

NATIONAL FOUNDATION FOR AMERICAN POLICY

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H-1B VISAS BY THE NUMBERS: 2010 AND BEYOND

EXECUTIVE SUMMARY

The availability of H-1B visas is crucial, otherwise skilled foreign nationals, particularly graduates of U.S. universities, could not work or remain in the United States. However, the supply of visas has been exhausted during or before each of the past 7 fiscal years, often leaving employers with no choice but to hire skilled foreign nationals outside the United States or see these scientists, engineers and professionals lost to competitors overseas. The current wait for employer-sponsored green cards (used to stay permanently) is 6 to 20 years, a timeframe unrealistic for hiring new employees.

Even when the economy is uncertain, employers still seek talented people on an ongoing basis. Based on historical usage, the H-1B visa quota for skilled foreign-born professionals is likely to be exhausted before or during the new fiscal year. The demand built up by the inability of employers to hire skilled professionals on new H-1B visas since at least December 2009 and the low quota on H-1Bs relative to the size of the U.S. labor force will contribute to employers likely reaching the annual cap of 65,000 and 20,000 exemption for recipients of a graduate degree from a U.S. university.

NFAP examined past studies and official government data on H-1Bs for FY 2009 and previous years. Among the findings in this research:

- Although important for the competitiveness of many U.S. companies, new H-1B visa holders represented only 0.06 percent of the U.S. civilian labor force in 2009, a tiny proportion of the U.S. workforce, making unsupportable claims that such individuals are “destroying” large numbers of U.S. jobs. Moreover, for the past several years no new H-1B visa holder could even be hired by companies in the United States for 4 to 12 months at a time due to quotas being exhausted, making it unlikely that employers would go without filling jobs if a qualified U.S. applicant was available.
- Seeking to undermine support for H-1B visas in general, critics have tended to leave the impression that Indian technology companies use the majority of the annual allotment of H-1B visas. USCIS data show in FY 2009, less than 6 percent of new H-1B visas went to Indian technology companies. Identifying 25 India-based firms one finds Indian companies utilized fewer than 5,000 (4,809) new H-1B petitions in FY 2009. Moreover, tracking these same companies over time, one finds that the number of new H-1B visas utilized by Indian technology firms fell by 70 percent between FY 2006 and FY 2009. Pointing out such data is not intended to accept the premise of some critics that H-1B visa holders are “taking American jobs.” To the extent Indian (and non-Indian) companies performing information technology service work allow U.S. businesses to focus on core functions, run more efficiently, and enhance shareholder wealth, U.S. companies can hire more people in the long run by becoming more profitable.

H-1B Visas By The Numbers: 2010 and Beyond

- A large variety of businesses and organizations in America, including public school systems, hire H-1B professionals every year. In FY 2009, 27,288 different employers hired at least one individual on a new H-1B petition, according to USCIS. Contrary to the popular impression, 96 percent of the employers (26,304 of 27,288) hired 10 or fewer individuals on a new H-1B petition. A total of 18,747 employers, or 69 percent, hired only one foreign national on a new H-1B petition.
- Many employers file green card applications for their employees on H-1B visas, as evidenced by the enormous backlog for employer-sponsored green cards. Some critics have turned this fact on its head and argued it is not legitimate for employers to petition for H-1B visa holders unless they intend to sponsor such foreign nationals for permanent residence. This ignores both business reality and the historical use of the temporary visa category. Historically, entry on an H-1 visa was allowed only for temporary work. As part of a broad immigration bill, Congress changed the law in 1990 to permit an applicant for an H-1 (redesignating the category H-1B) to enter either for temporary work or with an intention to be sponsored by a green card. The time and money to obtain permanent residence is a disincentive for employers to apply for permanent residence for H-1B visa holders unless both the employer and the employee intend that an individual will remain in the United States for 10 to 20 years. Given the business cycle, it is often not easy to forecast employment needs that far into the future.

Examining the 2009 H-1B numbers and recent research on high skill immigration shows many of the arguments made to restrict H-1B visas are weak. H-1Bs are used by a large variety of businesses and organizations in the United States. Given the long waits for green cards, H-1B visas remain often the only way an employer can hire an outstanding international student or bring a talented foreign national to America to work.

Research shows H-1B visa holders are important to innovation, entrepreneurship and job creation in America. With the annual flow of H-1Bs representing only 0.06 percent of the U.S. labor force in 2009, arguments that H-1B professionals overwhelm the American workforce are not supported by logic or the facts. Surveys of Indian and Chinese professionals who have left America show that visa constraints play a role in their leaving the country, an exodus that will continue absent reform of our immigration laws.

Liberalizing H-1B and green card quotas would help American companies innovate and create more jobs in the United States. While critics of H-1B visas often frame their arguments as helping Americans, the current restrictions inflict real harm on the country – and new restrictions will only increase the damage.

