

H-1B PROFESSIONALS AND WAGES: SETTING THE RECORD STRAIGHT

EXECUTIVE SUMMARY

U.S. companies hire and recruit globally. In some cases, this means hiring foreign-born individuals on H-1B temporary visas, many times off U.S. college campuses as part of the normal recruitment process. In essence, critics assert the only reason a U.S. employer would ever hire someone on an H-1B visa is because he or she will work cheaper than Americans, implying that only people born in the United States possess desirable skills. The story that a veritable conspiracy exists in America to hire foreign-born professionals so they can work cheaply is unsupported by the evidence. Moreover, it runs contrary to common sense and any serious analysis of how the U.S. labor market functions.

- A study by Madeline Zavodny, a research economist at the Federal Reserve Bank of Atlanta, found that the entry of H-1B professionals neither lowers the contemporaneous earnings of natives, nor has "an adverse impact on contemporaneous unemployment rates."
- Research by Paul E. Harrington, associate director of the Center for Labor Market Studies at Northeastern University, shows foreign-born and native professionals earn virtually identical salaries in math and science fields. National Science Foundation data show foreign-born scientists and engineers actually earn more than natives in some fields.
- Even among the highly stratified sample of the small number of employers whose actions warranted investigation and government-imposed penalties between 1992 and 2004, the average amount of back wages owed by even those employers is small – less than \$6,000 per employee, no more than the typical government and legal fees paid by most employers to hire H-1B visa holders. And among those employers, few if any are well-known companies. Generally, of the small number of violations no more than 10 to 15 percent of H-1B violations in a year are found to be "willful" by the Department of Labor, indicating the extent of abuse is limited.
- Contrary to the myth that H-1B visa holders are "indentured servants," professionals on such visas understand their market value and show great mobility in the U.S. labor market. An NFAP sampling of U.S. employers and immigration lawyers confirmed that individuals on H-1B visas change companies frequently. In fact,

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generally speaking, the majority of H-1B hires by large companies today first worked for other employers. This is supported by data from the Department of Homeland Security.

- A recent report for the Center for Immigration Studies (CIS) asserting that computer programmers on H-1B visas are underpaid contained shortcomings that make it unreliable for use by policy makers. The key flaw in the CIS study is that it utilized data that do not reveal what employers actually pay individuals on H-1B visas, relying on prevailing wage information alone, when, in fact, the actual amount companies pay is much higher. Actual starting salaries for H-1B professionals average 22 percent above the prevailing wage standards, according to a statistically valid sample of H-1B cases randomly selected for NFAP by a respected law firm. Another indicator of the CIS paper's unreliable methodology is that the paper claims that some large technology companies pay their H-1B employees, on average, as much as \$40,000 less than the H-1B professionals of competing tech firms located less than 30 minutes away, an impossibility given the competition for labor.
- 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 the median salary for a computer software engineer is \$7,273 in Bangalore and \$5,244 in Bombay, compared to \$60,000 in Boston and \$65,000 in New York, according to the Seattle-based market research firm PayScale.

INTRODUCTION

In recent years, Congress has failed to increase sufficiently the annual limit on H-1B visas for foreign-born professionals, regularly leaving U.S. companies unable to hire key personnel for many months. A key reason for Congress failing to act is the perception that the entry of skilled professionals on H-1B visas harms the employment prospects of natives. This perception is misguided and the result of several myths perpetuated by anti-immigration groups. Given the significant contributions made by foreign-born professionals, no one can claim the current tight numerical restrictions on H-1B visas are in the interests of the nation as a whole.

Despite the increased competition for talent and the tremendous changes in the U.S. and world economy over the past 16 years, with modest exceptions, the U.S. immigration system for high-skilled professionals has not changed since 1990 — except that it has become worse. Companies now pay hefty fees, endure

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longer waits, and submit to more restrictive rules than in the past. Prior to 1990, Congress placed no numerical limitation on the number of skilled foreign nationals employers could hire in H-1 temporary status. In the Immigration Act of 1990, Congress arbitrarily chose an annual cap of 65,000 and introduced several requirements in establishing a new H-1B category. Among the current requirements (instituted in 1990) is that companies pay the higher of the prevailing wage or actual wage paid to "all other individuals with similar experience and qualifications for the specific employment in question."¹

Since long regulatory delays make it virtually impossible to hire an individual directly on a green card (permanent residence), the availability of H-1B visas is important, otherwise skilled foreign nationals, particularly graduates of U.S. universities, could not work or remain in the United States. It can take often four years or more for a U.S. employer to complete the process for sponsoring a skilled foreigner for permanent residence due to U.S. government processing times and numerical limitations. No one can wait four years to start a job, so access to H-1B visas is essential if a foreign national is to work in America.

