visa application. The DOS will only investigate the application further if there has been a clear error or new evidence.<sup>7</sup>

**The process for obtaining an H-1B visa is especially convoluted.** An employer (often represented by a recruitment firm) interested in hiring a worker on an H-1B visa must first file a LCA with the DOL, pledging to fulfill defined workplace protection obligations. If the LCA is approved by the DOL, a certified copy will be sent to the employer, who then must file an I-129 petition for an H-1B visa through USCIS. If the prospective employee is outside the United States, the DOS must also be notified via the appropriate consulate. After approval, ICE is responsible for the maintenance of the H-1B visa.<sup>6</sup>

The DOL is charged with monitoring wage and hour violations and notification requirements. However, DOL has never initiated an investigation of an H-1B wage and hour violation. Investigations have only been initiated when there was a complaint from an aggrieved or credible party outside of DOL.<sup>8</sup> DOL will not initiate an investigation based upon independently obtained evidence, nor will it conduct an investigation based on evidence received from DHS.<sup>9</sup> This leaves DOL to rely upon complaints from H-1B guest workers, who are less likely to come forward with complaints knowing that they and their co-workers could lose their jobs if their employer is barred from the H-1B program.<sup>10</sup>

The GAO report also noted numerous barriers to effective DOL monitoring of H-1B employers, including the Department’s inability to access data from LCAs, its lack of subpoena power, and an absence of effective tools to compel employer cooperation. Despite these limitations, in 2009 there were

**The I-129** is a petition for non-immigrant workers that employers must send to USCIS and, in some cases, the DOS to be processed and checked for accuracy. It is a request that a worker be permitted to come to the U.S. to perform services or labor, or to receive training. The I-129 also used to request an extension of stay or change of status for a guest worker. For H-1B applicants, the I-129 requires detailed information about the domestic employer and employment, as well as details about the beneficiary’s present occupation and prior work experience.<sup>5</sup>

555 complaints that resulted in investigations and \$11 million in back wages awarded.<sup>11</sup> Tellingly, DOL’s own Inspector General has called the Department’s oversight of the H-1B a “rubber stamp.”<sup>12</sup>

Overall, the GAO found that the H-1B program lacks legal provisions for holding employers accountable to program requirements, particularly when they obtain H-1B workers through a staffing company.<sup>13</sup>

### *L Visa*

The L visa has numerous shortcomings. Little is known about L visa beneficiaries and they have very few workplace protections. There is no limit on the number of L visas that can be issued and DHS does not track of the total number of L-1 and L-2 visa beneficiaries working in the U.S. This makes it impossible to assess the impact of L visas on the U.S. workforce. Under the program, there are very few protections for domestic and foreign labor. A labor market test is not required and there is no wage floor. This is especially troubling since nearly 50 percent of L-1 visas went to workers from India where the average wage for professional workers is approximately 80 percent less than the average wage for a comparable U.S. worker.<sup>14</sup>

The effects of L visa holders on the U.S. labor market are unknown, since there are virtually no reporting requirements. The evidence suggests that employers are using the L visa to bring in low-cost personnel rather than executive-level professionals. According to the Economic Policy Institute, the lack of constraints, coupled with the fact that the number of L-1 visas rose 53 percent from 2000 to 2009, suggests that the program is being misused.<sup>15</sup>

DHS, which is charged with overseeing the program, has done little to rein it in. A DHS report identified numerous vulnerabilities and ongoing abuses of the L visa.<sup>16</sup> A report by the Department of Homeland Security, Office of Inspector General in January 2006 found “[t]hat so many foreign workers seem to qualify as possessing specialized knowledge [under the L-1B that it] appears to have led to the displacement of American workers.”<sup>17</sup>

### *J Visa*

The DOS role in managing the J visa has been heavily criticized. While the J visa, as mentioned, has a significant impact on the labor market, the DOL has no oversight of the program, nor does USCIS. The DOS has outsourced compliance monitoring of program rules and oversight of program performance to program sponsors and employers, who cannot be expected to report violations and jeopardize their own financial interests. Besides this obvious conflict of interest, the DOS’s own internal review from the Office of the Inspector General concluded that the agency “cannot effectively oversee the Exchange Visitor Program” and “lax

monitoring . . . has created an atmosphere in which the program regulations can easily be ignored and abused.” The DOS’s sanctions are generally weak, with the most severe being a revocation of sponsor designation.<sup>18</sup>

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## **The Problematic Role of Congress in Managing Guest Worker Programs**

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As Congress manages the allotment of guest worker visas and develops the statutory framework for immigration law, the process of managing guest worker programs is inherently political. Lobbying efforts by powerful special interests shape Congress’s decisions regarding visa caps and worker protections. Consequently, there are no caps on L, B, or J visas, and H-1B caps have fluctuated throughout the program’s history and have many exemptions. The GAO has found that statutory changes made to the H-1B have increased the pool of H-1B workers well beyond the cap and lowered the bar for eligibility.<sup>19</sup> In fact, after including the number of exemptions mentioned in Chapter 1, the number of H-1Bs granted in FY2010 amounted to 192,990.<sup>20</sup>

The disordered nature of U.S. government oversight of these programs represents another congressional shortcoming. Congress has not exercised its ability to reshape these programs in any meaningful way or streamline oversight and enforcement. In the case of the J-1 visa, Congress, in the Fulbright-Hays Act of 1961, designated the J-1 a formal diplomatic tool of the DOS. As such, the DOS, which has little experience managing guest worker programs, may develop ad hoc programs at will, with little outside governmental oversight. The current SWT program operated as a temporary work program for nearly 50 years without any specific congressional authorization.<sup>21</sup>

Congress must be cautious when amending statutes and eliminating visas, as the U.S. has tied specialty visa allotments to various trade agreements. For example, the U.S. has two free-trade agreements, with Chile and Singapore, with guest worker visa provisions providing for 6,800 visas under the H-1B program each fiscal year (designated as H-1B1 visas). U.S. participation in the World Trade Organization (WTO) also allows for international scrutiny into domestic immigration policy if another member country claims discriminatory treatment.<sup>22</sup> In 2011, India sent informal written communication to the U.S., claiming that the 2006 hike in security fees for H-1B and L visas violated U.S. obligations under the General Agreement on Trade in Services, the services treaty under the WTO, as it unfairly targeted Indian companies. The statute, enacted in 2005, imposes a \$2,000 fee on all companies in the U.S. with more than half of their employees covered by guest worker visas. It mainly affects Indian IT companies like Infosys and Wipro which are expected to pay \$200 million annually under the rule.<sup>23</sup> While India has not formally taken the U.S. to the WTO over the issue, the dispute highlights the complex political economy of guest worker visas.

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## Fraud and Regulatory Loopholes in Guest Worker Programs

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Guest worker programs are rife with fraud. A 2008 study conducted by the USCIS found that 13 percent of H-1B petitions filed by employers were fraudulent and another seven percent had some form of violation.<sup>24</sup> According to another report drafted by the USCIS Office of Fraud Detection and National Security, an estimated 21 percent of H-1B visa petitions violate H-1B regulations, including prevailing wage requirements, non-existent job locations, fraudulent and forged documents, and applications filed by non-existent businesses.<sup>25</sup> Of the cases showing a violation, the USCIS found:

- In 27 percent, the employer was not paying the visa beneficiary the prevailing wage according to H-1B regulations;
- In 20 percent, the government found fake degrees, forged signatures and documents, and documents that misrepresented the eligibility of the visa worker;
- In 14 percent, the business filing for H-1B petitions did not exist, could not support the number of employees it claimed, or did not intend to fill a job with a visa worker; and
- In 51 of the cases where violations were present, the government office conducted site visits and found that in 55 percent of these cases the visa recipient was no longer working or had never worked at the site identified in the visa application.<sup>26</sup>

The H-1B is not the only guest worker visa program with problems of employer fraud; other guest worker visa programs are being misused as well. However, many of the problems with guest worker visas, in fact, are inherent to the system in the form of regulatory loopholes. The remainder of this section will outline some of the most damaging loopholes in these programs and some emblematic cases of fraud and abuse, which underscore the failures that allow employers to game the system (for more industry-specific cases, see Chapters 3 and 4).

### *Wage Manipulation and Wage Depression through Regulatory Loopholes*

There is little evidence to show that guest worker visa programs are primarily used to recruit and retain the world's best and brightest workers. In fact, the evidence suggests that guest worker programs are used to hire mostly entry-level workers who are paid below market wages. This manipulates and depresses wages across industries.

In FY2010, 54 percent of H-1B visas were issued for entry-level positions. According to the GAO, these positions require guest workers to have a basic understanding of duties and perform routine tasks requiring limited judgment. Only six percent of H-1B visas were for guest workers in the top pay grade, which requires experience and a high level of independent judgment.<sup>27</sup>

Dr. Norm Matloff of the University of California, Davis attributes the bulk of H-1B abuse to regulatory loopholes and not outright violations of the law. He holds that the program is fundamentally about cheap labor, rather than a program to import skilled labor to fill shortages or create growth, as employers often claim.<sup>29</sup> Because the prevailing wage is defined in terms of the job and not the worker, it does not reflect the true market wage. As such, there are generally two ways in which employers *legally* reduce labor costs with the H-1B:

- Paying guest workers less than their skills and experience would normally command and instead classifying them as inexperienced, entry-level workers; or
- Hiring younger guest workers in lieu of older (over 35) U.S. citizens and permanent residents and, thus, saving on benefits and experience pay.

**The “Prevailing Wage:”** One area ripe for reform is the prevailing wage. While there is no prevailing wage requirement for L or J visas, the H-1B program requires employers to pay the prevailing wage or the actual wage paid to workers with similar qualifications. However, the prevailing wage is generally well below the market wage, as the statute defines prevailing wages in terms of the *job* not in terms of the *worker*. Specific skills that command a premium on the open labor market are obscured by broad occupational categories. Any skill sets, or qualifications not explicitly related to the requirements of a job—a Master’s degree, years of experience, technical knowledge, etc.—are not considered, allowing for employers to hire highly-skilled workers for a lower cost.<sup>28</sup>

Without a labor market test, most employers are free to use guest worker visa programs to lower their labor costs and displace U.S. citizens and permanent residents.<sup>30</sup> STEM employers, in particular, are guilty of worker displacement and have successfully depressed wages in many industries (see Chapter 3).

The statutory framework of the L-1 visa also legally drives down wages. Like the H-1B, the L-1 does not require a labor market test and employers can bypass U.S. workers when recruiting for open positions and even outright replace existing workers with L-1 guest workers. Unlike the H-1B, the L-1 has no wage requirements, making it even easier for employers to utilize cheap labor.<sup>31</sup> Also, basic data about the L-1 is missing, which makes wage manipulation and depression harder to track. For instance, specific wage data on L visa beneficiaries (from I-129 petitions) is not available, nor are the education levels of beneficiaries.