H-1B VISAS IN FY 2009, 2010 AND 2011

In recent years, U.S. Citizenship and Immigration Services (USCIS) has accepted H-1B applications for the next fiscal year on April 1. As predicted in a March 2009 NFAP Policy Brief, the H-1B quota (and the exemption for graduate degree holders) was exhausted before the end of the 2010 fiscal year.¹ According to U.S. Citizenship and Immigration Services, the final receipt date for the FY 2010 cap was December 21, 2009.² With the general improvement in the economy in the first half of 2010, it is reasonable to assume employers will see the H-1B quota exhausted in a similar fashion (or earlier) in FY 2011. The primary reason is the annual quota of 65,000 (plus a 20,000 exemption for those with advanced degrees from a U.S. university) is small relative to the size of the U.S. economy and labor force. There is no evidence that during the long periods of time when no foreign nationals could receive new H-1B petitions the job market improved for U.S. workers or professionals.

The demand for skilled foreign nationals has generally been so high and the quota so low that it has created problems for employers. During a one-week filing window in April 2008, U.S. Citizenship and Immigration Services (USCIS) received 163,000 H-1B applications, nearly twice as many petitions as slots available under the FY 2009 quota of 65,000, plus 20,000 for advanced degree holders from U.S. universities. The petitions were awarded to employers by lottery and no new H-1B petitions could be issued the remainder of the fiscal year. Even when the economy is uncertain, employers still seek talented people on an ongoing basis. Moreover, even firms that downsize in one part of a company may be hiring in another part.

In FY 2002 and 2003, during the dot-com bust, nearly 80,000 petitions counted against the cap. Whether or not today's economic situation is comparable is difficult to assess but the totals in those years would have been much higher if Congress had not eliminated pent up demand in 2001 by setting an H-1B ceiling of 195,000. In contrast, today a "backlog" for H-1Bs exists in that no employer could file for a new H-1B petition since at least December 2009.

The U.S. economy is large and diverse. As discussed later in the report, more than 27,000 different U.S. employers hired one or more individuals on an H-1B visa in FY 2009, according to USCIS. It is likely that many different employers will continue to hire H-1B visa holders they have identified as valuable to their organization.

H-1Bs visas are important to retaining skilled talent in America, otherwise skilled foreign nationals generally could not work or remain in the United States. The current long waits for employer-sponsored green cards (used to stay permanently) make them unrealistic to use for hiring new employees. Therefore, whether an employer seeks a skilled foreign-born professional for a short or long period, an H-1B visa often is the only practical means.

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H-1B visas are temporary visas that allow foreign nationals to work in the United States on short-term projects or as a prelude to a green card. The visas generally are good for up to 6 years (with a renewal after three years). Contrary to popular impression, Congress did not “create” an H-1B visa program in 1990. Individuals had long been permitted to come into the United States on H-1 temporary visas. Moreover, such professionals were not intended necessarily to be immigrants, as opposed to temporary entrants into the U.S. labor market. Prior to 1990, going back to the 1950s, H-1s generally could not enter the United States if they intended to stay permanently.

Congress changed the law in 1990 to allow “dual intent,” which allowed H-1B visa holders to intend to become permanent residents (green card recipients), while also placing an annual limit of 65,000. Until the law was expanded in 1990, H-1s could only enter the United States to fill jobs that were temporary or project-oriented.

By 1997, the 65,000 annual limit established by Congress in 1990 proved to be insufficient. Since that time employers have exhausted the supply of H-1B visas every year except during FY 2001 to FY 2003, when the ceiling was increased. In the past 7 years employers used up all the visas before or during the fiscal year. In 1998 and 2000 Congress passed short-term H-1B numerical increases that “sunset.”

In late 2004 Congress approved an exemption of 20,000 from the cap for recipients of an advanced degree from a U.S. university. (Congress had earlier approved an exemption from the numerical limit for those hired by universities and non-profit or government research institutes.) With each revision in the law has come greater regulation and scrutiny for employers and, starting in 1998, high and escalating fees for hiring H-1B professionals.

The current annual level of H-1Bs is about the same level as in 1990, even though the U.S. Gross Domestic Product has risen by 64 percent (from \$8.5 trillion to \$14 trillion) over the past 20 years, while the demand for skilled labor, particularly in technical fields, has also risen.

*H-1B Visas By The Numbers: 2010 and Beyond***THE MARKET HAS DETERMINED H-1B VISA USE**

Examining previous years shows that the market has determined the use of H-1B visas. When Congress raised the limit to 195,000 a year in FY 2002 and 2003, in both years fewer than 80,000 visas were issued against the cap, leaving 230,000 H-1B visas unused in those two years. Firms did not hire more H-1Bs in those years just because the cap was higher.

Table 1
H-1B VISAS ISSUED AGAINST THE CAP BY YEAR

<u>Year</u>	<u>CAP*</u>	<u>#Issued</u>	<u>#Unused</u>
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

Source: Department of Homeland Security; National Foundation for American Policy.
*Does not include exemptions from the cap. Exemptions from the cap include those hired by universities and non-profit research institutes and 20,000 individuals who received a master's degree or higher from a U.S. university.

