

# DELETING AMERICAN WORKERS

Abuse of the Temporary  
Foreign Worker System in the  
High Tech Industry



Federation for American Immigration Reform

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# DELETING AMERICAN WORKERS:

## Abuse of the Temporary Foreign Worker System in the High Tech Industry

### EXECUTIVE SUMMARY

Despite the well-documented troubles that have afflicted the high tech industry over the past three years—countless companies have gone out of business and millions of workers have lost their jobs, creating a growing pool of available labor—many companies continue to import workers from overseas.

The H-1B and L-1 visa programs allow people in professional occupations to work in the United States on a temporary basis. At a time of high unemployment, the high tech industry is flooding the labor market by importing workers who are willing to work more cheaply than American high tech workers.

The high tech industry's push to maintain high temporary worker visa levels in the face of economic downturn and rising unemployment stems from a desire to have a supply of cheap, exploitable foreign workers—not from any evidence of a high tech worker shortage, as the industry originally claimed when it pushed for the program to be increased.

#### Key Findings

- ❑ Temporary foreign workers are paid lower salaries than their American counterparts, driving down the prevailing wage and putting American workers at a competitive disadvantage.
- ❑ Employers are laying off American workers and replacing them with cheaper foreign workers under the H-1B and L-1 programs. No law prevents this.
- ❑ The temporary worker program is rife with fraud and abuse. The required government review of H-1B applications is a rubber stamp operation and is not safeguarding American jobs as Congress intended.
- ❑ Although the H-1B program is meant to provide companies with labor unavailable in this country, no evidence exists of a worker shortage; to the contrary, the market is filled with laid off, unemployed American high tech workers.
- ❑ Miniscule as the protections in the H-1B program are, the L-1 program puts American workers at an even greater disadvantage. Unlike the H-1B visa, the L-1 visa does not require that the employer pay the worker in the U.S. the prevailing wage for the type of work being performed.
- ❑ Abuse is so blatant that in some cases, companies are bringing workers in on L-1 visas and making their American employees train their foreign replacements before being laid off.
- ❑ As companies turn to the L-1 visa program to sidestep H-1B regulations, the use of the program is rising, almost doubling since 1995.

## BACKGROUND

The H-1B program's original mission was to supply American businesses with needed professional workers who companies said were not available in this country.

In 1990, Congress established the number of H-1B visas at 65,000 each year. In 2000, the high tech industry—which uses roughly 60 percent of all H-1B visas<sup>1</sup> and accounts for 80 percent of companies employing H-1B holders<sup>2</sup>—pushed successfully to triple the number of available visas from the original 65,000 to 195,000 annually for FY 2001, 2002, and 2003.<sup>3</sup>

*“It has become increasingly evident that the H-1B program is being utilized by some as the basis for building businesses which are dependent on the labors of foreign workers, in some cases in unfair competition with U.S. workers and those U.S. businesses that employ mostly domestic workers.”*

—former Secretary of Labor Robert Reich<sup>4</sup>

and the bill, presented three hours after the legislators were told they could go home for the day, was passed by a voice vote rather than a head count, with only 40 of the 435 members present at the time.<sup>5,6</sup>

When FY 2004 begins in October 2003, H-1B ceilings are scheduled to revert to their original level of 65,000—a level still high enough that it will continue to disadvantage American high tech workers.

### The Arithmetic of H-1B

In 2002, immigration officials approved 79,100 H-1B petitions that counted against the 195,000 ceiling cap. But that's just part of the story: In addition, the government approved another 18,600 H-1B petitions from organizations such as universities that were exempt from the cap, as well as 93,953 three-year extensions for H-1B workers already in the country.<sup>7</sup>

In 2000, Congress established a “sidebar” H-1B program outside the cap, making certain H-1B applications exempt from the cap. Under the existing law, *certain kinds of non-profit and educational institutions are exempt from the cap on H-1Bs.*<sup>8</sup> The

### HOW DOES THE H-1B PROGRAM WORK?

The “H” visa for temporary workers has existed in U.S. immigration law since 1952. The current use of the H-1B visa category for professional workers dates from 1990. The 1990 law made H-1B visas easier to obtain by removing the test used for other nonimmigrant visa applicants that required them to show that they have a permanent foreign residence which they have no intention of abandoning—in effect, tacitly establishing the H-1B temporary visas as a recruitment program for future immigrants.