Since 1996, the 65,000 annual limit on H-1B visas has been reached in most years, leaving employers with the choice of waiting several months for the start of the next fiscal year to hire prospective employees in the United States or to employ new people outside the country. Many companies concede that the uncertainty created by Congress' inability to provide a reliable mechanism to hire skilled professionals has encouraged placing more human resources outside the United States to avoid being subject to legislative winds. In this respect, the H-1B limitations imposed by Congress are most damaging to young, fast-growing companies that do not even possess the option of placing personnel in foreign facilities.

With the exception of FY 2001-2003, due to legislation passed in late 2000, the H-1B cap has been reached before the end of every fiscal year since 1996. For example, in FY 2006, the immigration service stopped taking new applications in August 2005. Even the additional 20,000 exemption from the H-1B cap for those who graduated with an advanced degree from a U.S. university, which became law in 2005, was exhausted by January 2006. President Bush recently called for increasing the annual limit on H-1B visas but action in Congress remains unclear.²

Two misconceptions about immigration and labor markets affect people's understanding of high-skilled migration. First, is the "lump of labor" fallacy, or the belief only a fixed number of jobs exist in an economy, which would mean that any new entrant to the labor market would compete with existing workers for the same limited number of jobs. As the *Wall Street Journal* noted recently about the U.S. economy, since "May of 2003, just under five million jobs have materialized. That is the equivalent of a new job for every worker in New Jersey."³ The number of jobs available in America is not a static number, nor is the amount of compensation paid to workers fixed. Both grow based on several factors, including labor force growth, technology, education, entrepreneurship, and research

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and development.

Within sectors, jobs increase or decrease from year to year based on product demand and other factors. However, it is easy to ignore that people work today in companies and industries that did not even exist in the early 1990s. "When I was involved in creating the first Internet browser in 1993, I can tell you how many Internet jobs there were, there were 200. I can tell you how many there are now, there's two million now," said Marc Andreessen, a founder of Netscape.⁴ Indian and Chinese entrepreneurs have founded nearly one-third of Silicon Valley's technology companies, according to research by University of California, Berkeley professor Annalee Saxenian. Given our immigration system, one can surmise a majority entered on H-1B visas.⁵

A second misconception centers on the notion that foreign-born individuals are hired instead of – rather than in addition to – native-born workers. The evidence indicates that native-born and foreign-born work together in companies all across America. In the nation's largest technology companies, typically no more than 5 to 10 percent of the employees work on H-1B visas at any one time, according to companies interviewed by NFAP. There are very few businesses with even a majority of workers in H-1B status and those firms are subjected to more stringent labor rules under U.S. law.

RESEARCH SHOWS NO NEGATIVE IMPACT ON NATIVE PROFESSIONALS

Critics make assertions about the wages of H-1B professionals not out of concern for the H-1B visa holders but because the critics believe the competition harms native workers. Note that it is possible that a policy that results in increased competition can affect some people but remain good policy nonetheless. For example, a moratorium on opening new restaurants in an area would help existing restaurant owners and their employees but would be bad for consumers and entrepreneurs who live nearby, as well as workers seeking opportunity. For that reason such protectionist policies are rare in America and their rarity is a primary reason for America's economic success relative to other nations.⁶

Still, 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, 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. The study found, "H-1B workers also do not appear to depress contemporaneous earnings growth . . . and do

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not appear to have an adverse impact on contemporaneous unemployment rates.”⁷ H-1B professionals work in a variety of fields where they represent a much smaller percentage of the workforce than in computer programming or other IT fields, so these results would be anticipated in other areas.