### *Legal “Indentured Servitude”*

Another major regulatory flaw with employment-based visas is that they are held by the employer, rather than the worker. This makes it easier to abuse guest workers and keep them in

exploitive working conditions. L-1 guest workers cannot switch jobs and only the employer has the right to apply for permanent residence on behalf of L-1 workers.<sup>32</sup> H-1B guest workers may switch jobs without changing visa status, but the process is complex.<sup>33</sup> Guest workers can lose their legal status and be forced to return to their home country if they are fired by their employer, effectively casting them as vulnerable “at-will” employees. Unethical employers hold the threat of termination over the H-1B and L guest workers as leverage, making the power dynamic between the worker and employer vastly unequal. Indeed, David Finegold of Rutgers University has compared H-1B and L-1 employees to “modern indentured servants,” as they are tied to a particular employer, have few bargaining rights, and are paid an artificially low wage.<sup>34</sup>

In the case of recruiting companies, they are often given the power to terminate an employee. 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 stipulated that if VIF terminates a teacher’s employment, the teacher’s visa will be terminated as well. Moreover, it stipulated that “VIF may terminate teacher’s visa at any time for any or no reason and without notice.”<sup>35</sup>

J visa guest workers are subject to this abuse as well. Recently, the *New York Times* reported that a group of visa holders under the SWT program organized a strike against a Hershey packing plant, which was forcing them to work long hours and lift boxes weighing up to 60 pounds. The students paid between \$3,000 and \$6,000 to come to the U.S. and received between \$1 and \$3.50 per hour after the cost of housing and transportation was deducted from their checks. After receiving complaints, the contractor running the program through the DOS threatened the students that they could be sent home. As many as 130,000 students participate in the SWT program.<sup>36</sup>

### *Social Security Number Fraud*

Instances of fraud are often not limited to visa sponsors, or staffing agencies. The Social Security Administration (SSA), in a September 2011 report on H-1B workers’ use of Social Security numbers (SSN), estimated that about 18 percent of H-1B workers to whom the SSA assigned numbers in 2007 may have used their SSNs for purposes other than work for their approved employer. This supports the argument that many H-1B visa beneficiaries are underpaid, because they are seeking additional employment. The report found that in some cases, H-1B beneficiaries sought additional work; in others, it resulted from unapproved transfers. Some of the employers contacted by the SSA reported that the beneficiary never worked for the organization and, in some cases, wages were never reported for H-1B beneficiaries by any employer. The report concluded that there is a need for a data match

agreement between the SSA and DHS to ensure that SSN integrity is not weakened, although the SSA ultimately rejected the contention that SSN integrity was weakened.<sup>37</sup>

### *Fraud Targets the Vulnerable Abroad*

Recent cases of fraud demonstrate that loopholes in our current guest worker visa programs leave a vulnerable international population susceptible to abuse. Con artists in the U.S. and abroad capitalize on the well-known laxity of U.S. guest worker programs. For example, a recent diplomatic leak released by WikiLeaks indicates that embassies abroad complain of “persistent fraud problems” with H-1B and L-1 visas. In Libya, it was reported that a man presented fake documents to the embassy, after paying a large sum for them online, believing that to be the process for obtaining a work visa in the U.S. In Mexico, it was reported that applicants frequently overstated qualifications, presented false pay receipts, or set up shell companies in the U.S. in an effort to bolster their applications. In Iceland, the embassy reported that immigration attorneys were attempting to fly in H-1B and L-1 applicants for the sole purpose of applying for visas from Iceland, in expectation that they would be issued more readily.<sup>38</sup>

Domestically, third parties have conned eager guest workers as well. Tri-Valley University was recently shut down by U.S. authorities after it came to light that the one-building University was serving as a diploma mill to an estimated 1,500 international students, mostly from India. The school had a “well-earned” reputation for offering OPT from day one, allowing students to bypass the visa process and directly enter into the job market. The students, many, no doubt, unaware of the illegality of the school’s practices, were faced with serious financial loss, a loss of credits, and even deportation.<sup>39</sup>

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<sup>1</sup> Marshall, Ray. *Immigration for Shared Prosperity—A Framework for Comprehensive Reform*, Washington: Economic Policy Institute, 2009, 1. Print.

<sup>2</sup> For an example of this argument in the public sphere, see: McDougall, Paul. “NYC Mayor: U.S. Needs More Foreign Tech Talent,” *InformationWeek*, October 10, 2011; Goldfarb, Sam. “Immigration Cap is Taking Best, Brightest? Gates Says,” *Seattle Times*, March 8, 2007. Web.

<sup>3</sup> United States. Government Accountability Office. *H-1B Visa Program, Reforms Are Needed to Minimize the Risks and Costs of Current Program*. Washington: DHS, 2011. Print.

<sup>4</sup> Ibid. 46.

<sup>5</sup> See: U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *I-129, Petition for a Non-immigrant Worker*. Web. <<http://www.uscis.gov/files/form/i-129.pdf>>.

<sup>6</sup> U.S. Department of Labor, Employment and Training Administration, *H-1B, H-1B1 and E-3 Specialty (Professional) Workers*. Web. <http://www.foreignlaborcert.doleta.gov/h-1b.cfm>.

<sup>7</sup> GAO, *H-1B Visa Program, Reforms Are Needed to Minimize the Risks and Costs of Current Program*. 46-47.

<sup>8</sup> Ibid. 47.

<sup>9</sup> Ibid. 47.

<sup>10</sup> Ibid. 48.



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- <sup>11</sup> Ibid. 48-49.
- <sup>12</sup> Hira, Ron. "H-1B Visas: Designing a Program to Meet the Needs of the U.S. Economy and U.S. Workers." Subcommittee on Immigration Policy and Enforcement. 2141 Rayburn House Office Building, Washington. March 31, 2011. Testimony.
- <sup>13</sup> GAO. *H-1B Visa Program, Reforms Are Needed to Minimize the Risks and Costs of Current Program*.
- <sup>14</sup> "IT sector to get 12% avg salary hike in 2011." *Times of India* [NEW DELHI] 08 Mar 2011. Web. Mar. 7, 2012.
- <sup>15</sup> Press Release. *L-1 visa program provides no protections for American workers*. Economic Policy Institute, August 13, 2010. For full report, see: Costa, Daniel, "Abuses in the L-Visa Program." Washington: Economic Policy Institute, August 13, 2010.
- <sup>16</sup> Department of Homeland Security, Office of Inspector General. *Review of Vulnerabilities and Potential Abuses of the L-1 Visa Program*. Washington: DHS, 2006.
- <sup>17</sup> Ibid, 9.
- <sup>18</sup> Costa, Daniel. *Guest Worker Diplomacy: J Visas Receive Minimal Oversight Despite Significant Implications for the U.S. Labor Market*. Washington: Economic Policy Institute, 2011. 2; 9; 16.
- <sup>19</sup> GAO. *H-1B Visa Program, Reforms Are Needed to Minimize the Risks and Costs of Current Program*. 2.
- <sup>20</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services. *Characteristics of H-1B Specialty Occupation Workers, Fiscal Year 2010 Annual Report*. Washington: DHS, 2011, 2-4. Print.
- <sup>21</sup> Costa, *Guest Worker Diplomacy: J Visas Receive Minimal Oversight Despite Significant Implications for the U.S. Labor Market*. 3-5.
- <sup>22</sup> Hira, Ron. *Bridge to Immigration or Cheap Labor? The H-1B & L-1 Visa Programs Are a Source of Both*. Economic Policy Institute, 2010, 12. Print.
- <sup>23</sup> Amiti Sen. "H1B, L1 visa fee hike violates WTO rules: India to US." *Economic Times*, March 26, 2011. Web. March 6, 2012.
- <sup>24</sup> Herbst, Moira. "High Rate of H-1B Visa Fraud." *Businessweek*, October 8, 2008. Web. March 6, 2012.
- <sup>25</sup> Weier, Mary Hayes, "Government Study Finds 21 percent of H-1B Applicants Violate the Rules." *Information Week*, October 20, 2008. Web. March 6, 2012.
- <sup>26</sup> Ibid.
- <sup>27</sup> GAO. *H-1B Visa Program, Reforms Are Needed to Minimize the Risks and Costs of Current Program*. 58.
- <sup>28</sup> Matloff, Norm. *How Widespread is the Use of the H-1B Visa for Reducing Labor Costs?* ISIM Conference on Dynamics of the S&E Labor Market. Georgetown University. Washington. July 11, 2011. Lecture.
- <sup>29</sup> Matloff, Norm. *H-1B Reform: Fix the Real Problems, Instead of Scapegoating the Indians*. The Changing Face of Immigration. UC Berkeley. Berkeley. November 16, 2011. Presentation. For PowerPoint slides, see:
- <sup>30</sup> Matloff. *H-1B Reform: Fix the Real Problems, Instead of Scapegoating the Indians*; Matloff. *How Widespread is the Use of the H-1B Visa for Reducing Labor Costs?*
- <sup>31</sup> Hira, Ron. *The H-1B and L-1 Visa Programs: Out of Control*. Washington: Economic Policy Institute, 2010, 1-2.
- <sup>32</sup> Costa. *Abuses in the L-visa Program*.
- <sup>33</sup> For an overview of the process, see the guest worker visa facilitation website H1 Base: <<http://www.h1base.com/visa/work/H1B%20Visa%20Transfer%20To%20A%20New%20Employer/ref/1169/>>.
- <sup>34</sup> Finegold, David. *Modern Indentured Servants*. Rutgers School of Management and Labor Relations. N.p., June 22, 2011. Web. Mar. 6, 2012.
- <sup>35</sup> Barber, Randy. *Report to the National Education Association on the Trends in Foreign Teacher Recruitment*. National Education Association and the Center for Economic Organizing, 2003. 15.
- <sup>36</sup> Preston, Julia. "Pleas Unheeded as Students' U.S. Jobs Soured," *New York Times*, October 16, 2011; Jennifer Gordon, "America's Sweatshop Diplomacy," *New York Times*, August 24, 2011.
- <sup>37</sup> Social Security Administration, Office of Inspector General. *H-1B Workers' use of Social Security Numbers*. SSA, 2011.
- <sup>38</sup> Thibodeau, Patrick. "WikiLeaks cables describe H-1B fraud attempts," *Computer World*, April; 18, 2011.
- <sup>39</sup> Rajghatta, Chidanand. "Duped Indian Students Ignored Red Flags," *The Times of India*, January 31, 2011.

## **CHAPTER 3: GUEST WORKER VISAS AND THE STEM WORKFORCE**

Science, technology, engineering, and mathematics (STEM) employers have come to dominate usage of H-1B and L visas, consistently using the majority of both visas every year. This dependence on temporary worker visas has led employers to justify their use by claiming there are domestic labor shortages and a skills gap. Employers gloss over the numerous shortcomings of temporary workers programs—absence of visa portability, wage suppression, absence of a labor market test, and inadequate wage standards—because the shortcomings benefit employers and harm workers.

This chapter will explore the extent of STEM industry use of guest worker visas and how the industry shaped visa programs through misleading labor shortage claims. It will then challenge the industry’s manufactured claims of labor market shortages through an analysis of supply and demand factors in the labor market. To conclude, it will demonstrate how guest worker visas suppress wages in the industry and highlight some ways in which employers “game the system.”

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### **STEM Industry Use of Guest Worker Visa Programs**

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#### *Background: The STEM Lobby’s Role in Crafting Guest Worker Visas*

Powerful interests in STEM fields have a strong incentive to preserve guest worker visa programs. Guest worker visa programs give employers access to a sizeable global workforce where the annual starting salaries are much lower than in the U.S. For example, in India a starting salary for an engineer averages \$10,000 per year.<sup>2</sup>

Microsoft has a long history of filling its ranks with temporary workers. Formerly it hired temporary domestic workers, but Microsoft started to look abroad after those workers sought greater rights.<sup>1</sup>

The STEM lobby had a crucial role in shaping the H-1B program by loudly echoing industry claims that visas were needed to fill vacancies not being filled by the domestic workforce. Throughout the 1980s, the National Science Foundation (NSF) predicted “looming shortfalls” of U.S. scientists and engineers. In 1990, the H-1B visa program was developed from the longstanding H-1 visa program to address the STEM industry’s purported employment needs. Also that year, time limits for the L visa were extended and the eligibility standard for receiving an H-1B was lowered to having just “specialized knowledge.”<sup>3</sup>

Fears of a skilled labor shortage continued through the 1990s, as the tech industry boomed and unemployment remained low. Numerous reports issued warnings about potential labor shortages slowing economic growth. In 1996, high-tech companies established the lobbying group, “American Business for Legal Immigration” (now known as “Compete America”) to push their pro-H-1B agenda. Compete America and other business interests used Information Technology Association of America (ITAA) (now known as “TechAmerica”) reports to claim mass shortages of IT workers and push for an increase in the H-1B cap.<sup>5</sup> However, these reports were based on the monitoring of job openings rather than economic indicators. In 1998, the GAO criticized the ITAA for weak methodology and a lack of empirical data.<sup>6</sup> Yet, despite these criticisms, in FYs 1999 and 2000 the cap was raised to 115,000 and 107,500 in FY2001, after ITAA reported 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.<sup>7</sup> In 2003, the cap was set back to 65,000, but in 2005 an additional 20,000 visas were made available for employers who hired international students with advanced degrees from U.S. colleges and universities. This is in addition to the unlimited number of visas that are available to universities and various non-profit entities.<sup>8</sup>

Economist **Jared Bernstein**, a former member of President Obama’s economic team, on STEM lobbying efforts: “They want all the engineers they can get at the lowest price . . . they say they can’t find enough talent, but what they really mean is that they can’t find enough people at the rate they want to pay.”<sup>4</sup>

Throughout this period, employers were able to retain the features of the H-1B visa that made it so beneficial to employers. Central to employer interests is the fact that the employer holds the visa, not the guest worker. This allows employers to easily terminate workers, rendering them out of status and thus requiring them to immediately leave the U.S. The indentured nature of their employment—up to six years with the same employer—makes guest workers less likely to voice concern over health and safety violations, utilize whistleblower provisions, or file for workers’ compensation.<sup>9</sup> Employers were also able to retain the deeply flawed system for setting guest worker wage rates, which has helped STEM employers keep wages largely stagnant.