The process for obtaining an H-1B visa begins with the employer, who must file a labor condition application with the Department of Labor (DOL), announcing the intent to recruit a professional foreign worker and stating that prevailing wages and working conditions will be met. (As it will later be seen, these conditions are not enforced.) After the DOL issues a labor certification, the employer submits a petition to the Bureau of Citizenship and Immigration Services (formerly this was done by the now defunct INS), with an application fee of \$130 and an additional fee of \$1,000. Once the petition is approved (a rubberstamp operation, as discussed on page 8), it is sent to the consular office abroad where the beneficiary will apply for a visa or to the immigration office here where the beneficiary will apply for adjustment of status.

number of such petitions was 24,510 in 1999, 21,710 in 2000, and 27,527 in the first three quarters of 2001.<sup>9</sup> *Therefore, even if Congress does not act to extend the higher H-1B cap, the number of H-1B visas issued from here on is theoretically unlimited and is likely to be significantly higher than the 65,000 cap.*

It should also be noted that H-1B visas, which are initially approved for three years, can be renewed for an additional three years. Such extensions are not counted toward the annual cap on H-1Bs. Because H-1B visas are good from three to six years, the number of H-1B foreign workers in the country at any point is the sum of those who have been admitted and remained within the last six years. In 2002, there were an estimated 710,000 H-1B holders in the United States.<sup>10</sup>

### An Increasing Share

As employers fill jobs with cheaper H-1B workers, U.S. workers are composing less and less of the high tech workforce. From 1994 to 2000, native-born workers fell from 90 percent of the high tech labor force to just under 80 percent, while the total share of foreign-born high tech workers increased to 20 percent, an increase researchers say is almost entirely attributable to the H-1B visa program. In fact, H-1B workers now account for more than eight percent of the entire high tech labor force.<sup>12</sup> The continuation of this trend is especially troubling in today's stagnant labor market, where so many workers are struggling for employment.

*“Instead of providing a short-term remedy for spot skill shortages, the H-1B visa has become widely used by employers as a reduced-cost probationary employment program for foreign professionals and students seeking work sponsorship for legal permanent resident status. These professionals and new graduates are willing to trade lower salaries and a temporary work status for the ability to enter and/or remain in our nation.”*

—Institute of Electrical and Electronics Engineers statement, November 2002<sup>11</sup>

## H-1B WORKERS ARE NOT TEMPORARY

Despite being called “temporary” workers, H-1Bs are used not as a temporary stopgap, but as a replacement workforce. The H-1B visa is merely the portal through which permanent immigrants gain initial access to the U.S. labor market. Of the 83,150 employment-based permanent residence admissions in FY 2001 (excluding family members), 66,214 (80 percent) were for people already in the country, presumably most of them temporary workers adjusting their status to permanent resident.<sup>13</sup>

Many of the beneficiaries of H-1B visas are foreign students who have graduated from U.S. universities and are seeking to stay in the country permanently. Other than marrying a U.S. citizen, finding a U.S. employer who will apply through the H-1B procedure is the most likely route for a foreign student to gain permanent legal residence; *in fact, nearly one-quarter of recent H-1Bs were formerly here as foreign students and simply adjusted their immigration status.*<sup>14</sup>

Several leading IT service firms derive a significant percentage of their total revenue—and a clear majority of their North American revenue—from temporary foreign workers in the U.S. For example, Infosys, one of the leading providers of foreign professional visa workers in the U.S., derived between 67 and 83 percent of its revenue and earnings in North America over the past three years from visa workers.<sup>16</sup>

*“Labor dynamics are changing. Major companies can now hire people with top skills for \$60,000 a year. We don’t need people on H-1Bs anymore. We can replenish staff from our own population.”*

—Howard Rubin, former adviser on technology issues to President Clinton<sup>15</sup>

## HARM TO AMERICAN WORKERS

Nothing in the law regulating H-1B visas requires employers to hire U.S. citizens first or lay them off last. As a result, legions of high tech workers report receiving pink slips while the H-1B workers in the cubicles next to them kept their jobs.

