

Tech companies seek to increase cap on visas for foreign-born skilled workers

by **John Yantis** - Aug. 1, 2010 12:00 AM

The Arizona Republic

A polarizing national debate on immigration isn't helping technology companies that have been trying for years to persuade Congress to change laws concerning foreign-born workers.

Specialty-jobs visas are often used by U.S. tech firms to hire foreign-born engineers and other workers with specific skills. But the number of visas issued annually is much too small, industry leaders say. The companies worry that as business picks up, they will be forced to turn away prime talent that could boost their company's research and development and performance.

Efforts to raise a 65,000-person annual cap on H-1B employment visas for foreign nationals and a parallel push to get them green cards swiftly are being overshadowed by a political debate that has nothing to do with ensuring cutting-edge companies can hire the best talent for specialty jobs, advocates say.

"We've been beating the drum hard on this issue for a long time, and lawmakers understand the argument," said Peter Cleveland, Intel Corp. vice president for global public policy. "Part of the problem is the general population has a view about immigrants, and we're trying to educate and explain the enormous value these highly trained immigrants provide."

Companies who want to increase the cap say they try to hire Americans first, but they insist the statistics don't lie.

"Half the master's and Ph.D. degree graduates are foreign-born students out of our universities, so we would like to recruit them," Cleveland said. "And to have a static cap on H-1Bs at 65,000 is self-defeating and counterproductive. The economy goes up and down. If there's more flexibility in that cap, if there's a market escalator, that is helpful to companies that are on the cutting edge of technology."

Graduate population

In many critical disciplines needed by the industry, particularly in science, math, engineering and technology, 50 percent or more of the post-graduate degrees at U.S. universities are awarded to foreign nationals, according to Compete America, a coalition based in Washington, D.C., that includes Intel and other advocates for reform of U.S. [immigration policy](#) for highly educated foreign professionals.

According to the American Association of Engineering Societies, for the 2008-2009 academic year, foreign nationals comprised 43.9 percent of the master's and 54.6 percent of the Ph.D.s awarded in engineering by U.S. universities. At Arizona State University's Ira A. Fulton Schools of Engineering, 5.9 percent of its roughly 4,200 undergraduates last fall were international students. The percentage jumped to 50.6 percent, or 1,012, of about 2,000 graduate students enrolled in the schools.

To build the pipeline and keep U.S. students in the programs, the semiconductor industry has spent \$319 million in the past three years in kindergarten through 12th grade on science, technology, engineering and math programs.

"Whether it's ON or any other members of the Semiconductor Industry Association, our use of visas are not an excuse to not hire U.S. citizens," said Colleen McKeown, senior vice president of human resources at Phoenix-based ON Semiconductor.

"That's not why we use the visas. We use the visas because that's where a lot of talent is for a lot of these positions."

Small numbers

H-1B visa holders represented 0.06 percent of the U.S. civilian labor force in 2009, according to the National Foundation for American Policy, a non-profit, nonpartisan organization based in Arlington, Va., that researches trade, immigration, education and other issues.

Including petitions exempt from counting against the H-1B quota, 85,133 new H-1B petitions were approved in fiscal 2009. This compares with a U.S. civilian labor force of approximately 154 million in 2009, according to the foundation. At Intel Corp., 6.5 percent of its U.S. employees have H-1B visas. The company employs more than 40,000 in the United States and more than 80,000 worldwide. At Chandler-based Microchip Technology Inc., 5.5 percent of the employees have H-1Bs. The company employs 5,100 people around the globe.

"When the cap runs out, it's difficult on everyone," said Lauren Carr, Microchip's vice president of human resources. "We certainly need the skills that they're bringing in. We look for all local talent, as well throughout the United States. We do feel there should be more a market demand than a set cap, but we deal with what we're given."

Others, including the Federation for American Immigration Reform, a Washington, D.C., group that seeks to improve border security, to stop illegal immigration and to promote immigration levels of about 300,000 people a year, believe H-1B reform is unnecessary.

