

Highly Educated Foreign Professionals: Vital to America's Economic Competitiveness

THE ISSUE: The numerical cap limiting the H-1B visa program for FY2006 was reached nearly two months prior to the start of the fiscal year. This marked the third consecutive year that this arbitrary numerical limit, set more than a decade ago, has been triggered prior to the end of the fiscal year. Congress has allowed this to occur despite overwhelming evidence of the number of high-tech jobs that need to be filled in the U.S., and the shortage of U.S. workers available to fill them. Yet, as President Bush and many others recently have stated, a solution to this problem is clear and readily available: bring more highly educated foreign professionals into this country, by way of the H-1B visa. Simply put, without more access to H-1Bs, our businesses suffer, and the U.S. stands to lose rapidly not only the competitive economic edge generations of Americans have worked so hard to achieve, but also its preeminence in a variety of scientific and technical fields—areas vital to our prosperity and national security.

What is the purpose of the H-1B program?—Through the H-1B program, U.S. employers are able to hire, on a temporary basis, highly educated foreign professionals for “specialty occupations”—jobs that require at least a bachelor’s degree or the equivalent in the field of specialty. Examples include doctors, engineers, professors and researchers in a wide variety of fields, accountants, medical personnel and computer scientists. Besides using these foreign professionals to obtain unique skills and knowledge in short supply in this country, U.S. businesses use the program to alleviate temporary shortages of U.S. professionals in specific occupations, and to acquire special expertise in overseas economic trends and issues, thereby allowing U.S. businesses to compete in global markets.

U.S. employers also turn to H-1B professionals when they recruit post-graduates from U.S. universities. Foreign students represent half of all U.S. graduate enrollments in engineering, math and computer science. There still are not enough U.S. students graduating with advanced degrees in these fields to fill highly specialized positions; and, according to the Bureau of Labor Statistics (BLS), the demand for such graduates will increase substantially in the next ten years. It is thus imperative that U.S. businesses have access to foreign professionals who have graduated from U.S. Masters and Ph.D. programs.

Does the H-1B Program Hurt U.S. Workers?—The H-1B program does not harm U.S. workers. The H-1B program has built-in safeguards to ensure that highly educated foreign professionals do not undercut the wages offered U.S. workers. Employers must offer the foreign professional a wage that is the **higher** of either the typical wage in the region for that type of work (“prevailing wage”), or what the employer actually pays existing employees with similar experience and duties. A U.S. employer using this program must also guarantee that:

- the foreign professional will be paid at or above the rate paid for a similar position at the employer’s own offices, or at those of its local competitors
- the foreign professional will not adversely affect the working conditions of U.S. colleagues
- U.S. colleagues will be given notice of the professional’s presence among them
- there is no strike or lockout at the works
- the position requires a professional in a specialty occupation and that the intended employee has the required qualifications

AILA's POSITION: The H-1B visa is a vital tool necessary to keep the U.S. economy competitive in the world market and to keep jobs in America. Far from harming U.S. workers and the U.S. economy, highly educated foreign professionals benefit our country by allowing U.S. employers to develop new products, undertake groundbreaking research, implement new projects, expand operations, create additional new jobs, and compete in the global marketplace. As President Bush remarked recently, if these professionals are not permitted to come to the U.S. to share their expertise, they will go to other countries and benefit companies abroad instead. The end result will be American jobs lost and American projects losing out to foreign competition, with devastating long-term consequences for the U.S. economy. Germany and Australia, to name but two economic competitors, already have updated their immigration laws to attract highly educated talent and are poised to take in the skilled professionals that we turn away. Other countries are sure to follow suit. It is thus imperative that Congress support an H-1B program reflecting our nation's urgent need for more H-1B workers, allowing U.S. employers' access now and in the future to the talents of these highly educated foreign professionals.

CURRENT LEGISLATION: There have been many attempts over the years to permanently increase the H-1B cap. Unfortunately, these attempts have failed. Most recently, in December 2005, the Senate passed a budget reconciliation bill (S.1932) that did not include the Senate Judiciary Committee's provisions to recapture unused H-1B visa numbers dating back to FY 1991, a total of up to 30,000 additional H-1B visas. Despite these recent setbacks, AILA remains active in the fight to alleviate the specialty occupation worker shortage.

TALENT Bill: AILA currently is part of a coalition of corporations, universities, research institutions and trade associations working to help solve the H-1B problem. To this end, the coalition has written a stand-alone bill which it hopes will assist U.S. businesses in alleviating the specialty occupation worker shortage. Among a variety of other excellent proposals, the TALENT bill would:

- exempt U.S.-educated workers with advanced degrees from the H-1B cap and permit work authorization for spouses of H-1B workers
- create a market-based H-1B cap beginning with a base level of 115,000
- redirect a portion of the H-1B education and training fee to the National Defense Education Act and the National Science Foundation's STEP program

More information on the main provisions of the TALENT Bill is posted on AILA's website: <http://www.aila.org/Content/default.aspx?docid=18564>. Senator Cornyn (R-TX) has indicated he will sponsor this bill and is now looking for co-sponsors in the Senate.

Chairman's Mark: In late February, Senate Judiciary Committee Chairman Specter (R-PA) introduced his own Comprehensive Immigration Reform bill. Markup for this bill began in early March. This "Chairman's Mark" incorporated some TALENT bill provisions, and would:

- create a market-based H-1B cap beginning with a base level of 115,000 (If the cap is exhausted in a given fiscal year then the subsequent fiscal year's visa floor increases by 20 percent of the base. If the cap is not exhausted in that fiscal year it remains constant.)
- create a new uncapped exemption from the overall H-1B cap for those foreign nationals who have earned an advanced degree in science, technology, engineering or math (STEM)

While AILA supports many items in the Chairman's mark, other provisions in the bill remain problematic. Of the major immigration reform proposals currently on the table in the Senate, only the Secure America and Orderly Immigration Act (S. 1033), sponsored by Senators McCain and Kennedy, meets AILA's criteria for realistic, comprehensive reform.