The AFL-CIO contends that companies are actively choosing to lay off U.S. workers instead of H-1Bs.<sup>17</sup> The Computer Workers of America union has called for the immediate repeal of the H-1B program.<sup>18</sup> The Institute of Electrical and Electronics Engineers has asked Congress to convene town hall meetings around the country to allow engineers to testify about their inability to find work even when they hold advanced degrees and skills in the most demanded programming languages.<sup>19</sup> And U.S. workers are now filing formal complaints charging that foreign guestworkers are replacing Americans during the downturn of the high tech industry.<sup>20</sup> Two lawsuits filed in early 2003 allege that Sun Microsystems laid off thousands of U.S. workers and replaced many of them with lower-paid H-1B workers.<sup>22</sup> In 2002, Sun admitted in court that it was laying off American workers while retaining H-1B workers in the same jobs,<sup>23</sup> directly contradicting the company’s 1998 testimony before the U.S. Senate, when it claimed it only employed H-1Bs as a last resort when no qualified Americans could be found.<sup>24</sup>

*“One recruiter flatly told me they have 50 H-1Bs willing to work cheap ahead of me in line.”*

—Dallas database administrator, interviewed in the *San Jose Mercury News*, September 26, 2002<sup>21</sup>

In fact, the demand to hire H-1B workers actually rose during the economic downturn when companies were conducting mass lay-offs. During 2001, companies submitted 342,000 H-1B applications, an increase of 14 percent from 2000—when the economy was still stable.<sup>25</sup>

### Workers—Or Cheap Workers?

Simply having a large influx of workers into the industry floods the labor market and

drives down wages.<sup>26</sup> But there is also a broad consensus that H-1B workers are paid lower wages than their American counterparts, further driving down the prevailing wage.

A 2001 National Research Council report found that H-1Bs have an adverse impact on overall wage levels.<sup>27</sup> The Independent Computer Consultants Association reports that the use of cheaper foreign labor has forced down the hourly rates of U.S. consultants by as much as ten to 40 percent.<sup>28</sup>

*“We have seen numerous instances in which American businesses have brought in foreign skilled workers after having laid off skilled American workers, simply because they can get the foreign workers more cheaply. [The H-1B program] has become a major means of circumventing the costs of paying skilled American workers or the costs of training them.”*

—Labor Secretary Robert Reich, October 1995<sup>29</sup>

Indeed, average annual base salaries for all high tech positions fell 5.5 percent in the first quarter of 2002, compared with the first quarter of the previous year.<sup>30</sup>

Notably, the wage rate used to hire H-1B workers may be based on the prevailing wage from salary surveys that are up to two years old. An H-1B visa holder working in the high tech industry in the beginning of 2001 may have been receiving the 1999 prevailing wage. During that time, the annual increase for high tech salaries was eight percent.<sup>31</sup> In addition, the salaries offered to H-1Bs meet the prevailing wage test if they are five percent lower than the prevailing wage. A still greater problem is that there is virtually no follow-up program to compare actual wages paid with the wage commitment in the application.

Many H-1Bs hope to be sponsored by their employers for permanent immigrant visas and thus are not likely to complain even if they are not paid prevailing wages or are expected to work extended hours.<sup>32</sup> Even more troubling, because the H-1B visa is job-specific and can only be used for the job the worker was brought in for—workers may lose their legal status if they lose their jobs—visa-holders are entirely dependent on their employer for the right to stay in the country and thus are in no position to protest against unfair pay or working conditions.<sup>33</sup>

“It’s not necessarily the skilled worker, it’s the harder worker,” says Fadi Bishara, president and founder of techVenture. “The employer is getting more productivity and cheaper labor. Because many H-1B applicants are willing to do whatever it takes to get into the country, they will work day and night and they won’t complain. They’re willing to compromise some of their salaries. They’re a special breed.”<sup>34</sup>

Indeed, study after study has found that H-1B holders are being exploited in their wages and working conditions, despite the requirement in the law that employers pay H-1B employees prevailing wages.

