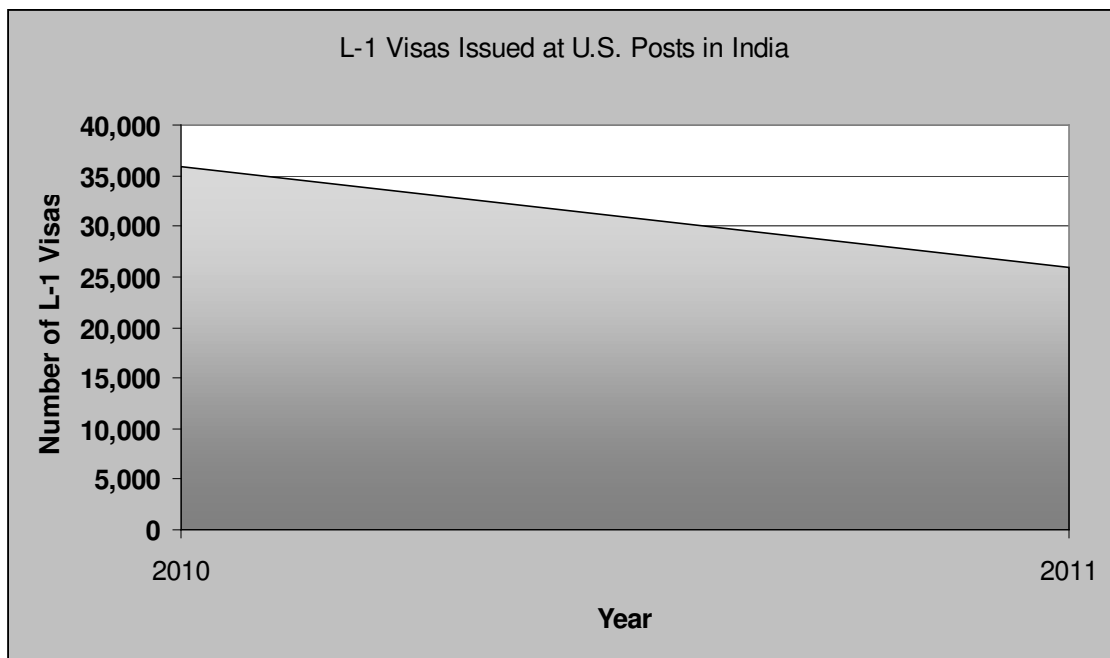


L-1 VISA APPROVALS DECLINE SIGNIFICANTLY AT U.S. POSTS IN INDIA IN 2011

The number of L-1 visas issued at U.S. posts in India declined by 28 percent from 2010 to 2011, according to data obtained from the U.S. Department of State by the National Foundation for American Policy (NFAP). The official data from the State Department show that L-1 visa approvals went from 35,896 in Fiscal Year (FY) 2010 to 25,898 in FY 2011, a drop of approximately 10,000 visas.¹ At the same time that L-1 visas issued in India declined by 28 percent, L-1 visas issued in the rest of the world rose by 15 percent, according to State Department data.² This shows an enormous gap in visas issued as well as, it must be assumed, approval/denial rates between posts in India and the rest of the world, raising policy questions as to whether this great disparity is the result of a conscious policy at U.S. posts in India. This confirms what many observers have believed: an increase in denials over the past 12 to 18 months is making it far more difficult for employers to transfer employees based in India into the United States on L-1 visas. Employers say this is having a negative impact on growth, projects, and product development in the United States.

Figure 1



Source: U.S. Department of State.

¹ Bureau of Consular Affairs, U.S. Department of State. According to the State Department, "The FY 2011 number is preliminary, but any changes when we release the final numbers would be minor."

² This is based on preliminary data for FY 2011 received from the State Department.

*L-1 Visa Approvals Decline Significantly at U.S. Posts in India***BACKGROUND**

Company executives say L-1 visas are essential as a means of moving – and integrating – personnel around the world. L-1 visas allow U.S. companies to transfer executives, managers and personnel with specialized knowledge from their overseas operations into the United States to work. To qualify, L-1 beneficiaries must have worked abroad for the employer for at least one continuous year (within a three-year period) prior to a petition being filed. This would prevent, for example, someone hired overseas from being sent to work immediately in the United States. Also, based on U.S. Citizenship and Immigration Services regulations, an executive or manager is limited to seven years, while an individual with specialized knowledge can stay for five years.