"There's more than a sufficient amount of guest workers available to these industries," said Ira Mehlman, the group's spokesman. "Both in good times and

bad times, they keep saying they want more workers even as there has been evidence that as they're bringing in H-1B workers, they are letting go of native workers. The mere fact that you have so many foreign H-1B workers in the labor force puts downward pressure on wages."

McKeown said wages are not the issue when it comes to H-1B hires.

"People get paid the same," she said. "It's one of the requirements of how the law works. And in a lot of the foreign countries where we do have design centers, the engineers may make as much or more than some of our U.S. folks."

How H-1B works

H-1B visas are tied to the sponsoring company, and are made on behalf of qualified foreign-born workers it would like to hire.

Employers who want to hire using the visas apply first with the U.S. Department of Labor for certification. They also apply with the U.S. Bureau of Citizenship and Immigration Services, or CIS. If both petitions are approved, the H-1B visa is good for three years. It can be extended but in most cases cannot go beyond six years.

The H-1B limit was not particularly relevant between 1992 and 1996 because it wasn't reached. During the next two years, as the dot-com boom took hold, Congress agreed to raise the number to 115,000 in 1999 and to 195,000 in 2001. It went back to 65,000 in 2004 and has been maxed out every year since.

The annual cap of 65,000 visas runs during the government's fiscal year, from Oct. 1 to Sept. 30. But there are exceptions.

The first 20,000 petitions that are filed for employees with U.S. master's degrees or higher are exempt. Also exempt are those workers hired by universities and non-profit or government research organizations.

To get an H-1B visa, the prospective employee must have a bachelor's degree or higher, or the equivalent.

"The nature of the duties has to be so specialized and complex that the person hired has to have particular knowledge required to perform that job," said Marie Sebrechts, a CIS spokeswoman.

H-1Bs can lead to a green card, or permanent residency. But the wait time for green cards is six to 20 years. The time frame is unrealistic for companies hoping to hire green-card applicants, according to the National Foundation for American Policy. Because the supply of H-1B visas has been exhausted during or before the end of each of the past seven fiscal years, companies that operate globally often are left with no choice but to hire skilled foreign nationals to work outside the United States. Otherwise, they may see scientists, engineers and professionals lost to competitors overseas, according to a foundation policy brief released in March.

Student to worker

H-1B holders say the process to move from being a student to getting the visa was fairly easy, provided they were offered a job.

"There are so many recruiters from different companies that are not willing to sponsor H-1B just because you're a foreign national," said Angela Shao, who is from China, speaks several languages, and works in ON Semiconductor's human-resources department. "That's the most difficult part is to get an offer. Once you get an offer, the process works real well, I think."

Shao is one of 52 H-1B holders at ON Semiconductor.

After graduation, foreign nationals with student visas have two months to start optional practical training. Once the training begins, they have 90 days to find a job, or their student visa becomes invalid.

The H-1B is tied to the sponsoring company, so if the employee moves on, the hiring company must apply for the visa again.

Karthik Jayaraman, a design engineer from India who works at ON Semiconductor, said the company told him the path to a green card generally takes at least six years, so there is a nine-year time frame between getting an H1-B and becoming a citizen. Once the procedure for a green card is started, the applicant cannot change jobs or move.

Jayaraman would like to see a streamlined system in which it's possible to apply for citizenship during the first year of holding an H1-B.

"If the company really feels that the candidate who is applying for the green card is worthy of it, and the manager of the group really wants him to work on a long-term project, then it would be good if the green card can be gotten in a really quick time rather than having to wait for six or seven years," Jayaraman said. When the H-1B cap was hit in 2007 and 2008, Microchip had to wait to hire the new college graduates in which it was interested.

"That was difficult because we could have hired them much sooner than we were allowed to because we couldn't get the visa," Carr said. "You can apply as early as April for the October year. If you don't get your application in before the cap is up, then you have to wait a whole year."