- ❑ A UCLA study found that H-1B engineers were paid 33 percent less than comparable U.S. citizens.<sup>35</sup>

- ❑ A Cornell University study found that H-1B programmers and engineers were underpaid by 20 to 30 percent.<sup>36</sup>
- ❑ An INS report found that the computer-related H-1B employees were paid a median salary 25 percent less than the national median for their field.<sup>37</sup>
- ❑ A Department of Labor audit found that 19 percent of H-1B workers were not even being paid the salaries promised by their employers on their labor application forms. The audit found that employers use H-1B employees to get around prevailing wages and personnel costs and that the large-scale use of H-1B workers lowers the level of wages in the affected professions.<sup>38</sup>
- ❑ A National Research Council report found that “H-1B workers requiring lower levels of high tech skill received lower wages, less senior job titles, smaller signing bonuses, and smaller pay and compensation increases than would be typical for the work they did.”<sup>39</sup>
- ❑ In 2001, the Labor Department received 269 complaints about abuse of H-1B workers, an increase from 140 in 2000.<sup>40</sup>
- ❑ Labor law violations involving H-1B workers have jumped more than five-fold since 1998. Labor Department back pay awards for such workers have jumped by more than tenfold.<sup>42</sup>

*“Despite different motivations, government actions have used immigration policies to weaken the position of domestic labor in general and minority workers in particular. They have undermined strategies that high- and low-wage workers alike use to gain opportunities and economic advancement. The government’s H-1B policy interventions undercut—or at the very least redirected—attention from the dramatic need to improve employment and training opportunities for low-wage and less skilled U.S. workers and students.”*

—Robert Bach, former executive associate commissioner of the INS<sup>41</sup>

### Minorities, Older Workers Hardest Hit

The Congressional Black Caucus tried unsuccessfully to stop the 2000 increase in H-1Bs, because it contained no provisions to encourage employers to recruit from underrepresent-

In 2001, Bank of America in Charlotte, N.C., outsourced its Human Resources functions to a company called Exult. In turn, Exult announced it was “outsourcing” its computer programming work to two subcontractors that rely heavily on H-1B guestworkers,” HCL and Hexaware. Existing employees were fired and replaced by foreign H-1B workers. The American BofA/Exult employees were forced to train their replacements in order to collect a severance package. The affected employees had very specialized skills and were working for salaries between \$70,000 and \$90,000. The labor certification application filed by HCL to replace some of those workers listed salaries of less than \$40,000 a year.<sup>43</sup>

Just to test the Department of Labor H-1B certification system, Larry Richards of SOFTPAC (the software professionals political action committee) filed an application with the Department of Labor to hire 20 programmers and pay them only \$5 an hour (far below the prevailing wage in programming, which at its low end hovers around \$20-\$25 an hour). It was approved in six days.<sup>44</sup>

ed groups rather than turning to H-1B workers.<sup>45</sup> The Coalition for Fair Employment in Silicon Valley has begun a campaign to increase the number of black Americans in technology jobs, pointing to businesses' dependence on foreign labor as one reason blacks have failed to advance in the field.<sup>46</sup> African American professors, scientists, and students are taking critical notice of high tech companies practices of hiring foreign workers through the H-1B program.<sup>47</sup>

Older, more experienced engineers who have reached their peak earning years are particularly vulnerable to abuses of the H-1B program. Not only are older workers being ushered out the back door as new H-1Bs are being welcomed in, but finding new work for older engineers is difficult. An American University study found that the time needed for a laid-off engineer to find another job increases three weeks for each additional year of age.<sup>48</sup>

## THE SHAM WORKER SHORTAGE

With so many American workers unemployed, the industry can hardly claim that it needs to import additional workers to fill a labor shortage.

*“Industry has long claimed it needed these special visas because U.S. schools weren’t churning out enough highly-skilled engineers and computer programmers. But their pursuit of foreign workers when so many highly qualified Americans are unemployed gives the lie to that excuse. It looks more like the tech industry is just trying to keep its labor costs down by importing cheap labor.”*

—USA Today editorial, December 5, 2001

- ❑ The Bureau of Labor Statistics reports that six percent of people in computer and mathematical occupations were unemployed in April 2003, or 194,000 people (a 25 percent jump from the 4.8 percent unemployment rate for the same time last year).<sup>49</sup>
- ❑ The high tech industry employed ten percent fewer people in December 2002 than it did in January 2001.<sup>50</sup>
- ❑ Overall high tech unemployment went from two percent in November 2001 to 5.5 percent one year later, and among computer programmers it went from 1.7 percent to 7.8 percent.<sup>51</sup>
- ❑ Electrical and electronic engineers have lost 241,000 jobs in the past two years and computer scientists have lost 175,000 jobs.<sup>52</sup>

- ❑ Between 2000 and 2002, employment in some high-tech areas in California fell 15-30 percent.<sup>53</sup>

Given the economic downturn and wider pool of available candidates, H-1B numbers should have fallen dramatically. But instead, in many cases, H-1Bs have become an even more attractive commodity than before, since employers are more anxious to save money by hiring the cheapest workers they can find.