RESEARCH ON THE WAGES OF FOREIGN-BORN PROFESSIONALS

Research by Paul E. Harrington, associate director of the Center for Labor Market Studies at Northeastern University, shows foreign-born and native professionals earn virtually identical salaries in math and science fields. Salaries in computer or math sciences were actually higher for the foreign-born among bachelor degree holders (\$58,000 vs. \$56,200) and doctoral degree holders (\$71,300 vs. \$70,500) and the same for recipients of master’s degrees. He found similar salaries for natives and foreign-born at all three levels in life sciences, as well as at the doctoral level in engineering, and a greater edge for natives at the bachelor and master’s level for engineering.⁸

National Science Foundation data indicate that foreign-born professionals actually earn more than their native counterparts when controlled for age and the year a science or engineering undergraduate, master’s, or doctorate degree is earned. The National Science Foundation reports: “Because foreign-born individuals in the labor force who have S&E (science and engineering) degrees are somewhat younger on average than natives, controlling for age and years since degree moves their salary differentials in a positive direction—in this case, making an initial earnings advantage over natives even larger – to 6.7 percent for foreign-born individuals with S&E bachelor’s degrees and to 7.8 percent for those with S&E PhDs.”⁹

AGE

When discussing salaries, one must compare apples with apples. In other words, one should not assume something nefarious is afoot when a difference in years of experience, skill level, and language results in different salaries for individuals. For all computer programmers with a bachelor’s degree, the median annual salary was \$67,000 in 2003, while a programmer between 25 and 29 had a median salary of \$58,000, according to the 2003 National Survey of College Graduates.¹⁰

Simply put, it may make sense for an employer to pay a younger worker less than a worker with more years in the labor market because greater experience and proven ability merits greater compensation. The wage differences for programmers of different ages cited above (\$9,000) are minor compared to other occupations. For example, in 2005 the typical annual salary for a rookie in Major League Baseball

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was \$316,000. In contrast, the average salary for all big league baseball players was more than 8 times higher, at \$2.6 million a year.¹¹

Even though there is little evidence that H-1B professionals are paid less than their native counterparts, when one takes into account factors such as experience and, perhaps, language ability, there would be nothing untoward about differences in wages, since H-1B professionals tend to be younger than natives.¹²

ENFORCEMENT AND FINES SHOW LITTLE EVIDENCE OF UNDERPAYMENT OF H-1BS

One way to obtain an upper-bound estimate of possible underpayment of wages to H-1B professionals is to examine Department of Labor (DOL) enforcement actions against employers. The evidence indicates that even among the highly stratified sample of the relatively small number of employers whose actions warranted investigation and government-imposed penalties (136 nationwide in 2004), the amount of back wages owed by even those employers is small. In fact, on average, it is no more than the typical government and legal fees paid by most employers to hire H-1B visa holders (see below).

Between 1992 and 2004, in all DOL investigations, the average amount of back wages owed to an H-1B employee was \$5,919.¹³

While it is true that the Department of Labor's enforcement of H-1Bs is primarily complaint-driven (though Congress has provided a mechanism for self-initiated DOL investigations), it is telling that among the cases investigated relatively few violations have been found to be labeled "willful" and/or result in debarment. DOL found employers either committed paperwork violations or misread employer obligations in a non-willful manner in the vast majority of the investigations conducted. In FY 2004, DOL found willful violations in only 11 percent (15 of 136) of its investigations that became final.¹⁴

The violations typically found over the past dozen years rarely seem to be committed by any well-known companies. Of the \$4.8 million owed in back wages in 2004, more than half (53 percent) came from findings against just 7 companies, none of whom are household names.¹⁵

EMPLOYER LEGAL AND PROCESSING FEES FOR H-1BS

U.S. employers are obligated to pay H-1B professionals the same wage as "all other individuals with similar experience and qualifications for the specific employment in question."¹⁶ But unlike with a native-born worker, the hiring costs to an employer do not end with the acceptance of a job offer.

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To hire a foreign national on an H-1B visa a U.S. employer must incur the following costs: \$2,500 in legal fees; \$1,500 training/scholarship fee; \$1,000 "premium processing" fee (not required but routinely used to overcome long processing times); a new \$500 antifraud fee; a \$185 immigration service fee; a \$125 in additional incidental costs (Federal Express, etc.), and a \$100 visa fee. These combined costs total \$5,910.

