H-1B Visas: The Bottleneck Stalling the Global Flow of Skilled Talent

The United States, known around the world for its commitment to market economics, has become a major bottleneck in the global flow of talent. The problem: a non-immigrant visa program that has been swamped by applicants and is under fierce attack by contenders for the Republican presidential nomination.

Background

Currently the US has 65,000 H-1B visas a year for non-immigrant workers. The first 20,000 advanced-degree graduates that file each year are exempt from that cap, as are people who work at non-profit institutions, such as universities. Candidates do not file for themselves; their companies file on their behalf. The visa enables non-immigrant workers to stay three years in the US, and that period may be extended to up to six years. At the same time, H-1B workers may also apply for a green card if they marry a US citizen, have a child in the US, or otherwise qualify for immigrant status. Additionally, foreign students in the US on F-1 visas are allowed to work 12 months after graduation; and STEM graduates may have a total of 24 months of training and employment in the US.

Hostages of Chance

The number of new applications this year reached approximately 236,000, setting a new record. For the fourth year in a row, US Citizenship and Immigration Services (USCIS) received petitions far in excess of the cap and did so in less than one week. At this point, H-1B petitions have a 36 percent chance of being selected for the lottery that winnows the pool down to 65,000. Non-STEM workers' chance of making it into the lottery is roughly 25%, according to Scott FitzGerald, Managing Partner of the Boston office of Fragomen, Del Rey, Bernsen & Loewy, LLP, a law firm in the US and India that specializes in H-1B visa work. In essence, chance is determining which candidates receive visas to work in the US.

Industry Drivers

Outsourcing of jobs by American companies is a major driver of the surge in H-1B visa petitions. To control their costs, firms outsource functions; companies don't replace laid off workers with foreign workers but with foreign outsourcing companies. In an example that occupied the political spotlight, Disney laid off 200-300 IT workers who were replaced by Tata Consulting workers with H-1B visas; adding insult to injury, the Disney workers were required to train their cheaper replacements. The vast majority of H-1B petitions now come from IT/outsourcing firms, the majority of which are Indian. Professor Ron Hira of Howard University has testified before Congress that of the top 20 companies receiving the most H-1B visas in 2014, 13 of them were global outsourcing firms and they received 40% of all visas issued that year.

At the heart of the debate is the following questions: are foreign workers taking jobs that could be filled by Americans? Are foreign workers being paid less than Americans doing the same work? There are no definite answers. According to Professor Hal Salzman of Rutgers University, the H-1B program was designed to address labor shortages. There is, he claims, no shortage of skilled American workers graduating from American STEM programs every year. The problem is that they are more expensive than their foreign-born counterparts. He found that wages in IT have been stagnant for years with the majority of foreign workers taking entry level positions. Ron Hira has found that the median wage for

Indian outsourcing employees on H-1B visas is approximately $65,000. An investigation by the Dayton Daily News claims that 82% of the 33,348 preliminary applications for H-1B visas in Ohio were for jobs with below-average wages. In 2013, though, Google hired 743 works with H-1B visas with median wage of $118,000 while Apple hired 262 worked with a median wage of $115,000. Professor William Kerr of Harvard University and William Lincoln of Johns Hopkins have found an increase in total science and engineering employment as the result of admitting highly skilled foreign workers into the US. A study done by Matthew Slaughter, dean of the Tuck School of Business at Dartmouth, surveyed 400 corporate executives, 82% of whom believe that hiring foreign workers was as or more expensive than hiring domestic workers. Additionally, Rosario Marin, co-chair of American Competitive Alliance, argues that almost 80% of full time graduate students in electrical engineering in this country are international students and more than 70% of the grad students in computer science are also foreign nationals.

In the absence of clarity, and with paralysis caused by the Presidential election season, inadequate solutions are only complicating the problem. Filing fees for employers that are heavy users of the program now include an addition $4,000 per petition. India has requested formal World Trade Organization consultations over the increase in fees and the cap on the number of visas. The Indian government believes that the fee increases will cost Indian IT and outsourcing companies roughly $400 million; and that preferential treatment for workers from Singapore and Chile violates the US' commitment under the General Agreement on Trade in Services (GATS) to provide 65,000 H1-B visas globally. On the domestic front, in February US Senators Jeff Sessions and Ted Cruz suggested that the government should mandate that minimum pay for H-1B workers should be $110,000.

Individual states and communities are trying to encourage technology entrepreneurs by short-circuiting their need to enter the lottery for H-1B visas. Massachusetts has created a public-private partnership called the Global Entrepreneur in Residence Program through the University of Massachusetts. In its first year, ten entrepreneurs raised $50 million in venture capital and have created roughly 150 jobs. The total cost of the program for taxpayers has been less than $100,000. New York and Colorado have started similar programs.

The Future Looks Uncertain for H-1B Visa Program

The single highest priority of the new Trump Administration is to accelerate US economic growth and to address what it believes is an imbalance in the US Visa program. Towards this end, there has been much lobbying on Capitol Hill on behalf of proponents of the H1B Visa program.

President Elect Trump nominated Alabama Senator Jeff Sessions a top H-1B opponent, to be his attorney general. In recent interviews Trump said reforming "abuses of visa programs that undercut the American worker" is among his top action items for his first 100 days in office. However, the expansion of H-1B visas is one of the few pieces of immigration reform policy that has strong bipartisan support in Congress. There have been several attempts at introducing legislation to deal with the issue. One bill, coauthored by Senator Bill Nelson, aimed to slash 15,000 visas from the annual pool. A separate bill, introduced with Senator Ted Cruz, called for a minimum salary floor for all H-1B holders of $110,000 or the equivalent of how much an American was paid in the role.

Advocates for the program contend that H-1Bs given out to foreigners between 2010 and 2013 will create more than 700,000 jobs for U.S. born workers by 2020. The Internet Association, a group of prominent technology companies that include Facebook, Twitter, Google, Netflix, and Amazon, penned an open letter to President-elect Donald Trump asking for his support on a series of policies including promoting the program.. They believe that the U.S. immigration system must allow more high-skilled graduates and workers to stay in the United States and contribute to the US economy and to accomplish this, they have stated that U.S. must expand and improve the Green Card program, including the creation of a STEM Green Card system.