## CURRENT WORKER PROTECTIONS ARE INADEQUATE

A frequent claim in defense of the H-1B program is that protections are built in to prohibit employers from engaging in practices that will harm American workers. In reality, the protections are either very weak or nonexistent, as is enforcement of these rules. Instead, the system relies heavily on the honor system, merely trusting companies to be good corporate citizens.

*The other 98 percent of employers petitioning for H-1Bs do not have to search for U.S. workers before hiring H-1Bs and can lay off U.S. workers to create job vacancies that are filled with H-1Bs.*

When the H-1B program was expanded in 1998, a provision was added to address the rapidly growing phenomenon of “body shops.” Body shops are contracting companies, often subsidiaries of foreign firms, that contract out H-1B workers to high tech firms. These companies are termed “H-1B–dependent” firms, defined as

those firms whose workers are 15 percent or more H-1Bs.<sup>54</sup> Those 100 to 200 employers—and only those employers—must attest that they made efforts to recruit U.S. workers and certify that U.S. workers were not laid off to make room for the H-1B workers in the previous 90 days and will not be laid off in the 90 days after the H-1Bs arrive.<sup>55</sup>

These H-1B–dependent firms account for only about two percent of companies submitting H-1B applications.<sup>56</sup> The other 98 percent of employers petitioning for H-1Bs do not have to search for U.S. workers before hiring H-1Bs and can lay off U.S. workers to create job vacancies that are filled with H-1Bs.

The few window-dressing protections written into the law to prevent American workers from being passed over and guestworkers from being exploited are all but nullified by a lack of enforcement. The U.S. Department of Labor and the immigration service are supposed to enforce the labor and immigration aspects of the H-1B program but lack the incentive, much less the resources, to keep the system from being abused. Employers know it, and they take full advantage.

An audit of the H-1B program by the Department of Labor’s Office of the Inspector General found that “DOL’s role amounts to little more than ... a ‘rubber stamping’ for LCA [labor condition applications] program applications.”<sup>57</sup>

The INS conducted a study of 3,247 H-1B applicants who applied at an American consulate in India (Indians account for about half of all H-1B visas issued<sup>58</sup>) and were unable to verify the authenticity of almost 45 percent of the claims made on the petitions. Twenty-one percent of the work experience claims made to the INS were confirmed to be fraudulent.<sup>59</sup>

The DOL Office of the Inspector General told Congress in 2000:

*“The OIG [Office of Inspector General] continues to identify fraud in the labor certification program, particularly in the H-1B temporary work visa program. These cases involve fraudulent petitions that are filed with DOL on behalf of fictitious companies and corporations; individuals who file petitions using the names of legitimate companies and corporations without their knowledge or permission; and increasing numbers of immigration attorneys and labor brokers who collect fees and file fraudulent applications on behalf of aliens. Based on prior investigative and audit work that found programmatic weaknesses and vulnerabilities in the program, the OIG remains concerned about the potential for increased fraud in this area.”<sup>60</sup>*

Labor Secretary Elaine Chao has expressed frustration that her department approves too many fraudulent requests for temporary workers and has requested a review of the procedures used for issuing visas for skilled foreign labor.<sup>61,62</sup>

## L VISAS: AN ADDITIONAL LOOPHOLE FOR DISPLACING AMERICAN WORKERS

Meanwhile, another battle is brewing over the L-1 visa, which allows multinational companies to transfer employees from a foreign corporation to a U.S. branch, parent, subsidiary, or affiliated entity.