While the legal fees could be higher or lower depending on the law firm and the relationship with the employer, these figures do not include additional in-house human resources costs associated with the extra work involved in employing foreign nationals. Nor do the costs include the expense of approximately \$10,000 that can be incurred by sponsoring a foreign national for permanent residence (a green card), which many large technology companies, in particular, will do. Critics rarely take into account that companies incur many additional expenses beyond simply the wages paid to H-1B visa holders.

TABLE 1

H-1B COSTS: GOVERNMENT AND LEGAL FEES: WHAT A TYPICAL U.S. COMPANY PAYS TO HIRE AN H-1B PROFESSIONAL

TYPE OF COST/FEE	AMOUNT
GOVERNMENT FEES	
Training/Scholarship Fee	\$ 1,500
Anti-Fraud Fee	\$ 500
Premium Processing*	\$ 1,000
Immigration Service Fee	\$ 185
Visa Fee (if outside U.S.)**	\$ 100
LEGAL EXPENSES	
Attorney Charges	\$ 2,500
Other (Fed Express, etc.)	\$ 125
TOTAL	\$ 5,910

*Source: National Foundation for American Policy. *The Premium Processing fee is not required but is normally used to receive a decision on an application in a timely manner. **Reciprocity fees could make visa fee higher depending on the country of origin. For example, there is a \$50 reciprocity fee for India and a \$800 fee for Saudi Arabia. Attorney charges are average based on interviews and could be higher or lower depending on specific circumstances. The total does not include relocation costs or company human resources staff time; processing or legal fees related to a spouse or dependent family member are not included, which could increase costs by approximately \$1,000. If H-1B status is renewed after 3 years, the \$1,500 training/scholarship fee and \$185 immigration service fee will need to be paid again, as well as legal fees.*

H-1B PROFESSIONALS AND WAGES: SETTING THE RECORD STRAIGHT**H-1B VISA HOLDERS POSSESS LABOR MOBILITY**

While the Department of Labor is unlikely to catch all underpayment of wages, the greater protection for both H-1B professionals and other workers is the freedom to change employers and the competition for their services. A myth has been perpetuated that H-1B visa holders are "indentured servants." This is far from the truth. An NFAP sampling of U.S. employers and immigration lawyers found that individuals on H-1B visas change companies frequently. A number of S&P 500 companies related that the majority of their H-1B hires first worked for other employers. (Independent immigration attorneys confirmed this.) H-1B visa holders are individuals who understand the marketplace, exchange information with others in the field, and are highly sought by employers. In fact, Congress made it easier for those in H-1B status to change jobs by allowing movement to another employer before all paperwork is completed.

Data from the Department of Homeland Security show that in FY 2003 more H-1B applications were approved for "continuing" employment than for initial employment. While continuing employment also includes H-1B professionals receiving an "extension" to stay at the same employer for an additional three years, anecdotal evidence indicates most "continuing" employment involves an H-1B visa holder changing to a new employer.¹⁷

Critics do not explain why H-1B professionals who are said to be underpaid would remain en masse with their employers when they could seek higher wages with competing firms. Some argue that H-1B visa holders sponsored for green cards are reluctant to change employers because they will lose their place in the queue for labor certification and permanent residence. To the extent this problem persists the solution is to:

- 1) Streamline the labor certification process (progress has been made via DOL's new PERM system).
- 2) Eliminate the labor certification backlog.
- 3) Allow premium processing (employers paying an extra fee) to speed green card processing at the immigration service.
- 4) Reduce the employment categories that require labor certification.
- 5) Expand the annual allotment of employment-based immigrant visas.

Major U.S. employers have supported such reforms, some of which were included in the recent Senate-passed budget bill, though the measures failed to become law by not surviving the reconciliation process with the House of Representatives.