### *Body Shops*

“Body shop” is the term used to describe staffing companies that hire H-1B and L visa guest workers, who are then placed with third-party employers.<sup>10</sup> They are essentially temp companies that specialize in guest workers. Many of the body shops are Indian-owned and provide IT services to U.S. customers. Of the top 10 H-1B employers in FY2009, at least six were headquartered in India.<sup>11</sup> In FY2012, 11 of the top 25 H-1B employers were body shops.<sup>12</sup>

Body shops are an abundant source of DOL complaints. According to the DOL, a large majority of the wage and hour complaints it receives are related to activities at body shops.<sup>13</sup> In

the Northeast region, where body shops predominate, “nearly all of the complaints [DOL] receive[s] involve staffing companies and [] the number of complaints are growing.”<sup>14</sup> The use of body shops makes it difficult to enforce H-1B laws. Body shops may contract out H-1B workers to a third-party employer who then contracts out the H-1B worker to a different employer. According to the GAO “only the staffing company, as the employer who has petitioned for the visa and made the attestations to comply, is technically accountable and ultimately liable for complying with program requirements.”<sup>15</sup>

### *Breakdown of STEM Industry Visa Use*

Over 60 percent of H-1B visas went to employers in STEM-related fields in FY2010. Sizeable portions, 47 percent, of those visas are granted in computer-related occupations.

H-1B Applications Approved	FY2005 <sup>16</sup>	FY2006 <sup>17</sup>	FY2007 <sup>18</sup>	FY2008 <sup>19</sup>	FY2009 <sup>20</sup>	FY2010 <sup>21</sup>
All Occupations	267,131	270,981	281,444	276,252	214,270	192,990
Computer-Related Occupations	113,867	130,556	139,628	137,010	88,960	90,802
Architecture, Engineering, and Surveying	32,030	29,883	31,866	30,062	25,278	19,781

Additionally, as seen below, four of the top five users of H-1B visas in FY2012 are STEM firms.

Top Five Firms Approved for H-1B Visas in FY2012 <sup>22</sup>	Number of H-1B Visa Petitions Approved in FY2012
1. Tata Consultancy Services	5,365
2. Microsoft	4,092
3. IBM	3,649
4. Deloitte Consulting	3,522
5. Wipro	2,965

As the DHS does not issue an annual report on the L-1 visa, 2008 was the last year available for L-1 visa employer information. The 2008 data indicate that the L-1 is used widely by high tech, computer, IT services-related firms, and offshoring firms.<sup>23</sup> All of the top five L-1 employers were STEM firms engaging in offshore outsourcing. The original intent of the L visa was to allow multinational firms to easily transfer top-level personnel to the U.S. However, the standards for obtaining an L visa have been lowered and as a result, an increasing number of IT outsourcing and offshoring firms that specialize in labor from India are using the L visa.<sup>24</sup>

Top Five Firms Approved for L-1 Visas in FY2008 <sup>25</sup>	Number of L-1s received in FY2008
1. Tata Consultancy Services Limit	1,998
2. Cognizant Tech Solutions US Cor.	1,839
3. Wipro Limited	662
4. Satyam Computer Services Limited	604
5. Infosys Technologies	377

OPT, which has been specifically tailored to favor the STEM occupations, offers another option for employers to hire young, cheap workers. In mid-2008, after failing to convince Congress to raise the H-1B cap, the Bush Administration extended OPT—this entails working for a private employer without a work visa—for the STEM fields from 12 to 29 months.<sup>26</sup> In 2008, ICE estimated that approximately 12,000 graduates took advantage of the STEM extension. Some 70,000 graduates participated in OPT in 2008 and, of those, about 23,000 were associated with STEM fields.<sup>27</sup> As ICE does not distribute OPT data annually, data from FY2008 is the most current information available.

Although skilled guest workers make up a very small percentage of the overall U.S. workforce, they are disproportionately concentrated in the STEM industries. Indeed, assuming an H-1B beneficiary remained employed six years, between FYs 2008 and 2011 H-1B workers would account for nearly 22 percent of the computer-related workforce and nearly five percent of the engineering workforce.<sup>28</sup> Furthermore, there are tens of thousands of L, OPT, and other guest workers in those industries.

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### Labor Market Conditions

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High skilled guest workers are an important component of a thriving and successful U.S. economy. However, to limit employer abuses and preserve opportunities for domestic labor, there must be a labor market test to ensure the system balances the interests of all parties. The absence of a labor market test for guest worker visas represents a substantial shortcoming in the U.S. guest worker system. Most other industrialized countries, including the United Kingdom, Canada, Germany, and Australia, utilize a labor market test to protect their domestic economies and citizens.<sup>29</sup>

A labor market test analyzes the supply of domestic labor and market demands. Absent a labor market test, employers can keep wages low by flooding the workforce with tens of thousands of guest workers in just a few sectors. The current high skilled immigration system authorizes over 350,000 skilled guest workers to enter the U.S. workforce each year.<sup>30</sup> For the vast majority of these workers, employers are not required to show that they could not find a

qualified U.S. citizen or permanent resident to fill the position.<sup>31</sup> Considering recent levels of unemployment, underemployment, and degree production, this level of guest worker admission is hard to justify. STEM employers often oppose labor market tests, because they know their virtually unfettered access to guest worker visas would be limited when supply and demand factors become central to visa issuance.

**Michael S. Teitelbaum**, Vice President, Alfred P. Sloan Foundation: “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.”<sup>36</sup>

### *Supply—Incumbent Workers*

Contrary to decades of industry lobbying based on the premise of a shortage of U.S. workers for STEM industry needs, economic indicators—notably low levels of unemployment and rising wages—that one would expect to accompany shortages have failed to materialize. Underemployment patterns, indications that STEM workers are involuntarily working out of their fields, suggest that underemployment of STEM workers is relatively high compared with that for non-STEM workers.<sup>32</sup> Additionally, employers neglect major segments of the workforce, in favor of hiring cheaper guest workers. For example:

- The science and engineering workforce is about 4.8 million, while 15.7 million workers hold science or engineering degrees.<sup>33</sup>
- A paltry 5.5 percent of workers in computer and mathematical occupations are Hispanic Americans—less than one-half their rate of total employment in the U.S. economy—and only 6.7 percent are African Americans.<sup>34</sup>
- Women hold only 24 percent of jobs in technical fields, but comprise 46 percent of the total U.S. workforce.<sup>35</sup>

Labor market indicators do not demonstrate a supply shortage and the evidence suggesting a need for more H-1B workers is anecdotal.<sup>37</sup> According to the Urban Institute, industry claims of pervasive shortages of qualified workers are just not true. Often, managers’ complaints about an inability to hire qualified workers do not rest in a lack of qualified applicants, but in expectations to hire low-wage workers who have specific work experience and do not require additional training.<sup>38</sup>

### *Supply—the Education Pipeline*

Over the past few decades, several business groups have claimed that the U.S. is not producing enough STEM graduates and will experience hiring shortfalls in the future.<sup>39</sup> Yet, the facts show domestic education programs are keeping pace with job openings in the STEM

industries. In fact, the corporate drive to lower wages in the STEM fields through guest worker visas and age discrimination is likely driving away many talented students.

According to the DOL, a Bachelor’s degree is the most significant source of postsecondary education or training for many high-tech workers. Completion of a Bachelor’s degree is generally a minimum requirement and often more essential than an Associate degree, Master’s degree, or on-the-job training.<sup>40</sup> While more than half of the students currently enrolled in Master’s or Ph.D. programs in computer science or computer engineering were nonresident aliens in 2009, U.S. students dominate programs at the Bachelor’s level. In 2009, 488,380 of 505,435 (97 percent) of all Bachelor’s degree recipients in the sciences and engineering were U.S. citizens or permanent residents.<sup>41</sup>

A further look at U.S. education trends reveals the embellishment of shortage claims:

- Degrees at all levels among U.S. citizens and permanent residents in science and engineering grew nearly 29 percent between 2001 and 2009, from 490,904 to 631,902.<sup>42</sup>

- Undergraduate degree production among U.S. citizens and permanent residents in science and engineering programs has remained strong. In 2009, in

Table 1 Bachelor’s by Field <sup>43</sup>	2001	2005	2009
Biological Sciences	60,574	66,005	83,145
Computer Sciences	40,192	50,597	36,677
Mathematics and Statistics	11,011	14,055	15,369
Physical Sciences	13,590	14,337	17,146
Engineering	54,795	61,412	66,529

the sciences, there were 421,851 degrees awarded to U.S. citizens and permanent residents. There were also 66,529 Bachelor’s degrees awarded to students in engineering.<sup>44</sup> This is illustrated in Table 1, which shows a sampling of the number of degrees awarded in certain science and engineering fields for years 2001, 2005, and 2009.

- Degree production in U.S. science and engineering graduate programs is strong as well. In 2009, nearly 100,000 U.S. citizens and permanent residents

Table 2 Master’s Field of Study <sup>45</sup>	2001	2005	2009
Biological Sciences	5,614	6,910	8,211
Computer Sciences	9,091	10,975	9,641
Mathematics and Statistics	2,050	2,820	3,245
Physical Sciences	2,498	2,708	2,767
Engineering	15,434	19,034	20,940

graduated with Master’s degrees in STEM disciplines. The largest numbers were enrolled in computer science and engineering programs. Table 2 shows a sampling of Master’s degrees awarded in biological sciences, computer sciences, mathematics and statistics, physical sciences, and engineering in 2001, 2005, and 2009.

- Degree production at the Ph.D. level was up over 19 percent from 2001 to 2009, going from 17,261 to 20,560.<sup>47</sup> Table 3 shows a sampling of Ph.D.'s awarded in life sciences, physical sciences, and engineering in 2001, 2005, and 2009.