### PROMISED BENEFITS TO AMERICAN WORKERS NOT DELIVERED

One of the key selling points that convinced many lawmakers to approve the expansion of the H-1B program was the establishment of a fund to be used to train and retrain American workers for technology-based jobs—in theory to produce more U.S. high tech workers and overcome the alleged shortage. Over the objection of the high tech industry, employers of H-1B workers were required to contribute a relatively modest fee of \$1,000 per guest worker to a fund that would be used for domestic job-training programs. Very little of this money has found its way into the kind of training programs that had been promised; it has gone primarily for low-skills data-entry jobs rather than high tech worker retraining. The Bush administration’s initial FY 2003 budget proposal even proposed applying all future funds to faster processing of permanent labor certifications for foreign workers rather than helping American workers (that proposal did not end up in the final approved budget).<sup>63</sup>

The intra-company transfer provision of the immigration law is a long-standing visa category designed to allow multi-national firms, whether U.S. or foreign, with operations both in the United States and abroad, to exchange personnel on a temporary basis. The primary impetus for the L-1 program was to allow for the mobility of management personnel, but the program also provides for personnel with “specialized knowledge” of the company’s operations. Visas issued under this category are valid for seven years for management and supervisory personnel and for five years for technical staff.

The L-1 visa is being used to bring high-tech workers to do U.S. jobs similar to the temporary worker H-1B visa program. However, unlike the H-1B visa, *the L-1 visa does not require that the employer pay the worker in the U.S. the prevailing wage for the type of work being performed.* That means that a subsidiary of a company headquartered in India, for example, can transfer its employees who are computer programmers to a subsidiary incorporated in the United States and continue to pay the workers Indian wage rates while they may be doing subcontract work for a U.S. company, such as Intel. Thus the Indian subcontractor can underbid a competitor paying prevailing wages, and Intel can lay off higher paid U.S. computer programmers.

The L-1 visa hurts U.S. workers in two ways. It brings in foreign workers who then directly or indirectly displace American workers. Later these workers may be transferred back abroad, permanently taking those U.S. jobs with them.

At some large high tech companies with U.S. offices, use of the L-1 visa now outstrips use of the H-1B visa to bring in temporary foreign workers.<sup>64</sup> In some reported cases, American workers are even made to train their foreign replacements before being laid off.<sup>65</sup>

### On the Rise

The L visa program has existed since 1970, but visas issued under the program have increased significantly in recent years. The number of foreign workers being brought in to the U.S. on L-1 visas has almost doubled since 1995:

1995 .....	29,088
1996 .....	32,098
1997 .....	36,589
1998 .....	38,307
1999 .....	41,739
2000 .....	54,963
2001 .....	59,384
2002 .....	57,721 <sup>66</sup>

In the first six months of 2003, L-1 visas climbed another seven percent over the same period the previous year.<sup>67</sup>

This meteoric rise in L-1 visa issuance highlights the fact that *at present there is no limit on the number of these visas that can be issued in a given year.*

### Sidestepping Protections for Americans

The L-1 visa is being touted to high tech companies as the way to get around the miniscule protections built into the H-1B program. One visa and immigration consultant says, “Employers looking to slash costs have discovered that they can use firms that hire L-1s to dump high-paid Americans in favor of cheaper workers from abroad.”<sup>68</sup> The employers escape not only the \$1,000 fee per worker in the H-1B program, but they also escape the prevailing wage problem.

A major immigration law firm has called the program “a quite useful tool to by-pass the cumbersome steps of obtaining a labor certification.”<sup>69</sup>

The Bureau of Citizenship and Immigration Services says that L-1 visas are intended for foreign employees coming to the U.S. to work for the specific company that petitioned for

*“At a time when domestic unemployment is at an all-time high and tens and thousands of jobless tech workers and others are looking for work, it is important to close the loopholes that disadvantage American workers.”*

—Rep. Rosa DeLauro (D-Conn.)<sup>70</sup>

them, not for another company that they are being contracted out to; such a use would be fraudulent, according to the government. Yet in practice, the use of L-1 visas directly contradicts this intent.<sup>71</sup> For instance, Tata Consultancy Services uses L-1 visas to bring in half of the

5,000 high tech workers it has placed at companies in the U.S. Other companies are following suit: Almost one-third of Infosys’ 3,000 U.S. workers are on L-1s, as are 32 percent of Wipro’s 1,500 U.S. workers (Infosys and Wipro are large outsourcing companies, or “body shops”).<sup>72</sup>

Siemens Technologies laid off Patricia Fluno and 11 colleagues in their Lake Mary, Florida, office and replaced them with high tech workers from Tata Consultancy.<sup>73</sup> The worker to whom Fluno’s work was relegated sits at her old desk, answers her old phone number, and earns a third of what she did. This would be a violation of the law if the replacement were an H-1B, but because it is an L-1 visa worker, nothing can be done. As a Siemens spokesperson explained, “They don’t work for us. They work for Tata.”