H-1B PROFESSIONALS AND WAGES: SETTING THE RECORD STRAIGHT**ALLEGATIONS IN A RECENT PAPER**

A recent report by John Miano for the Center for Immigration Studies (CIS) asserts that computer programmers on H-1B visas are underpaid.¹⁸ The report contains a number of shortcomings that make it unreliable for use by policymakers. The key flaw in the CIS study is that it utilized data that do not reveal what employers *actually pay* individuals on H-1B visas. The data showing what an employer pays an H-1B visa holder is contained on the I-129 form filed with U.S. Citizenship and Immigration Services. However, the information on that form is not publicly available. Instead, the CIS paper used the prevailing wage data that employers file with the Department of Labor – *even though employers do not necessarily pay H-1B visa holders just the prevailing wage indicated on the filing to DOL*. In fact, the prevailing wage is a minimum requirement and is usually lower than what the H-1B visa holder actually receives, which makes it impossible for the CIS paper to conclude much of anything with regard to H-1B wages.

As noted earlier, 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 employment in question” or “the prevailing wage level for the occupational classification in the area of employment, *whichever is greater...*”¹⁹ Therefore, any analysis that relies solely on prevailing wage data is inherently flawed.

To test the proposition that the prevailing wages listed on the DOL Labor Condition Application (LCA) are not representative of actual starting salaries, NFAP asked a respected law firm to select a random sample of H-1B cases from among its client base. The prevailing wage for each of the H-1B professionals was compared to the actual wage as it appears on the I-129 form filed with the immigration service (U.S. Citizenship and Immigration Services). The result? Among 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 average, 22 percent higher than prevailing wages. However, it does show, along with the other evidence in this policy brief, that any analysis that utilizes prevailing wage data to claim H-1B professionals are underpaid is fundamentally unreliable.²⁰ Note that the data derived from the law firm do not take into account any increases in salary the H-1B professional may have received after starting his or her job.

Much of the argument of the CIS paper is a comparison of annual salary estimates from the Occupational Employment Statistics (OES) survey with information on salaries from the Labor Condition Application forms filed by employers. Even beyond the mistaken notion of asserting employers pay no higher than the prevailing wage, there are additional problems with comparing H-1B wages to the OES, a government effort to collect salary information by occupation and geographic location. OES salary estimates include compensation, particularly bonuses, that employers are prohibited from including on the Labor Condition Application filed with the Department of Labor, even if such bonuses are regularly given to

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employees. (Performance bonuses are fairly common in white-collar occupations such as programmer and by definition the Labor Condition Application is for new employees.) Moreover, OES salary estimates are for all workers at a firm, and not just new hires, which means one is comparing apples and oranges when placing OES data alongside H-1B visa holders or other newly hired employees. Related to this, OES estimates are not age-adjusted. These differences would tend to make OES salaries higher than what might be expected for salaries listed on the Labor Condition Application.²¹

Interestingly, in NFAP's review, none of the Labor Condition Applications seeking foreign workers seemed to be for programmers of older, legacy software such as Fortran or COBOL – although there still are many such jobs in U.S. industry.²² If the reason a firm was seeking to hire H-1B programmers was simply to replace "more expensive" American workers, we might expect that older programming languages, known disproportionately by older programmers, would be in demand.

NFAP recreated the CIS paper by making editing decisions in inclusion of job titles as being in the "computer programmer" occupation similar to those decisions in the CIS paper. NFAP confirmed, by duplicating the paper, that the CIS report used exclusively the "minimum" salary listed on the Labor Condition Application, which generally corresponds to the prevailing wage.²³ However, as noted, there is actually little reason to believe that the minimum salary on the LCA – the prevailing wage – is what H-1B professionals hired under these Labor Condition Applications are actually paid. As noted earlier, the employer must pay whichever is higher, the prevailing wage or the "the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question." Moreover, the employer must bid for the services of the professional against other firms that may wish to hire him or her.