DATA REQUEST

The National Foundation for American Policy requested the L-1 visa data after the U.S. Embassy in New Delhi issued a press release on October 25, 2011, headlined, “U.S. Mission to India Reports 24% Year-on-Year Increase in H-1B Visas Issued.”³ In that press release, it stated, “The U.S. Mission to India saw H-1B (specialized skills work visa) issuances in India increase 24% between the U.S. Government’s Fiscal Year (FY) 2011 and FY 2010. This marks a total increase from 54,111 issued in 2010 to 67,195 in 2011 . . . This 24% increase is tied to the highest ever H-1B application and issuance rates in the history of the U.S. Mission to India, and illustrates the booming nature of U.S.-India business relations.”⁴

Two facts are noteworthy about the press release. First, the embassy press release is open to be interpreted as an effort to defend against criticism that consular officers in India have been denying L-1 visa applications and, to a lesser extent, H-1B visa applications, that in the past had been approved for similar cases. One can find no similar press release on H-1B visas in India released in FY 2009 or FY 2010. Second, while the increase in H-1B visa issuance is trumpeted in the October 25 press release, we now know that a larger percentage *decrease* in L-1 visa issuance was not mentioned anywhere in the embassy press release. Moreover, the 28 percent decline in L-1 visa issuance is despite what the press release calls “the booming nature of U.S.-India business relations.”⁵

The only mention of L-1 visas in the press release is the following: “India also remains the leader in issuances of L-1 (intra-company transfer) visas, issuing more than 25,000 L-1s in FY 2011 – or 37% of issuances worldwide.” In contrast to H-1B visas, there is no FY 2010 figure for L-1 visas mentioned in the press release to serve as a point of comparison.⁶

³ “U.S. Mission to India Reports 24% Year-on-Year Increase in H-1B Visas Issued,” U.S. Embassy (New Delhi), October 25, 2011.