Tata acknowledges that it paid some programmers on the project only \$36,000 a year—below the average local range of \$37,794 to \$69,638 for a basic programmer and far below the \$98,000 that one of the laid off U.S. programmers was paid.<sup>74</sup>

## POLICY RECOMMENDATIONS

Given that the United States has a population of 290 million people, a large share of whom are highly skilled and educated, there is no need whatsoever for a high-tech guest-worker program. There is overwhelming evidence that the program is operated largely as a means for employers to hold down their costs by discriminating against American workers in their hiring practices. It is also clear that the L-1 visa program is being used in a distorted fashion to get visas for workers who would otherwise be required to get an H-1B visa.

If the H-1B program is not to be done away with altogether, what reforms can be implemented to improve it? A variety of reform proposals have been advanced as a means to amend the H-1B program so that American workers are better protected:

- ❑ *Require that all employers who apply for H-1B workers complete the same attestations regarding non-lay-offs of American workers and efforts to hire American workers as are currently required of H-1B dependent employers. This could be a positive step, but it would be less than adequate protection for American workers without follow-up monitoring by the Department of Labor.*
- ❑ *Require that employers who apply for H-1B workers complete the same labor market test that is required for an employer who sponsors an immigrant. This is logical as long as the H-1B program is being operated as a screening program for immigrants. However, the weakness in this system is that at present the Department of Labor rubberstamps these cases without investigating the validity of the claims. This makes the system a sham protection for American workers.*
- ❑ *Require that the employer of an H-1B worker pay a premium wage for foreign temporary workers. The only way that employers will be discouraged from seeking to substitute less costly foreign workers for U.S. workers is if the salary advantage and the benefit of having the equivalent of indentured servitude are offset. The existing \$1,000 H-1B fee has failed to offset the lure of lowered compensation and working conditions offered by the H-1B program. Compensation preference for U.S. workers could take a variety of forms, e.g. an annual ten percent alien worker wage premium to fund U.S. worker training programs or a cut in the employer tax deductibility of compensation and recruiting expenses for foreign temporary workers.*
- ❑ *Limit H-1B programs to two years renewable two times instead of the current three-year period renewable once. Require a new attestation each time the H-1B status is renewed. This proposal would provide a more frequent review of supposed labor shortage and the employer's efforts to hire American employees. It would also provide a shorter interval before the first renewal to minimize the ties that might encourage a foreigner whose job is not renewed to stay illegally in this country.*

- ❑ *Eliminate extensions of status beyond the six-year limit.* Under legislation passed in 2002, H-1B workers who are pursuing permanent residence on the basis of an approved petition can continue to work in the U.S.
- ❑ *Maintain the permanently authorized 65,000 visa ceiling.* While preferable to a higher ceiling, the need for even this number of foreign high tech workers is unproven. A lower limit would be preferable.
- ❑ *Eliminate the exemption from the H-1B ceiling for universities, non-profit organizations, and governmental employers.* The exemption from the H-1B cap is an enormous loophole and never should have been created. Why are American workers in these sectors any less deserving of protections against unfair competition from foreign workers?
- ❑ *Provide that during a lay-off, temporary foreign workers will be laid off before American workers with the same occupational code.* Such a provision would have saved many American workers' jobs during the current high tech meltdown. In fairness to H-1B workers, employers should be required to pay the costs of return travel to the home country, including for those H-1B workers already in the United States when hired.
- ❑ *Require that the employer of an H-1B or L-1 visa employee pay to the school district the equivalent of the out-of-district student cost (the same as for a foreign student on an F visa) for any dependents of the temporary foreign worker enrolled in public school.* This proposal is similar to current special Department of Defense school impact programs in areas where military families are stationed and use the local schools.
- ❑ *The criteria for L-1 visa recipients should be restricted to managerial and executive personnel only.* The current concern with using the L-1 program as a backdoor equivalent of an H-1B visa would thereby be eliminated. Technical specialists would then have to get a more appropriate temporary visa.

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