Table 3 Ph.D. Field of Study <sup>46</sup>	2001	2005	2009
Biological Sciences	3,579	4,330	5,310
Computer Sciences	395	500	730
Mathematics and Statistics	525	540	788
Engineering	2,562	2,452	3,374

These degree production figures do not include workers who came into STEM fields through on-the-job training, or the tens of thousands of community college students, who either: 1) graduated with two-year Associate degrees in high-tech disciplines, which numbered nearly 67,470 in 2008–09, or 2) are completing IT-certification courses, or other continuing education curricula designed to help them transition into high-tech careers.<sup>48</sup> Both of these talent pools certainly qualify for employment in a significant number of professional, entry-level tech jobs.<sup>49</sup>

**Hal 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 the jobs available.”<sup>50</sup>

Highly qualified U.S. students are increasingly citing uncertainty in the future of domestic science and engineering, resulting from an increasing H-1B workforce and increased outsourcing, as a motivating factor causing them to pursue career opportunities outside of STEM.<sup>52</sup> A 2009 study by Rutgers University 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” to a STEM career, possibly based on perceptions that STEM careers are highly susceptible to offshoring.<sup>53</sup> Indeed, a recent Georgetown University study found that only a third of science and engineering graduates actually take jobs in STEM fields.<sup>54</sup> Many talented students trained in STEM disciplines are being lost to the financial sector, as the STEM workforce does not appear to be stable. Also, the average salary in STEM occupations sits at nearly \$24,000 less than in managerial and professional occupations.<sup>55</sup>

**Anthony Carnevale**, Director of the Georgetown University Center on Education and the Workforce: “If you’re a high [achieving] math student in America, from a purely economic point of view, it’s crazy to go into STEM.”<sup>51</sup>

Students in the U.S. watch labor market trends as they select a college major and career. For example, in 2011, Hal Salzman of Rutgers University presented evidence that the enrollment of U.S. students in petroleum engineering programs has dramatically increased in recent years. The increase is in response to increased hiring due to retiring petroleum engineers and starting salaries that average \$86,000 per year (up from \$53,000 in 2003).<sup>56</sup>



## *Demand*

At the nadir of the recent economic downturn, employment numbers looked bleak. STEM growth declined by five percent in 2009, while the U.S. high-tech industry lost 245,600 jobs.<sup>57</sup> In the third quarter of 2009, the unemployment rate for engineers hit 5.9 percent surpassing the highest unemployment rate for the occupation since at least 1972.<sup>58</sup> At the same time, the unemployment rate for computer and mathematical professionals reached six percent, surpassing 2003's all-time high of 5.7 percent.<sup>59</sup>

Some recent reports indicate an upswing in tech hiring. For instance, job growth appears strong for mobile applications developers, and their salaries are expected to increase 9.1 percent from \$85,000 to \$122,500 in the coming year.<sup>60</sup> In 2011, U.S. tech companies added thousands of workers, but overall job growth was less than one would expect, given that aggregate net income for tech firms in the S&P 500 rose 25.8 percent in the second quarter of 2011 compared with 2010. The globalized nature of the tech workforce has hampered U.S. job growth, as offshoring, advances in software automation, and Internet communication brought many of these jobs to India from the U.S. Job growth in the Indian tech sector is booming, with the three largest IT firms, Tata Consultancy, Infosys, and Wipro, adding well over 100,000 new workers in India during 2011.<sup>61</sup>

In January 2012, college graduate unemployment was 4.2 percent, while national unemployment was 8.3 percent.<sup>62</sup> In 2010, several STEM occupations reported unemployment rates higher than the professional average. The unemployment rate in 2010 for all engineers was 4.5 percent. For software engineers it was 4.6 percent, it was 5.2 percent in mathematical occupations, and it was 5.4 percent for all computing professionals.<sup>63</sup> For reference, the unemployment rate for college graduates, at full employment, is typically around 2.2 percent (it stood at an average 2.6 percent from 1992 to 2010) and is typically about half of the national unemployment rate. In 2008, unemployment for college graduates stood at 2.6 percent, while national unemployment was 5.8 percent.<sup>64</sup>

Some large STEM firms that 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.<sup>65</sup> Established companies like Boeing, Dell, GE, Intuit, Lockheed Martin, and Textron all laid off large numbers of employees in 2009.<sup>66</sup> In 2011, Cisco, RIM, Motorola, and Nokia together shed over 10,000 jobs.<sup>67</sup>

Graduation rates are keeping pace with demand for workers. Between 2006 and 2010, architecture and engineering occupations experienced a loss of nearly 150,000 jobs. However, the U.S. Bureau of Labor Statistics (BLS) projects that between 2010 and 2020, architecture and

engineering occupations will add 252,800 jobs, an average of 25,000 per year.<sup>68</sup> As mentioned above, each year over 90,000 U.S. citizens and permanent residents receive a Bachelor's, Master's, or Ph.D. in engineering.<sup>69</sup> Nearly 50,000 more students receive Associate's degrees and other subbaccalaureate awards in engineering and engineering-related technologies each year.<sup>70</sup> Thus, annually, there are over 100,000 newly educated STEM workers to fill the new openings, and still replace workers who retire, are promoted to management, or leave the field. However the supply clearly exceeds demand, because approximately 40 percent of new engineering graduates could not find jobs in engineering in 2010.<sup>71</sup>

Between 2006 and 2010, there were 229,600 new jobs added in computer and mathematical occupations.<sup>73</sup> However, DOL reported that computer and mathematical science occupations lost jobs each year from 2008 to 2010, falling from 3,308,260 to 3,283,950.<sup>74</sup> Looking ahead, between 2010 and 2020, BLS estimates that 778,300 new jobs will be added to computer and mathematical occupations. As mentioned above, each year approximately 65,000 students graduate with a Bachelor's, Master's, or Ph.D. in computer science or mathematics and statistics. An additional 46,000 students receive Associate's degrees and other subbaccalaureate awards in computer and information sciences.

**Gordon H. Hanson**, professor of economics at the University of California, San Diego and advocate for expanding the supply of immigration visas for high-skilled workers, concedes in his work: "Immigration may lower wages, and therefore production costs, for employers that use intensively the skills that immigrants bring with them."<sup>72</sup>

In sum, there are too many skilled workers chasing too few jobs.<sup>75</sup> Job growth does not outpace the number of workers entering the STEM workforce and there is no evidence of a labor shortage. While engineering and computer and mathematical occupations lost tens of thousands of jobs between 2008 and 2010, over 200,000 H-1B visas were granted despite high unemployment and underemployment.<sup>76</sup>

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## Wage Suppression in the STEM Fields

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Wage suppression is related to employer manipulation of the labor market. Employers have been able to hold down STEM wages in many industries by importing hundreds of thousands of mostly young, temporary workers. Counter to the principles upon which the program was founded, H-1B visa holders are often employed in non-shortage areas, creating distortions in the labor market, depressing wages, and driving talent away from STEM fields.

## *Oversupply of Labor*

As far back as 2001, the National Research Council of the National Academy of Sciences and the National Academy of Engineering warned the “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.”<sup>78</sup>

Indeed, based on the number of H-1B visas granted in computer-related occupations, H-1Bs could make up nearly 22 percent of the workforce. Recent wage data from the DOL shows very small wage increases in IT fields, consistent with an oversupply of labor:

- From 2005 to 2010, the median weekly earnings for computer systems analysts and scientists increased from \$1,210 to \$1,220.<sup>79</sup> This represents an annual average increase of only 0.1 percent and a 9.6 percent loss in buying power, after adjusting for inflation.
- Similarly, for computer programmers, the average weekly wage increased from \$1,205 in 2005 to \$1,218 in 2010, which, after adjusting for inflation, represents a 10.4 percent loss in buying power.<sup>80</sup>

“The GAO report suggests that at a minimum, it is very difficult to empirically and systematically observe different wages between populations of domestic workers and populations of H-1B workers that possess equivalent skills and experience levels without better raw data, and that this problem would be common to all research efforts into this issue. Moreover, the GAO concluded that data limitations and complex economic relationships hindered its ability to estimate the impact that raising the quota cap would have on wages and employment of domestic workers.”<sup>77</sup>

Other studies support these conclusions. For example:

- A 2009 study from the Council on Foreign Relations shows that H-1B admissions at current levels are associated with about a five to six percent drop in wages for computer programmers and systems analysts.<sup>81</sup>
- In 2011, Georgetown University’s Center on Education and the Workforce reported that engineering wages grew more slowly over the last three decades than any other occupational category, only 18 percent.<sup>82</sup>

Despite stagnant wages, which are evidence of an oversupply of labor, H-1B and L visas (as well as OPT) are still issued for guest workers in STEM fields. Unfortunately, in many cases, wage depression has become the goal of employers using guest worker visas.

## *Wage Manipulation Using the Prevailing Wage*

Employers are assisted in their quest for lower wages by the faulty system used to set the wage floor for H-1B workers. Employers are able to select a wage survey, or conduct their own, to determine the prevailing wage for the prospective employee. The prevailing wage is often below the wage that the worker would earn on the open market. For example, Norman Matloff reported that in 2011 the government prevailing wage for computer systems analysts was \$40,000 to \$52,000 less than the average wage for computer systems analysts in Silicon Valley.<sup>83</sup>

H-1B beneficiaries who are paid the prevailing wage are generally underpaid for their skills. Because H-1B beneficiaries are paid based on the job rather than the value of their education and training, as they would be in an open labor market, it is estimated that they are underpaid by 20 percent or more.<sup>87</sup> As there is no labor market test to ensure that visa beneficiaries complement the U.S. workforce, the guest worker visa system serves in many cases as a corporate subsidy in the form of cheaper labor, particularly for tech firms.

Unlike the H-1B, there is no wage floor for OPT or L visas. The absence of a wage floor creates an incentive for employers to give hiring preference to guest workers.<sup>88</sup> The L visa also creates an unfair advantage for foreign-owned businesses, because the L visa allows them ready access to low-cost personnel.

The DOL often approves LCAs for guest workers to work in high and low-skilled fields for low wages. Table 4 lists some examples of this from LCAs filed as part of H-1B applications in FY2010:

Guest worker proponent statements reveal the purpose of guest worker visas:

**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 U.S. wage for a similar employee.”<sup>84</sup>

**Vivek Wadhwa**, H-1B proponent and visiting scholar at the School of Information, UC-Berkeley, stated that as a former tech CEO he knows “H-1Bs are cheaper than domestic hires.”<sup>85</sup>

Former Federal Reserve chairman, **Alan Greenspan**, stated that H-1B workers are needed to lower wages in the technology sector.<sup>86</sup>

**Table 4 Approved H-1B Labor Condition Applications in FY2010**

Employer Name	Job Title	Location	Wage
Theresa C. Waddell	Child Care Worker	Arlington, VA	\$11.47/ Hour
MDM Hotel Group, LTD	Assistant Kitchen Supervisor	Miami, FL	\$12/ Hour
CAPES Educational Service	Computer Support Specialist	Dallas, TX	\$13.03/ Hour
Computer Nerds International, Inc.	Computer Software Engineer	Miami, FL	\$37,253/ Year

Source: Foreign Labor Certification Data Center Online Wage Library, 2010 H-1B Efile

## *Replacing Older Workers with Younger Workers*

Employers save labor costs by replacing older (over 35) workers with younger workers. As mentioned in Chapter 2, age discrimination is a major theme of employer misuse of guest worker visas. This is particularly true in STEM industries. Employers prefer young, cheap workers, over more experienced and expensive workers.<sup>89</sup> Our guest worker visa laws have made it possible for employers to access an endless supply of young, temporary workers. For example, H-1Bs in IT are about 10 years younger than U.S. workers in IT, which brings in salary savings by avoiding more experienced U.S. workers.<sup>90</sup>

Analysis by the GAO revealed that in 2008, among approved H-1B beneficiaries, 83 percent of systems analysts, programmers, and other computer-related workers were under the age of 35. Similarly, 73 percent of electrical and electronics engineers were under the age of 35 in 2008.<sup>91</sup>

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### **STEM Employers' (Ab)use of Guest Worker Programs**

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Employers and business leaders, particularly in the STEM fields, are strong advocates for increasing the number of H-1Bs, but resist all attempts to make guest worker programs more accountable. The U.S. government has failed to provide adequate oversight of the program, which has allowed employers to use guest worker visas as a way to import cheap, low-skilled labor. Employer abuse and government incompetence comes at the expense of both guest workers and domestic workers.

Guest worker visa programs have also enabled companies to outsource and offshore jobs. Supporting earlier warnings that the H-1B and similar programs were forcing U.S. workers to “train their replacements,” the majority of guest workers are not sponsored for permanent residency and thus return to their home countries after receiving training in the U.S.<sup>94</sup> The U.S. tech industry has, in many cases, followed these workers overseas where the standard of living and expected compensation for professionals is far lower. Some of the largest and most powerful supporters of guest worker programs, such as Microsoft, IBM, and Intel have significant research and development centers in countries such as China and India.<sup>95</sup>

#### **Bipartisan support for guest worker reform:**

**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.”<sup>92</sup>

**Senator Charles E. Grassley (R-IA)** on the H-1B and L visa programs: “Fraud and abuse is rampant in these programs, and we need more transparency to protect the integrity of our immigration system.”<sup>93</sup>

## *STEM Employer Fraud and Misuse*

As discussed in Chapter 2, employers can game the system in multiple ways, mainly through manipulation of statutory and regulatory loopholes. To avoid repetition, this section will cover the fraud and misuse of guest worker visas in the STEM workforce. Employer abuse of the system exposes both the profound problems with the U.S.'s guest worker visa system and also the insidious effects the system has on the STEM workforce.