⁴ *Ibid.*

⁵ *Ibid.*

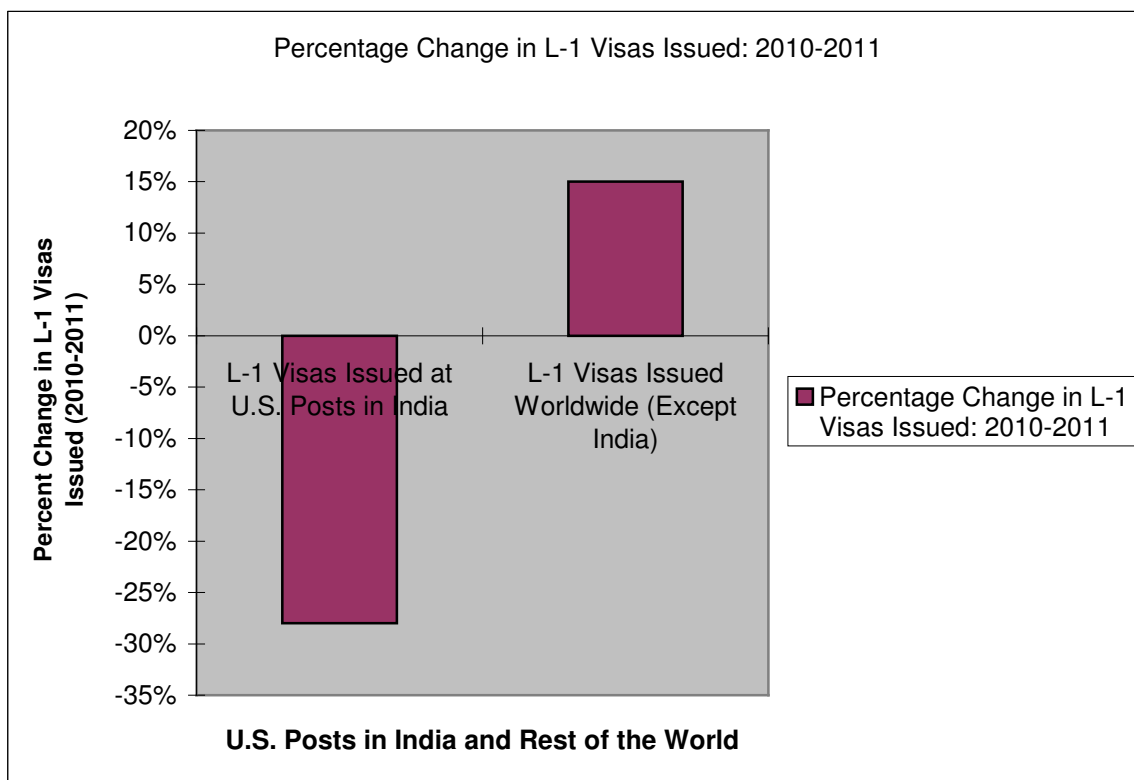
⁶ *Ibid.*

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COMPARING U.S. POSTS IN INDIA TO THE REST OF THE WORLD

As shown in Figure 2, a significant contrast exists between a 28 percent decrease in L-1 visas issued in India between FY 2010 and FY 2011, and an increase of 15 percent in L-1 visas issued at all U.S. posts around the world other than India during the same time period. The official data from the State Department show that L-1 visas issued fell from 35,896 in FY 2010 to 25,898 at U.S. posts in India in FY 2011.⁷ However, from FY 2010 to FY 2011, L-1 visas issued at U.S. posts other than India rose from 38,823 to 44,820.⁸

Figure 2



Source: U.S. Department of State.

Since all U.S. consulates and embassies operate under the same laws and regulations, it raises legitimate questions about what is happening to U.S. company applications to transfer important personnel into the United States from India. “There has been no change in the qualifications of applicants at Indian or any other posts. Nor has there been any change in the rules and regulations governing eligibility for L-1 visas,” said Crystal Williams,

⁷ Bureau of Consular Affairs, U.S. Department of State. According to the State Department, “The FY 2011 number is preliminary, but any changes when we release the final numbers would be minor.”

⁸ Data obtained from the U.S. Department of State.

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executive director, American Immigration Lawyers Association. “Instead, there has been an attitudinal change in adjudications. Recent adjudications have ignored the flexible statute enacted by Congress that was meant to accommodate the increased globalization of the economy, facilitate the ability of businesses to bring employees with needed skills into the United States and to operate competitively in the United States and across the globe.”⁹

Table 1
L-1 Visas Issued Worldwide (Except India)

Year	L-1 Visas Issued at U.S. Posts Worldwide (Except in India)
FY 2010	38,823
FY 2011	44,820

Source: U.S. Department of State.

A key issue is how U.S. Citizenship and Immigration Services adjudicators and consular officers interpret or have “re-interpreted” the phrase “specialized knowledge” in the context of L-1 visa holders. “Specialized knowledge” is defined in the Immigration and Nationality Act as “special knowledge of the company product and its application in international markets” or “an advanced level of knowledge of processes and procedures of the company.”¹⁰ As attorneys Daryl Buffenstein and Bo Cooper write, “The L-1B classification may be understood as allowing a transferee to infuse the U.S. operations with specialized knowledge gained abroad.”¹¹

Table 2
L-1 Visas Issued in India: 2010 to 2011

Year	L-1 Visas Issued at U.S. Posts in India
FY 2010	35,896
FY 2011	25,898

Source: U.S. Department of State.

⁹ Statement of Crystal Williams, executive director, American Immigration Lawyers Association, November 2, 2011.

¹⁰ As cited in Daryl Buffenstein and Bo Cooper, *Business Immigration Law & Practice*, vol. 1, (Washington, D.C.: American Immigration Lawyers Association, 2011), p. 863.

