

The H-1B Reality: Temporary Solution, Long Term Problem

Congress Increases H-1B Visas To Meet Market Demand, Placing Heavier Burden On Inefficient Immigration System

In October 2000, Congress passed the "American Competitiveness in the Twenty-First Century Act of 2000" (AC21). Responding to tight labor markets and burgeoning demand for highly skilled workers, particularly in the information-technology sector (IT), large bipartisan majorities voted to increase the annual ceiling on temporary "specialty worker" (H-1B) visas. AC21 raises the number of H-1B visas from 115,000 to 195,000 for each of the next three fiscal years. This was the second large increase since 1998, when the limit was only 65,000. (See Figure 1.) The ceiling reverts to 65,000 in 2004.

The recent strong demand for temporary workers reflects not only a booming IT industry, but also a failing permanent visa system. Temporary H-1B visas are generally approved in two to four months, while the wait for permanent employment visas now averages four and one-half years. Although many employers would prefer to hire permanent workers, they cannot operate with such delays. They therefore have turned to the temporary visa system to fill permanent positions and meet their growing demand for skilled labor.

The Temporary Visa Trap

CED recognizes that Congress needed to respond to the immediate labor needs of a

rapidly changing economy. However, CED also understands that rapidly increasing the flow of temporary visas will adversely affect the larger employment-based immigration system. The likely consequences include:

- Slower processing of temporary H-1B visas, and
- Increased stress on an already beleaguered system for issuing permanent employment visas.

As a result of the surge in demand for temporary workers and administrative problems within the Immigration and Naturalization Service (INS) and the Department of Labor (DOL), processing of H-1B visas began to slow even before AC21 raised the cap. Approval of H-1B visas, which normally took a

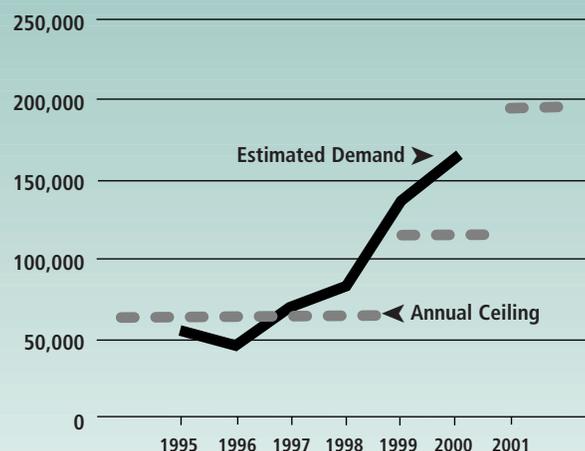
month or two, has taken as long as 4 months in some regions of the country since early 2000. AC21, which allows 80,000 more visas in FY2001 than last year—an increase of 70 percent—will likely produce further delays.

Two other provisions of AC21 will also slow the processing of H-1B visas. One provision provides an unlimited number of additional H-1B visas for employees of universities, non-profits and government.¹ Another eases portability restrictions and facilitates job change for existing H-1B visa holders, which will increase visa applications that permit work in new positions. While employers may be pleased by the apparent increase in available visas, they may find themselves frustrated by increasing delays in processing them and securing new workers.

Even more important, employers' increasing dependence on this temporary visa system will place great additional pressure on the already troubled permanent system. Conservative estimates indicate that at least 50 percent of H-1B visa holders apply for permanent status. (Indeed, the Acting Commissioner of the INS recently acknowledged that the temporary system has

Figure 1.

Surging Demand for H-1B Visas*



* Estimated demand is the number of individuals receiving H-1B visas plus additional petitions received after the cap was reached. 1999 estimated demand includes approximately 22,000 mistakenly over-issued visas, but may exclude some additional petitions received. 2000 estimated demand is based upon preliminary informal INS estimates.