ANALYSIS OF FY 2009 H-1B NUMBERS

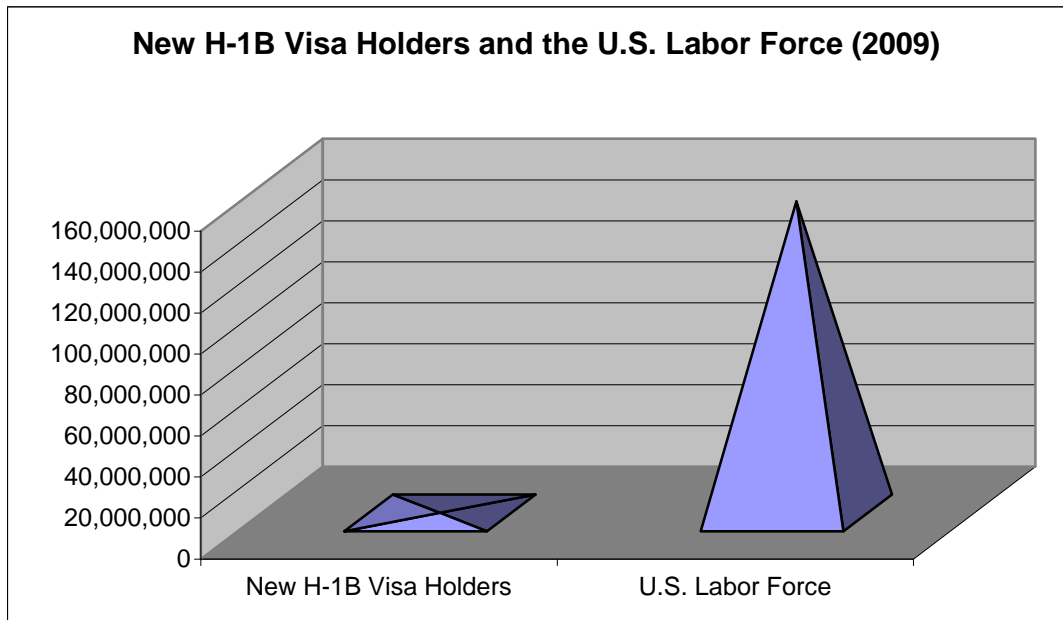
NFAP has obtained the FY 2009 H-1B numbers from USCIS detailing how many new H-1B petitions were approved for each employer.³ An analysis of the USCIS data reveals information contrary to the conventional wisdom about the share of H-1Bs relative to the U.S. labor force, the proportion of H-1B visas utilized by Indian companies and the variety of employers hiring individuals on H-1Bs. The findings appear below.

H-1Bs REPRESENT A SMALL PORTION OF THE U.S. LABOR FORCE

New H-1B visa holders in the United States accounted for 0.06 percent of the U.S. labor force in 2009. Including those petitions exempt from counting against the H-1B quota, a total of 85,133 new H-1B petitions were approved by USCIS in FY 2009.⁴ That compares to the U.S. civilian labor force of approximately 154 million in 2009.⁵

A key premise of critics remains that companies hire H-1B professionals to the exclusion of Americans. If one looks at the numbers this assertion makes little sense. Almost all companies that employ H-1B visa holders have a workforce with U.S. workers accounting for 85 percent to 99 percent. The relatively few businesses with more than 15 percent of workers on H-1B visas are “H-1B dependent” and must adhere to a stricter set of labor rules.

Figure 1



Source: U.S. Citizenship and Immigration Services, U.S. Department of Labor, National Foundation for American Policy