Examples of outright visa fraud are not uncommon in the STEM industries. In 2011 alone, one can find numerous examples in the press of visa fraud and misuse. One of the most prominent examples occurred in Alabama. It came to light when Jack Palmer filed suit against his employer Infosys Technologies, an Indian outsourcing company and one of the largest users of H-1Bs. Palmer claimed he was harassed after refusing to aid the company in “creatively” circumventing H-1B caps by utilizing B visas. When the illegality of management’s policy became clear, Palmer blew the whistle and also revealed the company was sending lower-skilled and unskilled workers from India to the U.S. to work at customer sites using H-1Bs, in violation of labor law.<sup>96</sup>

The use of B visas, a temporary visa for unpaid business visitors, shows the extent to which employers will go to exploit a cheap labor source and pass over U.S. workers. It was recently reported that the airplane manufacturer Boeing attempted to bring in 15 Russian engineers as low-paid contractors.<sup>97</sup> U.S. Customs officials at Seattle-Tacoma International Airport refused to grant the B visas requested by the Russian engineers. As noted above, the B visa is a visitor visa and is not intended to be used to obtain employment.

“H-1B only” job postings, where a preference for hiring workers holding an H-1B employer sponsored visa is suggested or expressly stated, have also been an ongoing problem. 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.<sup>98</sup> The DOJ is clear that job postings “may not express a preference for H-1B candidates or other individuals requiring sponsorship or employment visas.”<sup>99</sup>

## *Wage Trends and Outsourcing Practices Belie the “Best and Brightest” Claim*

The current system allows outsourcing and offshoring firms to undermine secure tech jobs in the U.S. While the industry claims that guest workers are needed as innovative job creators, the truth is the majority of guest workers are actually entry-level employees. In 2010, 54 percent, 130,528, of H-1B visas holders filled entry-level positions, requiring a “basic

understanding of duties and perform[ing] routine tasks requiring limited judgment.” Only six percent of H-1B visa holders in 2009 received compensation in the top pay grade (level IV), a reflection of highly specialized skills.<sup>100</sup> Furthermore, after 2004, the number of L-1B visas granted surpassed the number of L-1As, which suggests that fewer high-level executives and managers are hired under the program.<sup>101</sup> Instead, companies are obtaining more visas for workers with “specialized knowledge.” The DHS Office of Inspector General found in a review of the L-1 visa that “specialized knowledge” was so broadly defined that virtually all applicants met the definition.<sup>102</sup>

H-1B visas are used for workers in “specialty occupations,” which is so broadly defined, it includes child care workers and software engineers. In fact, employers are not even required to demonstrate that prospective H-1B workers have any valuable skills. A look at employee retention and outsourcing trends reinforces the assertion that the H-1B visa is less about securing the “best and brightest” in U.S. STEM industries and more about labor cost reduction. Evidence of this is seen in the wages paid to guest workers. In 2010, Infosys paid as little as \$25,210 for a full-time computer analyst.<sup>103</sup> For the “best and the brightest” one would expect to see a significant wage premium. This is clearly not the case.<sup>104</sup> There is actually a visa reserved for highly skilled guest workers. The O visa can be used for guest workers 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.<sup>105</sup> Employers favor H-1B and L visas because they do not have to satisfy qualification requirements of visa beneficiaries.

If H-1B beneficiaries were truly the “best and brightest,” one would expect employers to strive to keep them in the U.S. by making them permanent U.S. residents. However, the GAO estimates that only about 18 percent of eligible H-1B visa beneficiaries were sponsored for permanent residency in 2010.<sup>106</sup> This demonstrates a lack of commitment to and investment in their guest worker workforce. A look at the top 10 users of H-1B visas in the past 10 years reveals how few workers are sponsored for permanent residency.

Top Ten Firms using H-1B Visas: FY 2001-2010 <sup>107</sup>	Number of H-1B Visa Petitions Approved: FY 2001-2010	Number of PERM applications sponsored: FY 2001-2010	Percent of total
Microsoft	27,189	6,207	23 percent
Satyam Computer Services	25,983	237	<1 percent
IBM	13,723	1,013	7 percent
Enterprise Business Solutions	13,448	147	1 percent
Oracle	9,274	2,617	28 percent
Intel	7,696	2,792	36 percent
Patni Computer Systems	9,362	173	2 percent
Infosys Technologies	7,760	1,186	15 percent
Ernst Young	7,888	1,030	13 percent
Xceltech	7,929	44	<1 percent

Instead, as the Indian Foreign Commerce Minister notes, the H-1B is frequently used as an “outsourcing visa.”<sup>108</sup> The affordability of H-1B and L visa holders makes guest workers an attractive option for many tech companies. Many employers use third party recruitment firms or body shops, like Infosys, as the employer of record, which decreases a domestic employer’s risk of violating guest worker rights. In FY2008, the top four employers of H-1B visa recipients were body shops.<sup>109</sup> Also, aid the outsourcing process, a cottage industry of worker displacement legal firms has sprouted to assist companies with shifting work from domestic workers to those on visas.

Additionally, half of the top 20 companies that used L-1 visas in 2006 were IT outsourcing firms based in India, many of which are also among the top users of the H-1B program.<sup>110</sup> In 2008, the trend continued, as all of the top six L-1 users were offshore outsourcing firms. While the L-1 visa, for “inter-company transfers,” does not necessarily serve the same purpose as the H-1B as a tool to recruit and retain talented workers, it also has a very low rate of permanent residence sponsorship. In 2008, the top six L-1 firms mentioned above only sponsored 363 PERM applications, with Cognizant sponsoring 342 of those. Together, the six firms employed 5,504 L-1 beneficiaries.<sup>111</sup>

It is clear that the H-1B and L-1 labor pool is used to decrease employer labor costs with little to no concern for the impact on foreign and domestic workers.



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## **CHAPTER 4: GUEST WORKER VISAS AND THE EDUCATION SECTOR**

Unlike the STEM workforce, there is little debate that legitimate teacher shortages have existed in subjects like math, science, and special education, especially in hard-to-staff inner city and rural schools.<sup>1</sup> Although greatly reduced by recent cuts in funding to public schools, these shortages have differed widely from state to state, school district to school district, and even within school districts.<sup>2</sup> Many people associate H-1B visas with the information technology (IT) or STEM workforce; however, these visas are increasingly being used to bring educators to the U.S., often in underperforming schools. Indeed, education has become the third largest occupational group for H-1B visa recipients.

Two of the recurring problems with H-1B visas in the IT and STEM sectors have been employer use of guest workers as a substitute for American workers and the lack of protections for guest workers. The teaching fields have not seen as many of these problems. Many overseas-trained teachers, or guest teachers, who come to the U.S. become union members and receive the protections afforded by a collective bargaining agreement (CBA). Demonstrating the importance of union representation in the workplace, guest teachers under a CBA are able to combat some of the worst cases of wage depression and employer abuse. This arrangement is rare in the STEM workforce.

Nevertheless, there are still a number of problematic issues surrounding guest worker visa use in U.S. schools. The use of immigration policy as a solution to problems in the education system is shortsighted and fails to address systemic problems with preparation, recruitment, and treatment of teachers in the education system. This chapter will outline guest worker visa use in the education sector, the abuses by visa recruiters, the problems guest teachers may have after their arrival in the U.S., and the global impact of international teacher recruitment. To conclude, it will assess international recruitment as a solution to teacher shortages.

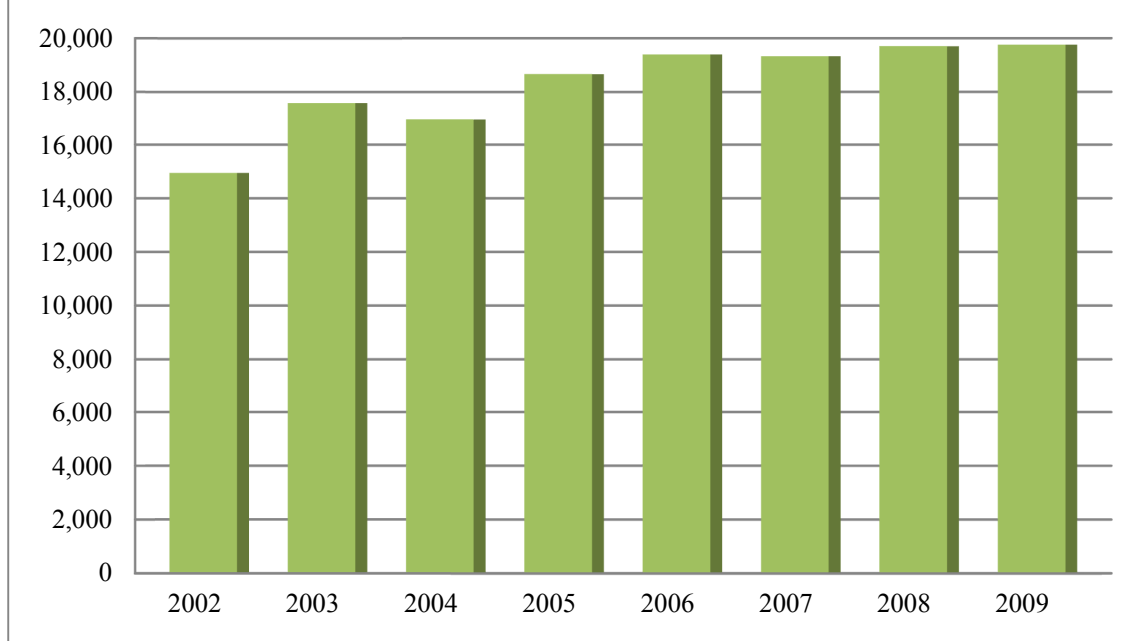
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### **Guest Worker Visa Use in the Education Sector**

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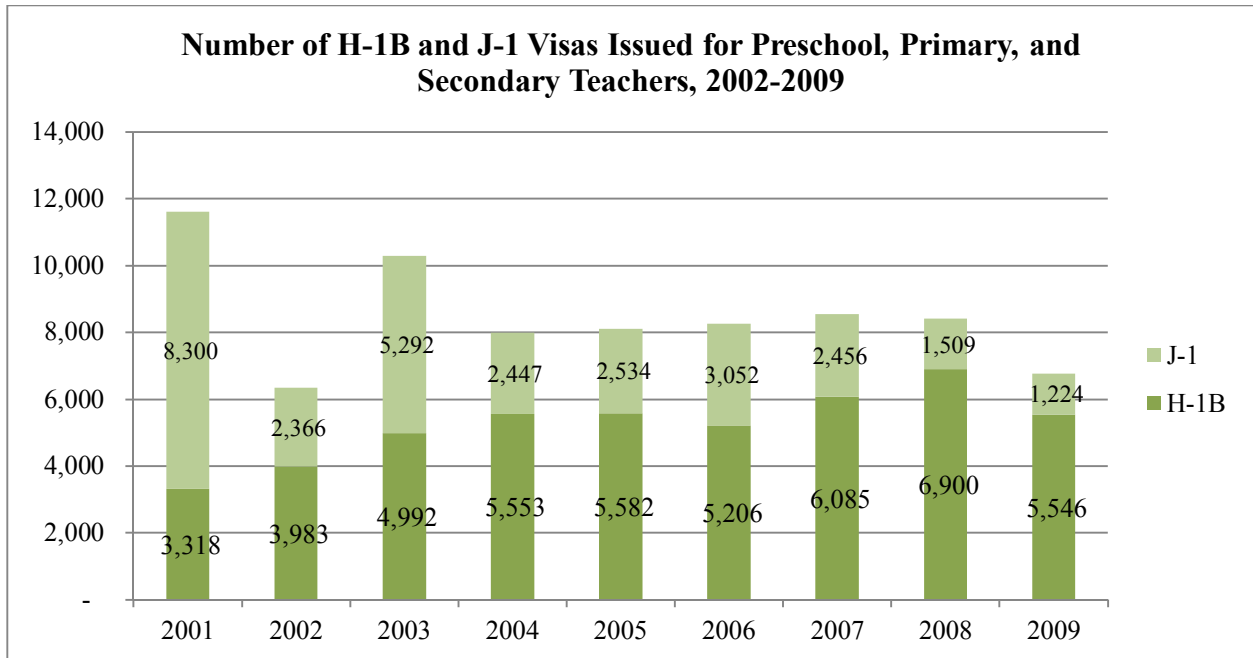
Guest teachers primarily come to teach in the U.S. on H-1B or J-1 visas. The total number of teachers currently in the U.S. is difficult to determine because H-1B visas are issued for a three-year period and for lack of government tracking. The American Federation of Teachers (AFT) estimated that there were 19,329 foreign-trained Pre-K through 12 teachers in the U.S. in 2007.<sup>3</sup> More current estimates for 2009 could be put at 19,755, which include the H-1B and J-1 visas.