On the Labor Condition Application, employers often list a maximum salary they intended to pay, as well as the minimum they would pay the H-1B professional. CIS examined the minimum, which biased the results significantly downward. CIS could just as easily have taken the average of the minimum and maximum salaries listed on Labor Condition Applications. For illustration purposes, it is possible to compute such an average even by assuming that where no maximum was listed that the maximum is no higher than the minimum. This is a very strict assumption, as it is unlikely that the majority of employers specifying just a minimum salary would pay just that minimum. Nevertheless, even taking this overly conservative approach of counting the minimum salary as the "maximum" where no maximum salary is listed, such an analysis yields average H-1B programmer wages of \$66,885 – 36 percent more than the average minimum salary specified, which the CIS paper asserts is the salary paid by employers – and 3 percent more than even the problematic (as explained above) average OES salary for programmers cited in the CIS paper.²⁴

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A final clue as to the unreliable character of the conclusions in the CIS paper is the illogical differences in wages supposedly paid by similar companies located in the same geographic locations. For example, it would take less than 20 minutes to drive from the headquarters of Intuit to Siebel Systems, yet according to the CIS paper, as compared to the OES average, Intuit pays its employees on H-1B visas *nearly \$30,000 more* than Siebel pays its H-1B visa holders.²⁵ Similarly, according to the CIS paper, relative to the OES average, Adobe Systems typically pays its H-1B professionals *nearly \$40,000 more* than the Oracle Corporation pays its H-1B employees, even though both are S&P 500 companies whose headquarters are located within a 30-minute drive of each other.²⁶ Given that H-1B professionals can move from one employer to the next and the lack of evidence that employers maintain different pay scales for foreign nationals in the United States, such results demonstrate the shortcomings of the analysis and data used in the CIS paper.

Mr. Miano, the author of the CIS paper, had previously formed the Programmer's Guild to lobby against H-1B visas. The decision to base an analysis of H-1B wages solely on prevailing wage data is puzzling given its limitations.²⁷

WAGES IN OTHER COUNTRIES

A final issue worth discussing is the extent to which wages in the United States are significantly higher than those in other nations. While much anxiety has emerged in recent years about companies locating work outside the United States, it seems contradictory for critics of "outsourcing" to also oppose the entry of skilled professionals into the United States.

Companies possess legitimate reasons to place resources in whatever geographical location will best serve the interests of customers, shareholders, and a company's broader workforce, since unprofitable firms serve none of those interests well or for very long. However, most people would agree that U.S. government policy should not, in effect, force companies to locate more of its workforce outside the country by prohibiting foreign-born professionals to work inside the United States.

The median salary for a computer software engineer is \$7,273 in Bangalore and \$5,244 in Bombay, compared to \$60,000 in Boston and \$65,000 in New York, according to the Seattle-based market research firm PayScale.²⁸ Those who would bar the door to foreign nationals being hired on H-1B visas – many graduating from U.S. universities – need to explain why it would be better if those individuals were hired in other nations by either U.S. or foreign companies.

H-1B PROFESSIONALS AND WAGES: SETTING THE RECORD STRAIGHT**TABLE 2****MEDIAN SALARY FOR A SOFTWARE ENGINEER**

Bangalore	Boston
\$7,273	\$60,000

Source: PayScale

CONCLUSION

It is a dim view of humanity – and a misreading of the nation’s economy – to assume that opportunity for some must mean misery for others. Many talented Americans contribute to the U.S. economy. However, many highly skilled and educated individuals are born outside the United States and seek the chance to work here. The entry and assimilation of this foreign-born talent has enriched the country. America’s openness relative to that of other nations provides us with a competitive advantage that extends even beyond the most recent generation of skilled foreign-born professionals.

A 2004 NFAP study found 60 percent of the nation’s top science students and 65 percent of the top math students are the children of immigrants. In fact, among finalists in the 2004 Intel Science Talent Search, more children (18) had parents who entered the country on H-1B visas than parents born in the United States (16). Similarly, more of the Math Olympiad top scorers also had parents who received H-1B visas (10) than parents born in the United States (7). New H-1B visa holders each year represent less than 0.04 percent of the U.S. population, illustrating the substantial gain in human capital that the United States receives from the entry of these individuals and their offspring. In effect, if opponents of immigration had succeeded over the past 20 years, two-thirds of the most outstanding future American scientists and mathematicians would not be here today because U.S. policy would have barred their parents from entering the United States.²⁹

The global competition for talent is fierce. Most skilled individuals born in a European country now possess the ability to work in any other EU nation with few restrictions. Moreover, the EU is liberalizing its laws for skilled workers coming from outside the EU.³⁰ China and India attract not only Western investment but beckon to their own people to stay (or return) home and make their careers in their native lands.