Table 2
Top 30 Employers for New H-1B Petitions Approved in FY 2009

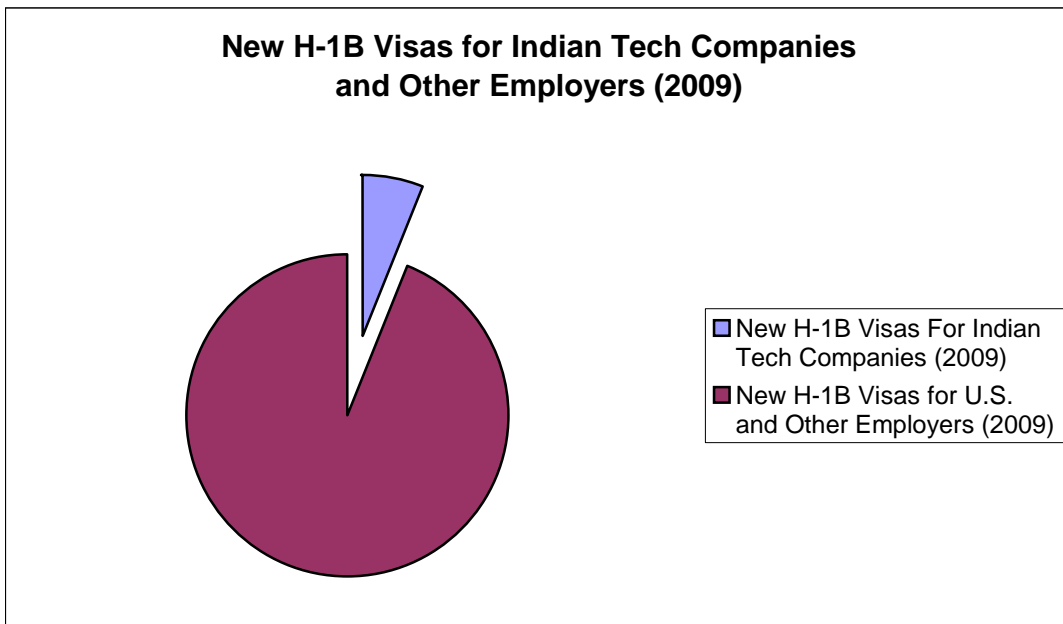
<u>EMPLOYER</u>	<u>NEW H-1B PETITIONS</u>
Wipro Ltd.	1,964
Microsoft Corp.	1,318
Intel Corp.	723
IBM India Private Ltd.	695
Patni Americas Inc.	609
Larsen & Toubro Infotech Ltd.	602
Ernst & Young LLP	481
Infosys Technologies Ltd.	440
UST Global Inc.	344
Deloitte Consulting LLP	328
Qualcomm Inc.	320
Cisco Systems Inc.	308
Accenture LLP	287
KPMG LLP	287
Oracle USA Inc.	272
Polaris Software Lab India Ltd.	254
Rite Aid Corp.	240
Goldman Sachs & Co.	236
Deloitte & Touche LLP	235
Cognizant Tech Solutions Corp.	233
Mphasis Corp.	229
Satyam Computer Services Ltd.	219
Bloomberg	217
Motorola Inc.	213
Google Inc.	211
Baltimore Public School System	187
University of Maryland	185
University of Michigan	183
Yahoo Inc.	183
Amazon Global Resources Inc	182

Source: USCIS. Petitions approved for initial beneficiaries in FY 2009

INDIAN TECHNOLOGY COMPANIES

Critics have tended to leave the impression that Indian technology companies use far more H-1B visas than they actually do. One persistent impression is that Indian technology companies garner the majority of H-1B visas each year. However, USCIS data show in FY 2009, less than 6 percent of new H-1B petitions went to Indian technology companies. Identifying 25 India-based firms one finds Indian companies utilized fewer than 5,000 (4,809) new H-1B visas in FY 2009. Moreover, tracking these same companies over time, shows that the number of new H-1B visas utilized by Indian technology firms fell by 70 percent between FY 2006 and FY 2009.⁶

Figure 2



Source: U.S. Citizenship and Immigration Services, National Foundation for American Policy

Pointing out such data is not intended to accept the premise of some critics that H-1B visa holders are “taking American jobs.” It is intended to set the record straight so debate on these issues can rest on a factual basis. Individual Indian companies have been among the larger users of H-1B visas, which critics have seized upon.

When Indian technology companies or other non-Indian IT service providers perform work in the United States it is because U.S. companies believe such work makes their businesses more profitable. Inefficient companies do

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not maintain large payrolls for a significant period of time, while increased flexibility and profitability are positive. To the extent Indian (and non-Indian) companies performing information technology service work allow U.S. businesses to focus on core functions, run more efficiently, and enhance shareholder wealth, U.S. companies can hire more people in the long run by becoming more profitable.

GREEN CARDS? YES. H-1Bs? YES.

Historically, entry on an H-1 visa was allowed only for temporary work. This meant consular officers required an applicant to prove he or she was not intending to immigrate (as a permanent resident) before issuing a temporary visa. (Today, tourists and international students must demonstrate this to a consular office.) As part of a broad immigration bill, Congress changed the law in 1990 to permit an applicant for an H-1 (designating the category H-1B) to enter either for temporary work or with an intention to be sponsored by a green card. In a new line of argument some critics have argued only employers who sponsor a large percentage of their H-1B visa holders for permanent residence are using the H-1B visa properly.⁷ This argument bears no basis in immigration law, the historical use of temporary visa or the reality of business.

Many employers file green card applications for their employees on H-1B visas, as evidenced by the enormous backlog for employer-sponsored green cards. However, the current wait time for employment-based immigrants is 6 to 20 years, with the longest for Indians in the 3rd preference category. The time and money to obtain permanent residence is a huge disincentive for employers to apply for permanent residence for H-1B visa holders unless both the employer and the employee intend that an individual will remain in the United States for the next 10 to 20 years. Given the business cycle, it is often not easy to forecast employment needs that far into the future.

Individual employers and business associations have advocated that Congress allocate more green cards for skilled immigrants. But the existence of a path to permanent residence within the immigration system should not be used as a policy club to restrict the use of H-1B visas. Since it is unlikely Congress and USCIS will ever provide a satisfactory solution to the employment-based immigrant visa issue, one should be aware that if foreign nationals are prevented from entering or staying in the U.S. on H-1B petitions, then employers could not sponsor such individuals for green cards. Therefore, a policy of “green cards, yes, H-1B visas, no,” is likely to be contradictory and unworkable, no matter how positive genuine reform of the employment-based green card system would be.