### Total Projected Number of Pre-K through 12 Teachers Working in the U.S. on H-1B and J-1 Visas, 2002-2009



Source: Interagency Working Group on U.S. Government-Sponsored Exchanges and Training; U.S. Citizenship and Immigration Services, Characteristics of Specialty Occupation Workers: Fiscal Year 2007-2010; Randy Barber, “Report to the National Education Association on the Trends in Foreign Teacher Recruitment,” (2003); AFT’s “Importing Educators,” (2009).

According to USCIS, in FY2010 there were 19,713 H-1B visa granted (renewals and initial beneficiaries) in all education occupations, down from 24,711 in 2009.<sup>4</sup> Of these beneficiaries, 14,209 visa beneficiaries were employed in college and university education, 2,243 in secondary school, and 1,984 in preschool, primary school, and kindergarten education.<sup>5</sup> College and university occupations were granted the second highest number of all H-1B visa petitions, accounting for 7.4 percent of all H-1B visa approvals, while secondary and primary education occupations accounted for 1.2 percent and 1.1 percent of visa recipients, respectively.<sup>6</sup> 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. Below is a graph with the numbers for all J-1 and H-1B beneficiaries from 2002–2010.



Source: Interagency Working Group on U.S. Government-Sponsored International Exchanges and Training; U.S. Citizenship and Immigration Services; AFT, "Importing Educators."

The J-1 visa is part of the DOS Exchange Visitor Program. The DOS lists 62 sponsors for J-1 visas in the teacher category. Of these sponsors, 21 were state education departments, seven city or county school boards, with the rest being foundations, specialty schools, and non-profits.<sup>7</sup> Like the H-1B visa, the J-1 visa is a nonimmigrant visa. It allows visa holders to apply for temporary, renewable visas that issued for one year and may be renewed up to three years. With the J-1 visa, employment is only tangential to cultural exchange, making the use of this program for more permanent solutions to labor shortages counter to the program's original intent. Additionally, there is no specific provision requiring employers to pay J-1 visa holders the prevailing wage as there is under H-1B regulations.<sup>8</sup>

To be eligible for the J-1 visa, guest teachers must:

- Meet the qualifications for teaching in primary or secondary schools in their last place of residence;
- Satisfy the standards of the state in which they will be working;
- Seek to teach primary or secondary school in the U.S. full-time;
- Possess sufficient proficiency in the English language; and
- Have a minimum of three years teaching experience.<sup>9</sup>

## Where Guest Teachers Are Working

There are significant data gaps in the U.S. visa system and improved access to government data is necessary to track and study international hiring trends in education. Employer-specific data for the J-1 visa is unavailable from DOS, but from H-1B data, one can sketch a picture of the

distribution of guest teachers in the U.S. Public education authorities—including public schools, districts, and state education agencies—are the largest employers of guest teachers.<sup>11</sup> 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 1. Top 5 school districts petitioning for H-1B visas <sup>10</sup>	Number of H-1B visa petitions approved in:		
	FY10	FY09	FY08
Dallas Independent School District	330	254	105
Prince George’s County Public Schools	227	329	239
E. Baton Rouge Parish School System	183	321	205
Baltimore City Public School System	163	355	229
New York City Dept. of Education	120	76	96

More recently, the flow of guest teachers to the U.S. has slowed, likely a result of the economic downturn. Approximately 135,000 teachers were laid off prior to the 2010 school year and almost two-thirds of states are providing less per-student funding for education in the current FY2012 than in FY2008.<sup>12</sup> In 2010, the numbers for the largest petitioning school districts were generally lower compared to years past.

At the state level, LCA petitions for the H-1B are dominated by some larger states, like Texas, California, and New York, as well as some smaller ones like Maryland and Louisiana. By comparing tables one and two, one can see that certain school districts, as in Dallas, Baltimore, and East Baton Rouge, drive the overall state numbers up. This underscores the dependency of certain districts on guest teachers to fill shortages.

Table 2. Top 10 States Submitting Labor Condition Applications for Teachers, 2010 <sup>1</sup>	
State	Number of LCAs Filed
Texas	2,006
California	931
New York	541
Maryland	487
Louisiana	401
Florida	307
Georgia	281
Illinois	229
New Jersey	222
Arizona	219



## *Collective Bargaining by Visa Category*

For J-1 visa sponsors, if a CBA is in place, the exchange-visitor teacher position must be in compliance with the agreement, so long as the J visa beneficiary is hired under the teacher category.<sup>13</sup> If the J visa recipient is misclassified as an intern or trainee, the CBA likely will not apply. For H-1Bs, employment conditions and contracts vary from district to district. Recruiting school districts have the option either to employ teachers directly or to have recruiting firms listed as the employer, with teachers contracted to the schools. This distinction makes a significant difference for teachers. If the district elects to be the employer, then the H-1B beneficiary may be covered by a CBA. If no CBA exists, or the recruiter remains the employer, guest teachers will struggle to find a voice in the workplace.

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## **Gaming the System: Visa Recruiters in the Education Sector**

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The role of recruitment firms and the recruitment process, in general, can be problematic for guest teachers and schools. Within the international recruitment process, recruitment firms use these teachers to turn a profit by charging fees to both teachers and schools. For schools, despite the fees, international recruitment often represents a cost-saving measure or an easy, short-term solution to local teacher shortages. For-profit recruiting practices are almost entirely unregulated and may have harmful effects on international teachers.

### *The Role of Visa Recruiters*

School systems around the country, particularly those in urban inner cities and rural school districts, have had difficulty recruiting and retaining teachers in certain subjects, such as math and science. While nearly a decade ago attrition rates for new teachers was as high as 40 to 50 percent within the first five years of teaching, more recently—perhaps reflecting constricting state and local government budgets and lack of job security among new teachers—it has declined significantly. The attrition rate for beginning teachers hired in 2007-2008 was about 10 percent, but only increased another 2.5 percent for those new teachers at the end of the 2009-10 school year. Yet, some districts, especially poorer, lower-performing ones, continue to lose nearly half of their new faculty in the first years of employment. High turnover rates can create a vicious cycle, threatening the stability and efficacy of disadvantaged schools.<sup>14</sup>

A number of schools have sought an immediate staffing fix by importing teachers from abroad instead of addressing issues that promote long-term, stable staffing. With a growing number of states and school systems opting to recruit guest teachers, a cottage industry of recruiters has sprung up (as in the STEM industries). These for-profit firms seek to make money by recruiting teachers outside the U.S. and encouraging school systems to look abroad to fill their staffing needs. The precise number of recruiting agencies is not known; however, AFT estimates that there are 33 international recruiting agencies working with U.S. schools.<sup>15</sup>

The packages provided by the recruitment agencies differ and the recruiter may make its profit by charging the school system or potential teacher a fee, or by charging fees to both. Guest teachers are required to pay fees normally ranging from \$3,000 to \$13,000, but some recruiting agencies charge more to recruiters for screening qualifications, setting up interviews, securing visas, booking travel plans, and arranging for housing and orientation programs.<sup>16</sup> To encourage employers to hire guest teachers, some recruiting agencies provide free trips and other incentives to human resources departments. For example, the recruitment firm Teachers Placement Group (TPG) offered all-expense 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.<sup>17</sup>

### *Recruitment Firms: Fraud and Abuse*

In recent years, many charges have come to light that international education recruiters, as well as some school systems, have engaged in fraud and abuse regarding guest worker visas. This type of fraud inevitably has harmful effects on the most vulnerable link in the international recruitment process, the teachers. Guest teachers often have little recourse to curb these abuses, which may come in the form of exploitative contracts, withholding wages, crushing debt from recruitment services, or employer threats, among other acts.

Unfortunately, the examples of this sort of abuse are abundant. Buying visas and the burden of debt is often a central concern, as some recruiters illegally charge workers for their visa, take payments 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 international recruits, others have taken advantage of the system and abuse their authority, burdening their recruits with so much debt that they essentially become indentured servants. Two recent case studies in Louisiana and Maryland make this clear.

Universal Placement International (UPI) has sent teachers to five understaffed school districts in Louisiana in recent years. The company imposed fees on teachers up to \$15,000 to pay for visa applications and paperwork, along with an additional 10 percent of their monthly salaries for two years, amounting to approximately 37 percent of teachers' salaries. If terminated from the position, they would return home to their home countries with insurmountable debt.<sup>18</sup>

Two-hundred Filipino teachers with the Louisiana Federation of Teachers sued UPI, and the Louisiana Workforce Commission ordered the agency to pay about \$1.8 million in illegally charged placement fees and fines of \$500 and \$7,500 in attorney's fees.<sup>19</sup> Additionally, the Philippine Overseas Employment Agency found in favor of 10 Filipino migrant teachers deployed to Louisiana in a May 2011 administrative case against their recruiter and cancelled the license of the agency. It also imposed fines and awarded refunds to the complainants.<sup>20</sup>

Luzellene Perez, a teacher in Jefferson Parish, near New Orleans, reflecting on her arrival in the U.S.: “We were already in deep, deep trouble with debts because we were paying all these people.”<sup>21</sup>

Beginning in 2004, with 30 Filipino teachers, Prince George’s County has been one of the most visible employers of guest teachers, and one of the biggest users of the H-1B in recent years.<sup>22</sup> In 2011, the DOL’s Wage and Hour Division found Prince George’s County Public Schools (PGCPS) system in willful violation of H-1B visa program laws. DOL investigators discovered PGCPS illegally reduced the wages of 1,044 guest teachers by requiring the payment of \$4,224,146 in fees to cover its H-1B visa program expenses that the law requires be incurred by the employer. PGCPS required the guest teachers to pay the employer fees and, as a result, the teachers’ earnings were reduced below the prevailing wage. PGCPS was assessed \$1,740,000 in civil penalties and was barred from filing new petitions, extensions, or requests for permanent residency for guest workers under any employment-based visa program for two years.<sup>23</sup>

While the DOL rightfully sanctioned PGCPS for abusing and defrauding the U.S. guest worker system and its guest teachers, the sanctions also detrimentally affected many school teachers, who could not renew their visas and remain employed in their schools. In effect, the DOL decision will result in termination of guest teachers whose visas expire in the next two years affecting more than 1,000 workers. In penalizing PGCPS, the DOL also punished the victims of the crime, demonstrating the need for reform in the system to protect the most vulnerable in the international recruitment process.<sup>24</sup>

### *Recruiter Contracts and Collective Bargaining Agreements*

Often during the international recruitment process migrating teachers must sign two contracts, one with the recruiter and one with the employer. The recruiter contract is usually signed in the home country, before the provisions of the employer contract are known and before possibly acquiring union representation.<sup>25</sup> Within a CBA arrangement, employees still have some recourse. However, when recruiters remain the employer outside of a CBA, recruiter contracts can be exploitative and harmful to guest teachers.

For example, TPG, based in Plainview, NY, recruited teachers for the Cleveland, Newark, and Philadelphia school districts in recent years. Cleveland chose to be the employer, so the guest teachers were part of the Cleveland Teachers’ Union, which provided the new teachers with a place to voice their concerns regarding TPG’s contract. The contract required teachers to pay the company \$15,000 if they returned to their home countries in the first year of the contract, \$10,000 if they returned in the second year and \$7,500 in the third. The union pressured the school district to stop payment to TPG and required that harmful clauses be

removed from TPG's contract and assistance be provided to the teachers in bringing their families to Cleveland. Similarly, 15 guest teachers with the Newark Teachers' Union invalidated their TPG contracts—which they were forced to sign—and forced TPG to pay a fine of \$3,050 per teacher.<sup>26</sup>

Conversely, in Philadelphia, TPG remained the employer instead of the school district. The new teachers were dissatisfied with their salaries, were not told about income taxes prior to their arrival, had minimal health insurance, and were forced to pay hefty recruitment fees. Yet, they were not able to negotiate, as they were TPG contract employees and were not covered by a CBA.<sup>27</sup>

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### **Problems upon Arrival**

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Besides the outright fraud and abuse sometimes present in the international recruitment process, foreign-trained educators face hardships upon arrival, both in adjusting to a new culture and with their employers and workplaces.