¹ In 2000, approximately 6 percent of newly approved H-1B workers were in educational occupations, but this does not include workers in other occupations in educational institutions or those in other non-profits and government, which cannot be gleaned from the data.

evolved into a “transition” system.²⁾ As a result, if the new caps on H-1B visas are met through 2003, these new visa holders (and their families) will create a demand for about 450,000 permanent visas (“green cards”). The current system, however, is already heavily backlogged and ill equipped to handle this flow. The primary problems with the permanent visa system are:

- Inefficient and ineffective labor certification at DOL, and
- Administrative backlogs and delays at INS.

Labor Certification. The DOL is required by law to certify that job openings for workers on permanent employment visas meet certain criteria intended to protect domestic workers and their wages, such as the unavailability of qualified domestic applicants and the payment of locally “prevailing” wages. This certification process now takes years to complete, for reasons including insufficient resources, an increasing number of filings, and a lack of uniform standards. This system places cumbersome and costly requirements on employers and DOL. But, while restricting and discouraging skilled immigrant workers, the labor certification system does not work and “has lost even the appearance of protecting native-born workers and jobs.”³ As the rapidly increasing H-1B population swells the demand for green cards, the certification

² Remarks given by Mary Ann Wyrsh, Acting Commissioner of INS, before the Carnegie Endowment for International Peace, International Migration Policy Program, January 25, 2000.

³ Demetrios, Papademetriou G. and Stephane Yale-Loehr. *Balancing Interests: Rethinking U.S. Selection of Skilled Immigrants*. Washington, DC: Carnegie Endowment for International Peace, 1996; See also “Agency Meltdown: Department of Labor Puts Breaks on Business Immigration.” ALLA Issue Paper. Washington, DC: American Immigration Lawyers Association, June 8, 2000.

backlogs will continue to grow, frustrating prospective workers and employers alike.

Immigration Administration.

Administrative inefficiencies at INS also prevent the permanent system for employment visas from functioning properly. The Immigration Act of 1990 allocates a total of 140,000 visas for permanent employment needs, but in recent years the number issued has averaged less than 100,000. In 1998, for example, INS issued only 77,517 permanent employment visas. The shortfall results, however, not from weak demand, but simply from processing delays. For example, several hundred thousand applicants for employment visas are languishing among the more than one million green card applicants in the backlog of “adjustment” from temporary to permanent status. These backlogs, like those for labor certification, will grow with the increase in temporary employment visas, placing still more stress on failing INS administration.

The Need for Comprehensive Reform

Our “new economy” will require increasing numbers of skilled workers. To create such a labor force, we must do a more effective job of educating and training our young people than in the past. But additional new workers will come from abroad, responding to both the likely decline in the domestic labor force a decade hence and the increasing globalization of the market for skilled labor. CED believes that we need an effective *permanent* visa system to meet these demands. While some provision for genuinely temporary foreign workers will be necessary and desirable, our growing dependence upon temporary workers adds both uncertainty and potential instability to our labor markets. Further, it is incongruous that employers must use the tempo-

rary visa system to fill permanent positions with immigrants seeking permanent residency. More permanent visas for skilled immigrants should be made available, and processed efficiently, and the temporary visa system should serve the purpose for which it was intended.

In a forthcoming policy statement, CED will outline a set of comprehensive recommendations for reform of the system of employment visas. These will address both the H-1B problems described above and other issues. CED’s recommendations include, but are not limited to, increasing the number of permanent employment-based visas, replacing labor certification with a more efficient attestation process, and instituting a market-driven mechanism for adjusting the number of temporary visas.♦

This brief was prepared by Tarek Anandan and Jim Kapsis March 2001

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Committee for Economic Development

477 Madison Avenue
New York, New York 10022
Phone: 212-688-2063
Fax: 212-758-9068

2000 L Street, NW, Suite 700,
Washington, DC 20036
Phone: 202-296-5860
Fax: 202-223-0776

Web Site: www.ced.org