*H-1B Visas By The Numbers: 2010 and Beyond***MANY EMPLOYERS USE H-1B VISAS**

Every year a large variety of businesses and organizations in America, including public school systems, hire H-1B professionals. In FY 2009, 27,288 different employers hired at least one individual on a new H-1B petition, according to USCIS. Contrary to the popular impression, 96 percent of the employers (26,304 of 27,288) hired 10 or fewer individuals on a new H-1B petition. A total of 18,747 employers, or 69 percent, hired only one foreign national on a new H-1B petition.⁸

RESEARCH ON H-1BS AND HIGH SKILL IMMIGRATION

In recent years quite a bit of research has come out that makes a compelling case for America adopting more open policies toward foreign-born professionals and high skill immigration in general. Some of that research is summarized below.

FOREIGN NATIONALS LEAVING U.S., VISA POLICY A FACTOR

A survey of more than 1,000 Indian and Chinese professionals who left the United States and returned to their native countries found many individuals perceive greater opportunities in their countries of birth than ever before. The March 2009 findings from Duke University and University of California, Berkeley researchers send a signal that America cannot take it for granted that outstanding international students, researchers and professionals from around the world will always want to stay and work in the United States. "The responses to our survey seemed to indicate that returnees' departures were not related solely to preferences for starting a business in their home countries or to perceptions of possibilities of further professional advancement in their home countries," concluded co-authors Vivek Wadhwa (Duke University), AnnaLee Saxenian (University of California, Berkeley), Richard Freeman (Harvard University), Gary Gereffi (Duke University) and Alex Salkever (Duke University). "Returnees showed a strong preference for their home country because of family and personal considerations."⁹

"A majority of respondents indicated that they would at least consider returning to the U.S. if they could get a visa and a good job. Most likely the good job is the key here, as visa considerations did not weigh heavily in their decision to leave. Fewer than one-third of respondents had permanent-residency status, however, and it is possible that, though visa issues may not be perceived as a major reason to leave, job difficulties resulting from restrictive visa policies could be playing a major role in spurring the exodus," the authors found.¹⁰

In fact, the survey found that only 34 percent of Indians without a green card said "No," they would not return to the United States "if offered a permanent resident visa (green card) and a suitable job opportunity." The remaining 64 percent said yes or maybe they would return (26 percent said yes, 40 percent said maybe). The results were similar for Chinese professionals without a green card who had returned to China, with 27 percent saying they

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would not return to America if offered permanent residence and a suitable job opportunity, with the remaining 73 percent saying yes or maybe they would come back to America (17.5 percent yes, 55 percent maybe).¹¹

Approximately one-third of Indian temporary visa holders (32.6 percent) said U.S. visas/permits contributed to their decision to return home to India. Twenty-two percent of Chinese said visa issues contributed to their decision to leave America and return to China.¹²

H-1Bs AND JOB CREATION

One reason so much emotion swirls around high skill immigration issues is many people assume if a job is filled by a foreign national, then that means an American who could have filled that job is out of luck. Yet the flow of jobs in an economy and even within a company is much more dynamic than allowed for in such a simple one-for-one, zero-sum analysis of employment.

The National Foundation for American Policy found evidence H-1B visa holders are associated with increases in employment at U.S. technology companies in the Standard and Poor's (S&P) 500. Some criticized the study, in part, because, public statements citing the research did not carefully couch the conclusions in the same language used in the study. That led to the impression the analysis had concluded the hiring of each H-1B visa holder "caused" the hiring of additional Americans.¹³

The study stated that correlation is not the same as causation. However, making inferences based on association is common in much significant research, such as that showing a connection between higher levels of education and higher wages. The study found an association between companies filing for H-1B visa holders and later increases in employment at these technology companies. At minimum, the study's findings disputed the notion that "cheaper" H-1Bs were leading to fewer Americans employed in these companies.

The findings were consistent with information from tech companies on the dynamic process of job creation and the results held up in estimates with different controls and subsets of firms. One reason the study has been widely cited is it reflects the real world experiences of tech companies in hiring highly skilled foreign-born professionals and international graduate students from U.S. universities. In addition to citing the research, Bill Gates noted Microsoft's own internal findings that H-1Bs lead to increased complementary employment: "Microsoft has found that for every H-1B hire we make, we add on average four additional employees to support them in various capacities."¹⁴ That is similar to the finding in the National Foundation for American Policy research. Discussions with executives at eBay and other tech companies revealed the same experiences. It's common sense to job creators that hiring talented individuals leads to growth and innovation.