¹¹ *Ibid.*

*L-1 Visa Approvals Decline Significantly at U.S. Posts in India***STATE DEPARTMENT EXPLANATION AND RESPONSES FROM EMPLOYER GROUPS**

In response to an NFAP question for the reason for the decline in L-1 visa issuance, a spokesperson for the Bureau of Consular Affairs replied in writing, “On the question about decline, we have heard concerns from some companies that they are experiencing high refusal rates. We have seen an uptick in unqualified applicants in this category due to a much broader use of complex ‘specialized knowledge’ provisions as the basis of L-1 application, which may account for the perception of increased refusals. We work proactively with companies and business associations to ensure that we explain the requirements for this visa in complete detail.”¹²

However, employer groups reached for comment by NFAP disagreed that the issue is one of perception. “The data clearly show that there is a serious problem,” said Randel K. Johnson, senior vice president for labor, immigration and employee benefits at the U.S. Chamber of Commerce. “Our member companies believe they have and are submitting adequate applications for visas, and sense that there has been some change in policy at the State Department in how these applications are handled. Whatever the reason, we jointly need to work together to rectify the growing denial rates.”¹³

Diane Farrell, executive vice president and senior director, U.S.-India Business Council (USIBC), said, “The recent uptick in L-1 visa refusals is making it very challenging for our members to bring skilled, experienced professionals to work in the U.S. This is of great concern to USIBC as it is forcing these companies to look outside the U.S. for investment. The data reinforce the need for visa policies that work to ensure strong trade, investment and job growth in both the U.S. and India.”¹⁴

The L-1 visa issue is economically important to many employers. “ACIP members are facing continued competition for skilled global talent and need consistency in adjudications to stay globally competitive,” said Lynn Shotwell, executive director, American Council on International Personnel (ACIP), which has many multinational corporations as members. “Our members work hard to train and develop their global workforce and need flexibility to transfer their employees around the world as needed.”¹⁵

“To fully realize the potential of the high-tech sector, our country needs a well-trained, reliable workforce,” said Dan Varroney, acting President and CEO of TechAmerica. “Tomorrow’s highly trained, state-of-the-art talent pool will only materialize if Congress provides consistent STEM education investments in the long-term and allows business access in the short term to the best and the brightest highly-skilled immigrants from around the world

¹² Response received via email from spokesperson for the Bureau of Consular Affairs, November 1, 2011.

¹³ Statement of Randel K. Johnson, senior vice president for labor, immigration and employee benefits, U.S. Chamber of Commerce, November 2, 2011.

¹⁴ Statement of Diane Farrell, executive vice president and senior director, U.S.-India Business Council, November 2, 2011.

¹⁵ Statement of Lynn Shotwell, executive director, American Council on International Personnel, November 2, 2011.

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who come here to invest their skills and knowledge. It is disturbing to hear that the number of highly-skilled visas being approved by the State Department in India has declined while increasing elsewhere in the world. This is an unnecessary challenge that our companies are now facing and has the potential to affect the long-term health of our industry.”¹⁶

CONCLUSION

The State Department has suggested that since India receives a large percentage of the L-1 visas issued each year that means there is nothing wrong with the L-1 visa approval process at U.S. posts in India. That line of argument is questionable. The reason individuals from India receive the most H-1B and L-1 visas is because there are a large number of highly educated employees and candidates for employment who were born in India, while at the same time U.S. investment in India has grown substantially over the past two decades. The fact that India has a large and growing pool of skilled professionals tells us nothing about whether when employers apply for L-1 visas the individual cases of such professionals are decided properly.

The release of the L-1 visa data makes it difficult for U.S. government officials to argue that nothing different is going on in India when compared with the rest of the world. The information that L-1 visas declined in India comes after the U.S. embassy in Delhi announced the number of H-1B visas issued there increased from 2010 to 2011. A decline of 28 percent in L-1 visas issued in India from 2010 to 2011, at the same time that employers have seen an increase of 15 percent in L-1 visas issued in the rest of the world, using the same law and regulations, indicates something is amiss.

¹⁶ Statement of Dan Varroney, acting President and CEO of TechAmerica, November 2, 2011.

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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, former U.S. Senator and Energy Secretary Spencer Abraham, Ohio University economist Richard Vedder, former INS Commissioner James Ziglar 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.