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Concerns about the wages paid to individuals on H-1B visas are misguided. No evidence exists that companies maintain two sets of pay scales – one for the foreign-born, one for natives – or that H-1B visa holders are anything but smart individuals who exercise their prerogatives in the U.S. labor market. Research shows no basis for the allegation that H-1B professionals are underpaid or unduly prevent natives from succeeding in the U.S. labor market.

H-1B PROFESSIONALS AND WAGES: SETTING THE RECORD STRAIGHT**ENDNOTES**

¹ Section 212(n)(1) of the Immigration and Nationality Act.

² "Bush Asks For More Visas for High Tech Workers," *Financial Times*, February 3, 2006.

³ Editorial, Review and Outlook, "Look Who's Working," *Wall Street Journal*, February 4, 2006.

⁴ Marc Andreessen interviewed on *Lou Dobbs Tonight*, March 4, 2004.

⁵ AnnaLee Saxenian, "Brain Circulation, How High-Skilled Immigration Makes Everyone Better Off," *Brookings Review*, Winter 2002. In past years, the majority of H-1B visa holders have been from India and China.

⁶ See William W. Lewis, *The Power of Productivity*, University of Chicago Press, 2004. Lewis argues, with much evidence to back him up, that countries and sectors most exposed to the forces of competition increase productivity and consumer welfare the most.

⁷ Madeline Zavodny, "The H-1B Program and Its Effects on Information Technology Workers," Federal Reserve Bank of Atlanta, *Economic Review*, Third Quarter 2003, p.7.

⁸ Paul E. Harrington, "Understanding & Responding to Imbalances in Engineering & IT Labor Markets," Presentation to Business Roundtable, September 15, 2004. Salary data are for 1999.

⁹ *Indicators in Science and Engineering: 2002*, National Science Foundation. Some of this difference results from the foreign-born being more likely to enter the job market in private sector companies, than in public or private universities, which pay less. Controlling for type of employer and occupation shows a negligible difference between foreign-born and native at the bachelor's, master's and PhD levels. Although many in the National Science Foundation data set may no longer be on an H-1B visa, others are, and the ones that are not would in the majority of cases have worked in that status for some period of time.

¹⁰ 2003 National Survey of College Graduates, National Science Foundation.

¹¹ Associated Press, "Average Major League Baseball Salary at \$2.6 Million," April 7, 2005.

¹² In FY 2003, among approved H-1B petitions, 6.5 percent were for individuals 20-24, 34.6 percent were 25-29, and 30.8 percent were 30-34, according to *Characteristics of Specialty Occupational Workers (H-1B): Fiscal Year 2003*, Department of Homeland Security, November 2004, p. 9. In contrast, in the 2003 National Survey of College Graduates, the median age for a programmer was 41.

¹³ NFAP calculation from Department of Labor data. Over the course of more than a dozen years, the cumulative total of back wages owed was approximately \$19 million. Placed in the context of a \$10 trillion U.S. economy this figure is not large.

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¹⁴ DOL data; CIA World Factbook, 2006. Back wages owed to 641 H-1B visa holders in 2004 is hardly a worrisome number in the context of a labor force consisting of more than 149 million people.

¹⁵ "Examination of Department of Labor data.

¹⁶ Section 212(n)(1) of the Immigration and Nationality Act.

¹⁷ *Characteristics of Specialty Occupational Workers (H-1B): Fiscal Year 2003*, Department of Homeland Security, November 2004, p. 4. In FY 2003, 112,026 petitions were approved for "continuing" employment and 105,314 for "initial" employment.

¹⁸ John Miano, "The Bottom of the Pay Scale: Wages for H-1B Computer Professionals," Center for Immigration Studies, December 2005. Hereafter referred to as the CIS paper or report. The paper concludes: "The analysis demonstrates that, despite the H-1B prevailing wage requirement, actual pay rates reported by employers of H-1B workers were significantly lower than those of American workers . . . On average, applications for H-1B workers in computer occupations were for wages \$13,000 less than Americans in the same occupation and state."

¹⁹ Section 212(n)(1) of the Immigration and Nationality Act. Emphasis added.