#### *Culture Shock, Language Barriers, and Lack of Support*

Teachers recruited from abroad often have difficulty adjusting to their new jobs and lives in the U.S. Frequently, they become indebted to their recruiting agency, in addition to the understandable home-sickness and culture shock that comes with relocating to a new country. Despite the English language proficiency requirement, guest teachers may have initial difficulty adjusting to and understanding unfamiliar accents. Additionally, many are unprepared for the discipline problems and low academic preparedness levels of their often impoverished students, as guest teachers generally are recruited to staff some of the most resource-challenged schools. As AFT argues, this is not an indication of poor performance and resources should be made available to help internationally recruited teachers adjust to cultural and communication challenges.<sup>28</sup>

The pressure can be intense. In 2007, two Baltimore teachers working in the U.S. on H-1B visas committed suicide. Both teachers had shown signs of depression, but did not utilize the Employee Assistance Program available to them. Like all new teachers, guest teachers require mentoring and professional development to aid in their adjustment to their new environment and working in high-need schools. Currently, orientation programs vary dramatically and teachers may feel isolated, evidenced by the high rates of attrition in the first years of teaching for both foreign-trained and domestic teachers.<sup>29</sup> Again, it is estimated that 20 percent of all new hires leave the classroom after three years, while in urban districts close to 50 percent of new hires leave in the first five years.<sup>30</sup>

### *Inadequate Living Conditions and Company Housing*

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, some 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 2-bedroom, 2 bathroom apartment.<sup>31</sup> 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.

In the Louisiana case, an extreme example of this occurred. PARS International Placement Agency and Universal Placement International, two recruiting agencies owned by the same family, recruited teachers from the Philippines to teach in the East Baton Rouge Parish School System.<sup>32</sup> 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 the shower stalls and scattered inside a kitchen cabinet when a teacher opened it.” They were also overcharged for their living arrangements—an \$800 a month apartment with four to eight occupants, each charged \$310 for rent. To keep teachers in these apartments, the agency threatened to sue teachers who sought to find better housing and intimidated those that sought assistance from friends or the broader Filipino community.<sup>33</sup> Once again, one can see how guest worker visas take power away from employees and allow employers or recruiters to place them in an indentured position.

### *Wage Discrepancies, Unequal Benefits, and Predatory Employers*

Wage discrepancies between foreign and domestic teachers are less common than in the STEM fields; however, those teachers in the U.S. on J-1 visas without a CBA have no assurance they will 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 paid directly to FAU, which paid the teachers only \$5,000 for a year of work.<sup>34</sup> Even under a CBA, guest teachers are sometimes contractually excluded from benefits like health insurance, justified with the expectation that the recruiting firm will provide health insurance. Yet, school systems are held harmless if their guest teachers are not provided health insurance—a sure cost-saving measure for employers.<sup>35</sup>

As this report has shown, employers often engage in outright predatory behavior with vulnerable guest teachers. One flagrant display of this became public in 2004, when 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. The agencies had recruited 273 teachers from the Philippines with the promise of jobs in the U.S. and permanent residency status, when in reality fewer than 100 jobs were available for the workers when they arrived in Texas.<sup>36</sup> 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 five percent interest rate which compounded monthly. This translates to a 60 percent annual interest rate. In addition, the recruitment firms tacked on additional late fees of 15 percent on the interest rate for late payments.<sup>37</sup>

Ingrid Cruz, a Louisiana school teacher, recalls when after confronting her recruiter over an exorbitant fee for filing a visa, she was told: “What if I make an example out of you and sue one of the teachers, just to give you a lesson?”<sup>38</sup>

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## Global Impact

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The capacity of the world’s education systems, in absolute numbers, more than doubled in almost 43 years. According to the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1970, there were 415 million students enrolled in primary education compared to 696 million students in 2008; from 1970 to 2008, the number of secondary education students rose from 195 million to 526 million; and the number of tertiary students increased by six times, from 32 million to 159 million students.<sup>39</sup> On the international level, UNESCO estimates that 18 million new teachers are needed by 2015 to meet ‘Education for All’ goals and ensure universal access to primary education for students in all countries in the world.<sup>40</sup>

With the demand for teachers high, both domestically (in certain schools) and internationally, teachers from developing countries can come to the U.S. and earn a much higher wage than at home. However, because need in the sending country may be high, the decision to migrate may adversely affect the sending community. It often comes at a difficult personal cost as well. When developed countries, like the U.S., import educators from abroad to fill shortages, it drains talent from needy school systems and may put overseas families and migrant workers in a precarious and difficult familial situation.

For example, in the Philippines, one of the largest labor exporting economies and a major source of guest teachers in the U.S., there is an estimated shortage of 16,000 public school teachers. The Philippines also has the worst pupil-teacher ratio in Asia at 45:1. Additionally, those leaving for the U.S. to take teaching jobs are generally those with better credentials or those with training in mathematics or special education. It is difficult to keep these talented

teachers at home when wages for a public school teacher in the Philippines sits at an average \$3,500 a year and a guest teacher may earn around \$45,000 annually in Baltimore, for example.<sup>42</sup>

In their research on the impact of international teacher recruitment, the AFT reports that families in countries like the Philippines are often forced to accept long absences of a parent or spouse in return for the promise of financial security, a promise which is often undermined by unscrupulous recruitment agencies. One in seven Filipino workers works abroad and they send back nearly \$1 billion monthly.<sup>43</sup>

A teachers' union leader in the Philippines describes a common classroom environment: "To accommodate the students, most public schools schedule two, three, and sometimes even four shifts within the entire day, with 70 or 80 students packed in a room. Usually, the first class starts as early as 6:00 a.m. to accommodate the other sessions."<sup>41</sup>

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## Recruiting Educators Abroad as a Solution to Domestic Staffing Shortages

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Recruiting educators from abroad is a short-term solution to staffing problems. By recruiting guest teachers, school systems fail to address the issues that make these schools undesirable workplaces. Schools may be hard to staff for a number of reasons that cannot be solved by importing educators, including:

- 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; and
- They have eroding or unsafe school buildings.

**American Federation of Teachers:**  
"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."<sup>44</sup>

The root causes of teacher shortage and retention problems, such as the presence of "persistently dangerous" schools, must be the focus of any potential solutions. Immigration reform, itself, is not a means to address the teacher shortage. The AFT has developed a different set of recommendations, an outline of strategies to make hard-to-staff schools desirable places to teach. These strategies include:

- Establishing and maintaining safe and orderly schools;
- Targeting professional development to best address the needs of teachers and staff in these challenging environments; and
- Identifying and carrying out school district and state responsibilities.<sup>45</sup>

Improving teaching and learning conditions must be at the forefront of any sensible strategy to effectively staff U.S. schools. However, as international teacher recruitment remains a reality, the AFT recommends these steps to ensure that international recruitment practices are fair and just:

- The development, adoption and enforcement of ethical standards for the international recruitment of teachers;
- Improved access to the government data necessary to track and study international hiring trends in education; and
- International cooperation to protect migrant workers and mitigate any negative impact of teacher migration in sending countries.<sup>46</sup>

Presently, there are no standards, voluntary or mandatory, establishing acceptable practices for recruiting teachers from abroad for U.S. public schools. Without national standards, it is difficult to adopt and enforce standards at the local and state level. However, reflecting the worldwide phenomenon of teacher migration, the AFT proposes that U.S. education stakeholders look to the 2004 Teacher Recruitment Protocol of the 53 Commonwealth countries for inspiration. Within the Protocol, the responsibilities of recruiting countries are enumerated. Significantly, the first point in that section states:

1.1....It is the responsibility of the authorities in recruiting countries to manage domestic teacher supply and demand in a manner that limits the need to resort to organized recruitment in order to meet the normal demand for teachers.<sup>47</sup>

The U.S. is currently failing to uphold this basic principle.

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<sup>1</sup> “Teacher Shortage Areas Nationwide Listing 1990-91 thru 2011-12,” U.S. Department of Education, Office of Postsecondary Education, March 2011. [www2.ed.gov/about/offices/list/ope/pol/tsa.doc](http://www2.ed.gov/about/offices/list/ope/pol/tsa.doc).

<sup>2</sup> AFT, *Importing Educators: Causes and Consequences of International Teacher Recruitment*, Washington, D.C.: American Federation of Teachers, AFL-CIO, 2009, 7.

<sup>3</sup> AFT, *Importing Educators*, 10.

<sup>4</sup> *Characteristics of Specialty Occupation Workers: Fiscal Year 2010, Annual Report*, 14.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid, 15.

<sup>7</sup> “J-1 Visa: Designated Sponsor Organizations,” U.S. Department of State, 2012. <http://j1.visa.state.gov/participants/how-to-apply/sponsor-search/?program=Teacher>.



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- <sup>8</sup>Barber, Randy. "Report to the National Education Association on the Trends in Foreign Teacher Recruitment," *National Education Association and the Center for Economic Organizing*, 2003, 2.
- <sup>9</sup>"J-1 Visa Program: Teacher Program," U.S. Department of State, 2012. <http://j1visa.state.gov/programs/teacher/>.
- <sup>10</sup>Derived from Foreign Labor Certification Data and LCA data from "Top H1B Visa Sponsors in Educational Services in 2009-2011," *Myvisajobs.com*, 2011. <http://www.myvisajobs.com/Education-11OG.htm>.
- <sup>11</sup>Barber, "Report to the National Education Association on the Trends in Foreign Teacher Recruitment. 1.
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- <sup>14</sup>Di Carlo, Matthew. "Do Half Of New Teachers Leave The Profession Within Five Years?" The Albert Shanker Institute: *Shanker Blog*, December 15, 2011.
- <sup>15</sup>AFT, *Importing Educators*, 16.
- <sup>16</sup>Ibid, 15.
- <sup>17</sup>Ibid.
- <sup>18</sup>Abramson, Larry. "La. Teacher Union Files Complaint Against Recruiter," *NPR News* [transcript], October 2, 2009. <http://www.npr.org/templates/story/story.php?storyId=113423285>.
- <sup>19</sup>"Filipino teachers win case vs. agency in U.S." OFW (Overseas Filipino Workers) News, April 19, 2010. <http://ofwnow.com/local-news/filipino-teachers-win-case-vs-agency-in-u-s/2121>.
- <sup>20</sup>"Filipino migrant teachers in Louisiana win POEA case – Partido ng Manggagawa," *Human Rights Online Philippines*, May 22, 2011. [Press Release] <http://hronlineph.com/2011/05/22/press-release-filipino-migrant-teachers-in-louisiana-win-poea-case-partido-ng-manggagawa/>.
- <sup>21</sup>Toppo, Greg and Fernancez Icess, "Federal complaint: Filipino teachers held in 'servitude,'" *USA Today*, October 27, 2009.
- <sup>22</sup>Ly, Phuong. "Lessons Far from Home," *Washington Post Magazine*, August 3, 2008.
- <sup>23</sup>WHD News Release, "Prince George's County Public Schools charged with violating provisions of H-1B temporary foreign worker program," U.S. Department of Labor, April 4, 2011.
- <sup>24</sup>WHD News Release, "Prince George's County Public Schools charged with violating provisions of H-1B temporary foreign worker program"; Carlo Parapara, "PM Statement on the Plight of Filipino Teachers of Maryland's PGCPs," Partido ng Manggagawa (PM): Filipino Educators Network, July 16, 2011. <http://www.pen-usa.org/hot-news-1/statementontheplightoffilipinoteachersofmaryland%E2%80%99spgcp>.
- <sup>25</sup>AFT, *Importing Educators*, 18.
- <sup>26</sup>Ibid, 16.
- <sup>27</sup>AFT, *Importing Educators*, 15-16.
- <sup>28</sup>AFT, *Importing Educators*, 19-20.
- <sup>29</sup>Ibid.
- <sup>30</sup>"Research Spotlight on Recruiting & Retaining Teachers Highly Qualified Teachers," National Education Association, 2007. <http://www.nea.org/tools/17054.htm>.
- <sup>31</sup>Ly. "Lessons Far from Home."
- <sup>32</sup>"Pinoy teachers in U.S. use blog to air grievances vs. recruiter," *ABS-CBN News Service*, November 24, 2008. <http://www.abs-cbnnews.com/pinoy-migration/oneone/24/08/pinoy-teachers-use-blog-express-grievances-vs-placement-agency>.
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- <sup>34</sup>AFT, *Importing Educators*, 18.
- <sup>35</sup>Ibid, 19.
- <sup>36</sup>Ibid, 17.
- <sup>37</sup>U.S. Justice Department, U.S. Attorney's Office, "Former El Past School Administrator Indicted," Western District of Texas [Press Release], October 22, 2004. <http://www.ed.gov/about/offices/list/oig/invtreports/tx102004.pdf>.
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- <sup>39</sup>UNESCO, *Global Education Digest 2010: Comparing Education Statistics Across the World*, (Montreal, Quebec: UNESCO Institute for Statistics (UIS), 2010), 12. [http://www.uis.unesco.org/Library/Documents/GED\\_2010\\_EN.pdf](http://www.uis.unesco.org/Library/Documents/GED_2010_EN.pdf).
- <sup>40</sup>AFT, *Importing Educators*, 4.
- <sup>41</sup>Ibid, 22.