Stalemate on issue

Of course, the recession that took hold in 2008 made the 65,000 cap on H-1B visas less of an issue for companies.

But companies, as well as immigration advocates, worry that as business picks up, the caps will again be met quickly, forcing human resource managers to turn away prime talent.

"Obviously, when the economy is bad, it regulates itself as we see in the current environment," said Bob Sakaniwa of the American Immigration Lawyers Association in Washington, D.C. "But rest assured, as soon as we get out of this, because companies are expanding and business is gearing up again, we'll need workers from wherever we can get them. And to artificially cut it off doesn't seem to make sense."

Although action on the bill isn't likely in this session of Congress, Cleveland said legislation was introduced by Rep. John Shadegg, R-Ariz., that would increase the cap from 65,000 to 115,000 initially. If the larger cap is hit, the number would escalate on a small percentage basis so the same problem wouldn't exist in the following year.

The industry is hopeful the increased caps and an easier path to the green cards are part of a comprehensive federal package of immigration reforms.

And while Arizona's Senate Bill 1070 has put immigration reform front and center, technology leaders worry that Congress could be caught between the desire to change the laws for companies and members' fears of piecemeal legislation that could hurt broader attempts at change.

McKeown said, "There are those who are members of Congress, the federal government or the administration who only want to pass it if it's comprehensive reform. And then there are those who would say, 'Yes, we support your idea, but there's no way I'm doing comprehensive (reform).'"

The Obama administration may be more agreeable to changes sought for years, lobbyists say.

"The current administration has said this is a priority, and obviously [President Obama](#) has made it clear this is something he wants to see done," said Jessica Herrera-Flanigan, co-executive director of America Competes, a coalition based in Washington that includes Intel and other advocates for reform of U.S. immigration policy for highly-educated foreign professionals.

"It's not merely a presidential call, however. You have to look at the political temper of the country, you have to look at Congress, and it has to be a joint effort. But I do think there is some will there."

Other options

The White House referred comment on H1-Bs to CIS, where Sebrechts said she could not comment on policy matters of the administration.

The agency announced recently that it would launch what it said is an unprecedented, top-to-bottom examination of its adjudication and customer-service policies, including those in the area of H-1Bs. McKeown, who chairs the Semiconductor's Industry Association's Workforce Committee, said her group advocates skipping the H-1B process altogether, essentially by stapling green cards to some diplomas.

Legislation proposed in Congress would allow foreign-born students who receive U.S. graduate degrees in science, technology, engineering and math to be put on a fast track to citizenship.

"There is some support from the federal government for that, but again, it gets caught up in the whole national debate about immigration," she said. "Most of

these students who come here for their college education at the advanced level would want to stay here and work and contribute and add to our society."

Over the past 7 years, the number of visas has been exhausted

The technology industry argues that a limit of 65,000 H-1B visas for foreign-born employees is not enough to stay competitive with the rest of the world.

Year	Cap	Issued	Unused
1992	65,000	48,600	16,400
1993	65,000	61,600	3,400
1994	65,000	60,300	4,700
1995	65,000	54,200	10,800
1996	65,000	55,100	9,900
1997	65,000	65,000	0
1998	65,000	65,000	0
1999	115,000	115,000	0
2000	115,000	115,000	0
2001	195,000	163,600	31,400
2002	195,000	79,100	115,900
2003	195,000	78,000	117,000
2004	65,000	65,000	0
2005	65,000	65,000	0
2006	65,000	65,000	0
2007	65,000	65,000	0
2008	65,000	65,000	0
2009	65,000	65,000	0
2010	65,000	65,000	0

*Does not include exemptions from the cap, including those hired by universities and non-profit research groups and 20,000 individuals who received a master's degree or higher from a U.S. university.

Sources: Department of Homeland Security, National Foundation for American Policy.