SKILLED FOREIGN NATIONALS AND TAXES

A March 2009 study by Arlene Holen for the Technology Policy Institute found “highly skilled immigrants pay substantially more in taxes than they receive in federal benefits.” According to the research, “The relaxation of green card constraints proposed in the Comprehensive Immigration Reform Act of 2006 could have increased labor earnings and GDP by approximately \$34 billion in the tenth year following enactment and had a net positive effect on the budget of \$34 to \$47 billion over ten years. . . . Relaxation of H-1B caps under the Comprehensive Immigration Reform Act of 2007 could have increased labor earnings and GDP by \$60 billion in the tenth year following enactment and improved the federal budget’s bottom line by \$64 to \$86 billion over ten years.”¹⁵

H-1Bs AND PATENTS

A paper by economists William R. Kerr (Harvard Business School) and William F. Lincoln (University of Michigan) concluded, “We find that fluctuations in H-1B admissions levels significantly influence the rate of Indian and Chinese patenting in cities and firms dependent upon the program relative to their peers. Most of our specifications also find weak crowding-in effects or no effects at all for native patenting. We conclude that total invention increases with higher admission levels primarily through the direct contributions of immigrant inventors.”¹⁶

Kerr and Lincoln found, “A 10 percent growth in H-1B admissions correlates with an 8 percent growth in Indian invention” relative to firms outside of the computer sector less reliant on H-1Bs.¹⁷

Similarly, according to a study by Keith Maskus, an economist at the University of Colorado, for every 100 international students who receive science or engineering Ph.D.'s from American universities, the nation gains 62 future patent applications.¹⁸

H-1B FEES AND OTHER COMPANY CONTRIBUTIONS TOWARD U.S. EDUCATION

U.S. businesses pay over \$91 billion a year in state and local taxes directed toward public education, while the mandated scholarship and training fees U.S. companies pay for each H-1B professional hired are more than \$2 billion since 1999.¹⁹ (These fees are \$1,500 for companies with more than 25 full-time employees and \$750 for firms with 25 or fewer employees and are levied on each new H-1B petition and renewals.) Some argue that companies should not be permitted to hire international students and other foreign nationals on skilled visas unless they do more to support education. However, it is illogical to oppose increasing the annual level of green cards or H-1B visas in order to hold U.S. businesses responsible for the inadequate performance of U.S. public education, since it is elected officials, not companies, who are responsible for local, state and federal education policy. Moreover, changes to our schools will take years to have a major impact on overall student performance.

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Companies such as Intel, Oracle, Microsoft and others make substantial charitable contributions to aid education in the United States. The Gates Foundation alone, funded by Microsoft stock, has contributed \$3 billion to U.S. public education since 1999.

Since 1999, the H-1B fees paid by companies have funded 53,000 scholarships for U.S. students in math and science through the National Science Foundation, as well as hands-on science programs for 190,000 elementary, middle and high school students and 6,800 teachers. More than 55,000 U.S. workers have received training through the H-1B fees paid by companies.²⁰

H-1Bs AND WAGES

There is little evidence that native information technology (IT) workers are harmed by an openness towards H-1B professionals. A study by Madeline Zavodny, a research economist at the Federal Reserve Bank of Atlanta, found, "H-1B workers [also] do not appear to depress contemporaneous earnings growth." As to unemployment, the study concluded that the entry of H-1B computer programmers "do not appear to have an adverse impact on contemporaneous unemployment rates." The study also noted that some results "do suggest a positive relationship between the number of LCA [Labor Condition] applications and the unemployment rate a year later." Zavodny concluded: "None of the results suggest that an influx of H-1Bs as proxied by Labor Condition Applications filed relative to total IT employment, lower contemporaneous average earnings. Indeed, many of the results indicate a positive, statistically significant relationship." This would mean H-1B employment is actually associated with better job conditions for natives, according to the study, which could be because H-1B professionals are complementary to native professionals.²¹

If companies simply wanted to obtain services based only on wages, then U.S. companies would move all of their work outside the United States, since wage rates are lower in most countries around the world. Some have sought to use prevailing wage data filed with the Department of Labor to argue employers underpay H-1B visa holders. However, prevailing wage data do not necessarily reflect the salaries received by H-1B professionals.²² The wage data maintained by the Department of Labor are simply listings of the minimum an employer can pay an H-1B professional for a particular job. The data showing what an employer actually pays an H-1B visa holder are contained on the I-129 forms filed with U.S. Citizenship and Immigration Services (USCIS). Unlike the prevailing wage data at DOL, the forms filed with USCIS are not normally available to the public. To examine this issue, the National Foundation for American Policy asked a respected law firm to select a random sample of H-1B cases from among its client base. They represented different occupations but the vast majority of the H-1Bs were in high technology fields. Among the 100 randomly selected cases, *the average actual wage was more than 22 percent higher than the prevailing wage*. This is not meant to be definitive proof that actual wages are always, on

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average, 22 percent higher than prevailing wages. However, it does show, along with other evidence, that analyses utilizing prevailing wage data to claim H-1B professionals are underpaid are not reliable.²³

IMMIGRANT ENTREPRENEURS

A study by Stuart Anderson and Michaela Platzer conducted for the National Venture Capital Association found “Over the past 15 years, immigrants have started 25 percent of U.S. public companies that were venture-backed, a high percentage of the most innovative companies in America . . . The largest U.S. venture-backed public companies started by immigrants include Intel, Solectron, Sanmina-SCI, Sun Microsystems, eBay, Yahoo!, and Google.”²⁴