²⁰ While it is possible cases from a different law firm could yield somewhat different results, this law firm serves a diverse client base that appears typical of the employers petitioning for H-1B professionals.

²¹ Another problem with comparing LCA data with the OES is the question of whether the "occupations" on the OES truly match the "job titles" on the LCAs. As acknowledged in the CIS paper, the mapping of job titles to occupation is difficult and involves many judgment calls. It also shows one of the conceptual problems in comparing H-1B data to external data sources – it is necessary to group many quite different jobs under the same label. The Occupations and Employment Statistics (OES) data includes very standardized Federal occupational labels that do not (and to be fair, cannot) cover the full variety of job characteristics in a labor force of 150 million workers. There are exactly 9 OES computer occupations included in the CIS report. On the LCA applications coded as computer occupations, there were 5,438 different job titles. Although many of these job titles are close to each other ("web programmer" versus "web site programmer"), other differences in title seemed to indicate very different sets of skills.

²² The result of a search of the job database Monster.com for "COBOL" found 788 ads by employers posted in the 30 days prior to February 6, 2006. It is possible that some of the applications with very generic job titles (such as "computer programmer," with no other qualifier) may be for legacy computer languages.

²³ The mean of the LCA variable WAGE RATE 1, the minimum that an employer agrees to pay a worker with an H-1B, is \$49,258 in the CIS report and \$49,105 in our dataset attempting to duplicate the CIS results.

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As noted above, there are likely to be some differences in which job titles were mapped to “computer programmer,” since there is no easy objective way to define the job title. This can be seen in NFAP’s attempt to reproduce the CIS mapping of the single OES occupational category “computer programmer” to the LCA job titles. Some words in the job titles included in the LCAs indicated the type of programming to be done (i.e. Flash, .NET, Quality Assurance, Graphics, JAVA, Web, VB). Other qualifiers in job titles signaled at least something about ability level (i.e. junior, senior, manager, assistant). Starting with job titles that directly include the phrase “programmer” (including abbreviations), it was necessary to make judgment calls related to job titles that would better map to other Federal occupational categories. For example, a programmer/engineer was kept in the programmer category, while an engineer/programmer went to engineering. We also, following criteria mentioned in the CIS report, excluded programmers earning greater than \$300,000 a year.

²⁴ There appears to be a minor discrepancy in the data the CIS paper cites as the 2003 Occupations and Employment Statistics average salary for computer programmers. The CIS report cites this as \$65,264. However, OES estimates are made twice a year, in May and November. The mean programmer salary reported on the BLS website (www.bls.gov/oes) was \$64,510 in May 2003 and \$65,170 in November 2003—in each case slightly lower than the number CIS cites.

²⁵ CIS report; Mapquest.

²⁶ Ibid.

²⁷ Testimony of John Miano before the U.S. House Judiciary Committee Subcommittee on Immigration and Claims, August 5, 1999. Miano called for a minimum wage of \$100,000 for computer programmers on H-1B visas and imposing a tax/application fee for H-1Bs of \$20,000 each.

²⁸ www.payscale.com.

²⁹ Stuart Anderson, *The Multiplier Effect*, National Foundation for American Policy, July 2004. Available at www.nfap.com.

³⁰ Alison Abbott, “Europe revamps visa rules to attract world’s best minds,” *Nature*, October 27, 2005.

H-1B PROFESSIONALS AND WAGES: SETTING THE RECORD STRAIGHT**ABOUT THE NATIONAL FOUNDATION FOR AMERICAN POLICY**

Started in 2003, the National Foundation for American Policy (NFAP) is a 501(c)(3) non-profit, non-partisan public policy research organization based in Arlington, Va. The focus of the research is on trade, immigration, and other issues of national importance. NFAP Executive Director Stuart Anderson served as Staff Director of the Senate Immigration Subcommittee, working for Senators Spencer Abraham and Sam Brownback, and as head of policy and counselor to the Commissioner of the Immigration and Naturalization Service. The Advisory Board members include Columbia University economist Jagdish Bhagwati, Ohio University economist Richard Vedder, Rep. Guy Vander Jagt (ret.) and other prominent individuals.