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<sup>42</sup> Ibid, 21-22.

<sup>43</sup> Ibid, 21.

<sup>44</sup> Ibid, 26.

<sup>45</sup> Ibid, 25.

<sup>46</sup> Ibid, 26.

<sup>47</sup> Ibid.

## **CHAPTER 5: LOOKING AHEAD**

The high skilled guest worker visa system is broken and desperately in need of reform. The current system is easily manipulated by employers, which harms workers across industries and national boundaries. The labor movement supports the creation of an independent commission that would ensure foreign and domestic workers fair access to jobs and protection from employer abuse.

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### **The Labor Movement’s Framework for Comprehensive Immigration Reform**

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In 2009, former Secretary of Labor Ray Marshall and the Economic Policy Institute released “Immigration for Shared Prosperity: A Framework for Comprehensive Reform.” The recommended reform structure was similar to other reform structures endorsed by the AFL-CIO and Change to Win labor federations. The commission framework at the core of Secretary Marshall’s plan has also been endorsed by organizations such as the Migration Policy Institute.

The framework has five major interconnected pieces:

- 1) the creation of an independent, highly professional commission—the Foreign Worker Adjustment Commission (FWAC)—to measure labor shortages and recommend numbers and characteristics of employment-based temporary and permanent immigrants to fill those shortages;
- 2) a rational, operational control of our borders and effective internal tracking systems;
- 3) a fair and efficient worker authorization system complemented by more effective labor law enforcement;
- 4) a humane and practical system to adjust the status of unauthorized immigrants; and
- 5) the improvement, but not expansion, of our temporary indentured worker programs.<sup>1</sup>

DPE strongly supports the five policy pieces outlined by Secretary Marshall and sees them as a clear remedy to the problems with guest work visa programs. Immigration reform—based on the inherent value of family reunification—must complement strong, worker-centered, and effective labor standards enforcement, with all workers having full access to the protection of labor, health, safety, and other laws. “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.”<sup>2</sup> Examining the two policy prescriptions that are most relevant to professional workers makes this clear.<sup>3</sup>

## *Independent Commission to Manage Future Immigration Flows*

The current employment-based immigration system is a product of political compromises that disregards real labor market needs and is rarely updated to reflect changing conditions. The system for allocating employment visas — both temporary and permanent — should be de-politicized and placed in the hands of an independent commission. The commission would be served by a professional staff of economists, demographers, statisticians, and immigration specialists to assess labor market needs on an ongoing basis, based on a methodology approved by Congress. In designing the new system, and establishing the methodology to be used for assessing labor shortages, the commission would be required to examine the impact of immigration on the economy, wages, workforce, and business. This would ensure that guest workers complement, rather than displace the domestic workforce.

**The labor movement on immigration reform:** “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....”<sup>4</sup>

## *Improvement, not Expansion, of Temporary Worker Programs*

The current system exploits workers. Reform is necessary, but it needs to be conceived in a way that is consistent with democratic values. As Secretary Marshall, the AFL-CIO, and Change to Win argue:

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.<sup>5</sup>

Congress should reaffirm the dynamism of the U.S. labor market by allowing guest workers to work for any employer after 18 months, so long as an independent commission has determined there is a labor shortage. This would end the indentured nature of our current guest worker visa programs. Greater movement for guest workers would allow them to more freely engage in union activities, negotiate higher wages, access health and safety laws, and benefit from other worker protections without fear of retaliation and deportation.

Bureaucratic reform also must take place to ensure greater protections for workers. As the GAO points out for the H-1B, “restrictions on agencies’ abilities to enforce program requirements and coordinate with one another widen the risk of fraud and abuse, and undermine efforts to enforce worker protections.”<sup>6</sup> Agencies need to be empowered to enforce program requirements and coordinate their efforts to prevent abuses of the system.

There must also be minimum wage standards for all guest worker visas. For the H-1B, DPE supports setting the minimum wage at the 75<sup>th</sup> percentile of the market wage for a given occupation. If guest workers are the best and the brightest, as supporters claim, then they should command a greater premium. However, guest workers are not paid a premium and in fact, reports have shown that many guest workers make less than or the same as U.S. citizens and permanent residents. Establishing a minimum market wage would ensure that employers truly recruited the most talented employees, instead of depressing wages by recruiting low-wage, entry-level employees.

Body shops must undergo greater scrutiny since their existence weakens enforcement efforts. On this, the GAO recommended that the end-user of the H-1B beneficiary, recruited from a staffing company, also be held liable for complying with labor protection requirements.<sup>7</sup> A secure hot-line system for guest workers to register complaints with the DOL would also add a level of worker protection to all guest worker visa programs.

Finally, piece-meal changes to guest worker programs add more opportunities for employers to game an already badly broken system. While there may be aspects to legislative proposals that would be beneficial to workers, absent comprehensive reform of high skilled guest worker visa programs, there will continue to be exploitation of guest labor and displacement of domestic labor.

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<sup>1</sup> Marshall, Ray. *Immigration for Shared Prosperity—A Framework for Comprehensive Reform*. Washington: Economic Policy Institute, 2009. 2. Print.

<sup>2</sup> Ibid.

<sup>3</sup> The following is synthesized from: Marshall, *Immigration for a Shared Prosperity—A Framework for Comprehensive Reform*; Marshal, Ray. *Value-Added Immigration: Lessons for the United States from Canada, Australia, and the United Kingdom*. Washington: Economic Policy Institute. 2011; AFL-CIO and Change to Win. *The Labor Movement’s Framework for Comprehensive Immigration Reform*.

<sup>4</sup> AFL-CIO and Change to Win. *The Labor Movement’s Framework for Comprehensive Immigration Reform*.

<sup>5</sup> Ibid, 2; Marshall. *Immigration for a Shared Prosperity—A Framework for Comprehensive Reform*. 54.

<sup>6</sup> United States Government Accountability Office, *H-1B Visa Program, Reforms Are Needed to Minimize the Risks and Costs of Current Program*. Washington: GAO, 2011, 60.

<sup>7</sup> Ibid. 61.

**APPENDIX: A GUIDE TO GUEST WORKER VISAS**

<b>Visa</b>	<b>Description<sup>1</sup></b>	<b>Quota Restrictions<sup>2</sup></b>	<b>Initial Duration<sup>3</sup></b>	<b>Renewal<sup>4</sup></b>
E-1	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.	There are no quota restrictions for E-1 visas.	Two years.	Up to two years per extension. No maximum number of extensions.*
E-2	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.	There are no quota restrictions for E-2 visas.	Two years.	Up to two years per extension. No maximum number of extensions.*
E-3	The E-3 visa is a visa for citizens of Australia to work temporarily in the U.S. in a specialty occupation.	A maximum of 10,500 E-3 visas per FY. Family of visa holders and those renewing visas do not count towards cap.	Two years.	Up to two years per extension. No maximum number of extensions.
H-1B	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.	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 education.	Up to three years.	Increments of up to three years. Total stay limit six years. There are additional extensions if employer sponsors employee for permanent residency.

<b>Visa</b>	<b>Description</b>	<b>Quota Restrictions</b>	<b>Initial Duration</b>	<b>Renewal</b>
H-1B1	The U.S. 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.	6,800 visas per FY (set aside within 65,000 H-1B cap).	Up to three years.	Up to one year per extension. No maximum number of extensions.
H-1B2	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. Department of Defense.	One hundred for Department of Defense.	Up to five years.	Increments of up to five years. Total stay 10 years.*
H-1B3	The H-1B3 visa applies to a fashion model who is nationally or internationally recognized for achievements, to be employed in the U.S.	Counts under 65,000 H-1B cap.	Up to three years.	Increments of up to three years. Total stay limit six years.*
H-2A	The H-2A visa applies to temporary or seasonal agricultural workers.	There is no annual cap on visas for H-2A workers.	Same as labor certification, with a maximum of one year.	Same as labor certification (up to one year). Total stay three years.
H-2B	The H-2B visa applies to temporary or seasonal nonagricultural workers.	The H-2B numerical limit set by Congress is 66,000 per FY. Allocated 33,000 each ½ of FY.	Same as labor certification, with maximum of one year.	Same as labor certification (up to one year). Total stay three years.

<b>Visa</b>	<b>Description</b>	<b>Quota Restrictions</b>	<b>Initial Duration</b>	<b>Renewal</b>
H-3	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.	50 visas per fiscal year allocated to H-3 aliens participating in special ed. training programs.	Special Ed. Training – up to 18 months. Others – two years.	Special Ed. Trainee – total stay 18 months. Others – two years.
J-1	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.	There is no annual cap on J-1 visas. <sup>5</sup>	Up to one year.	May be renewed up to three years. <sup>6</sup>
L-1A	The L-1A visa is for persons employed at a managerial/ executive level for at least one of the previous three years 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.	There is no annual cap on L-1 visas.	Existing office – up to three years. New office – up to one year.	Increments of up to two years. Total stay seven years.
L-1B	The L-1B visa is for persons employed for at least one year of the previous three years 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.	There is no annual cap on L-1 visas.	Existing office – up to three years. New office – up to one year.	Increments of up to two years. Total stay five years.



<b>Visa</b>	<b>Description</b>	<b>Quota Restrictions</b>	<b>Initial Duration</b>	<b>Renewal</b>
O-1	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.	There is no annual cap on O visas.	Up to three years.	Increments of up to one year.
O-2	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.	There is no annual cap on O visas.	Up to three years.	Increments of up to one year.
P-1	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.	There is no annual cap on P visas.	Individual athlete – up to five years. Athletic and entertainment groups – up to one year.	Individual athlete – total stay 10 years. Athletic groups and entertainment groups – increments of one year.
P-2	The P-2 visa is for individuals who are entertainers or part of a performance group that performs on a reciprocal exchange program with U.S. organizations.	There is no annual cap on P visas.	Individual athlete – up to five years. Athletic and entertainment groups – up to one year.	Individual athlete – total stay 10 years. Athletic groups and entertainment groups – increments of one year.

Visa	Description	Quota Restrictions	Initial Duration	Renewal
P-3	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.	There is no annual cap on P visas.	Individual athlete – up to five years. Athletic and entertainment groups – up to one year.	Individual athlete – total stay 10 years. Athletic groups and entertainment groups – increments of one year.
Q-1	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 if participants' home country in the U.S.	There is no annual cap on Q visas.	Up to 15 months.	Total stay limited to 15 months.
R-1	The R-1 visa is for members of legitimate religious organizations to live and work in the U.S. for a specific period of time.	There is no annual cap on R visas.	Up to 30 months.	Increments of up to 30 months. Total stay five years.
R-2	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.	There is no annual cap on R visas.	Up to 30 months.	Increments of up to 30 months. Total stay five years.

<sup>1</sup> U.S. Department of State, Bureau of Consular Affairs. *Types of Visas for Temporary Visitors*. Web. Mar. 8, 2012; U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Temporary (Nonimmigrant) Workers*. Sep. 9, 2011. Web. Mar. 8, 2012.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

\*With some exceptions



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