Duke University research that involved interviews with executives at U.S. technology and engineering companies found essentially the same results as the National Venture Capital Association study. “Of the 2054 companies we interviewed, 25.3 percent reported that at least one of their key founders was an immigrant. Extrapolating from this sample, we estimate that all companies founded by immigrants from 1995 to 2005 produced \$52 billion in sales and employed 450,000 workers in 2005,” according to Vivek Wadhwa, AnnaLee Saxenian, Ben Rissing and Gary Gereffi.²⁵

THE CHILDREN OF H-1B VISA HOLDERS

At the 2004 Intel Science Talent Search, the nation’s leading science competition for top high school students, the National Foundation for American Policy conducted interviews to determine the immigration background of the 40 finalists. The results: two-thirds of the Intel Science Talent Search finalists were the children of immigrants. The prevalence among the finalists of children of past H-1B visa holders is remarkable. Even though new H-1B visa holders each year represent only 0.03 percent of the U.S. population, it turns out more of the children had parents who entered the country on H-1B visas than had parents born in the United States. One conclusion from this: if current immigration policies had been even more restrictive, many of the coming generation’s top scientists and engineers would not be here in the United States today – because we never would have allowed in their parents.²⁶

H-1BS AND EDUCATION LEVELS

Contrary to assertions that H-1B visa holders are not highly skilled, official data for FY 2008 show 57 percent of recent H-1B professionals earned a master’s degree or higher, according to the Department of Homeland Security. Forty-one percent earned a master’s degree, 11 percent earned a Ph.D. and 5 percent a professional degree.²⁷ In 2007, U.S. universities awarded about half of master’s degrees and 73 percent of Ph.D.s in electrical engineering to foreign nationals, according to the National Science Foundation.²⁸

CONCLUSION

Examining the 2009 H-1B numbers and recent research on high skill immigration shows many of the arguments made to restrict H-1B visas are weak. H-1Bs are used by a large variety of businesses and organizations in the United States, over 27,000 employers in 2008. With green card wait times between 6 to 20 years, H-1B visas remain often the only way an employer can hire an outstanding international student or bring a talented foreign national to America to work.

Research shows H-1B visa holders are important to innovation, entrepreneurship and job creation in America. Moreover, arguments that H-1B professionals overwhelm the American workforce are not supported by logic or the facts. In 2009, the annual flow of new H-1B visa holders represented only 0.06 percent of the U.S. labor force. Surveys of Indian and Chinese professionals who have left America show that visa constraints play a role in their leaving the country, an exodus that will continue absent reform of our immigration laws.

Liberalizing H-1B and green card quotas would help American companies innovate and create more jobs in the United States. While critics of H-1B visas often cloak their arguments in the guise of helping Americans, it is the current restrictions that are inflicting real harm on the country – and new restrictions will only increase the damage.

END NOTES

¹ *H-1B Visas By the Numbers*, National Foundation for American Policy, March 2009.

² Communication with USCIS.

³ Unless otherwise noted, the data discussed here are from the U.S. Citizenship and Immigration Services list of FY 2009 employers and H-1B initial beneficiaries.

⁴ Note: USCIS data list H-1B petitions in the fiscal year approved. That means H-1B petitions that count against the FY 2010 quota would be included in the FY 2009 totals if those cases were approved prior to October 1, 2010. Similarly, cases that count against the FY 2011 cap would be included in the USCIS data for FY 2010 if those cases are approved prior to October 1, 2011. It appears the drop from the approximately 109,000 petitions approved in FY 2008 to 85,133 in FY 2009 is an accounting issue – when the cases were approved. Cases that counted against the cap in FY 2009 were primarily included in the FY 2008 data, since they were approved prior to October 1, 2009 (the start of the 2010 fiscal year). In contrast, the FY 2010 H-1B petitions subject to quota were not all approved until December 2009, and, as a result, were included in both FY 2009 and FY 2010 data by USCIS. Depending on the demand for H-1B petitions for FY 2011, this means that FY 2010 data may show an “increase” in H-1B petitions that would reflect primarily an accounting issue.

⁵ Bureau of Labor Statistics, U.S. Department of Labor.

⁶ Note the data here are for India-based companies. In the past, some publications have cited Cognizant as an “Indian” company but since it is a U.S. company NFAP is not including Cognizant in the FY 2009 count or in the calculations on percentage decline. The inclusion of Cognizant would not affect the underlying analysis. It is possible there may be other companies one might argue could be added to the list. However, even if one added another 1,000 H-1B visa holders to the total it would only change the percentages cited by at most a few percentage points.

⁷ See, for example, Department for Professional Employees, AFL-CIO, *Gaming the System, Guest Worker Visa Programs and Professional and Technical Workers in the U.S.*, Department for Professional Employees, AFL-CIO, 2009; Ron Hira, *Bridge to Immigration or Cheap Temporary Labor?*, EPI Briefing Paper, Economic Policy Institute, February 17, 2010.

⁸ U.S. Citizenship and Immigration Services list of FY 2009 employers and H-1B initial beneficiaries.

⁹ Vivek Wadhwa, AnnaLee Saxenian, Richard Freeman, Gary Gereffi and Alex Salkever, *America’s Loss is the World’s Gain*, Duke University, University of California, Berkeley, Harvard University, Ewing Marion Kauffman Foundation, p. 6. The research is available at <http://www.globalizationresearch.com/>.

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¹⁰ Ibid.

¹¹ Thank you to Professor Wadhwa and Karna Vishwas for providing additional data by reexamining the survey results by filtering out respondents to this question who already possessed a green card or U.S. citizenship.

¹² Additional data from the survey provided by Professor Wadhwa and Karna Vishwas.

¹³ *H-1B Visas and Job Creation*, (Arlington, VA: National Foundation for American Policy, March 2008). While the study acknowledged that H-1B applications could indicate broader hiring, the analysis controlled for the overall business climate and found little change in the result that H-1B professionals are associated with increased hiring at large technology companies.

¹⁴ Written Testimony of William H. Gates Chairman, Microsoft Corporation And Co-Chair, Bill & Melinda Gates Foundation Before the Committee on Science and Technology United States House of Representatives, March 12, 2008, p. 14.

¹⁵ Arlene Holen, *The Budgetary Effects of High-Skilled Immigration Reform*, Technology Policy Institute, March 2009.

¹⁶ William R. Kerr and William F. Lincoln, "The Supply Side of Innovation: H-1B Visa Reforms and U.S. Ethnic Invention," Harvard Business School, Working Paper, 09-005, 2009, p. 30.

¹⁷ Ibid., p. 29.

¹⁸ Stuart Anderson, "The Nation's Future is Stuck Overseas," *The New York Times*, November 16, 2005; Keith E. Maskus, Gnanaraj Chellaraj, and Aaditya Mattoo, "The Contribution Of Skilled Immigration and International Graduate Students To U.S. Innovation," March 17, 2005.

¹⁹ See *U.S. Businesses Pay Over \$91 Billion a Year to Support Education*, NFAP Policy Brief, May 2007. <http://www.nfap.com/pdf/0507brief-business-immigration.pdf>. The research staff of the National Taxpayers Union pointed out these two studies and the relevant figures on taxes: <http://www.taxfoundation.org/files/bp52.pdf>) and <http://www.taxfoundation.org/publications/show/2056.html>. The fee figures are derived from data from the Department of Homeland Security. Estimates of annual receipts indicate that since 1999/2000 companies paid approximately \$2 billion cumulatively up to the middle of FY 2009 and surpassed that \$2 billion level after the filings for FY 2010. Such filings began on April 1, 2009.

²⁰ See *U.S. Businesses Pay Over \$91 Billion a Year in Taxes to Support Education*, National Foundation for American Policy; FY 2011 National Science Foundation Budget Request to Congress, EHR – 16.

²¹ Madeline Zavodny, "The H-1B Program and Its Effects on Information Technology Workers," Federal Reserve Bank of Atlanta, *Economic Review*, Third Quarter 2003.

²² For a more detailed discussion of the wage issues see *H-1B Professionals and Wages: Setting the Record Straight*, NFAP Policy Brief, National Foundation for American Policy, March 2006. Under Section 212(n)(1) of the Immigration and Nationality Act, an employer hiring an individual in H-1B status must pay at least "the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific

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employment in question” or “the prevailing wage level for the occupational classification in the area of employment, *whichever is greater*. . .” Therefore, relying solely on prevailing wage data is inappropriate.

<http://www.nfap.com/researchactivities/articles/NFAPPolicyBriefH1BProfessionalsAndWages0306.pdf>

²³ Ibid. While it is possible cases from a different law firm could yield somewhat different results, this law firm served a diverse client base that appears typical of the employers petitioning for H-1B professionals.

²⁴ Stuart Anderson and Michaela Platzer, *American Made: The Impact of Immigrant Entrepreneurs and Professionals on U.S. Competitiveness*, National Venture Capital Association, November 2006, p. 6.

²⁵ Vivek Wadhwa, AnnaLee Saxenian, Ben Rissing, and Gary Gereffi, “Skilled Immigration and Economic Growth,” *Applied Research in Economic Development*, vol. 5, issue 1, May 2008, p. 7.

²⁶ Stuart Anderson, *The Multiplier Effect*, National Foundation for American Policy, July 2004.

²⁷ *Characteristics of Specialty Occupational Workers (H-1B): Fiscal Year 2008*, Department of Homeland Security, May 1, 2009, 9.

²⁸ Tabulations of the NSF-NIH Survey of Graduate Students & Postdoctorates in S&E performed using the National Science Foundation’s Webcaspar data tool, <http://webcaspar.nsf.gov>.

ABOUT THE NATIONAL FOUNDATION FOR AMERICAN POLICY

Established in the Fall 2003, the National Foundation for American Policy (NFAP) is a 501(c)(3) non-profit, non-partisan public policy research organization based in Arlington, Virginia focusing on trade, immigration and related issues. The Advisory Board members include Columbia University economist Jagdish Bhagwati, Ohio University economist Richard Vedder and other prominent individuals. Over the past 24 months, NFAP's research has been written about in the *Wall Street Journal*, the *New York Times*, the *Washington Post*, and other major media outlets. The organization's reports can be found at www.nfap.com.