
H-1B & L-1 Visa Programs: Identifying Problems & Solutions

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Policy Objectives of H-1B Program

- Fill Shortages for High-Skilled US Workers
 - Act as Bridge to Permanent Employment-Based Immigration
 - Prevent Offshoring

 - H-1B Gets Failing Grades For Each Of These Objectives
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H-1B Reality

- Fill Shortages for US Workers?
 - No such requirements
 - "H-1B workers may be hired even when a qualified U.S. worker wants the job, and a U.S. worker can be displaced from the job in favor of the foreign worker."
 - U.S. Dept of Labor Strategic Plan 2006-2011
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H-1B Reality

- Bridge to Permanent Employment-Based Immigration?
 - Not true for many top H-1B employers
 - Immigration Yield = Greencard Apps/ H-1Bs
 - Very low for many top H-1B employers
 - **Wipro** is #2 H-1B Employer (FY07)
 - Offshore outsourcing firm
 - Received 2,567 H-1Bs but only applied for 76 Greencards for a 3% immigration yield
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H-1B Reality – Bridge to Permanent Immigration

- **I-Flex** is #9 H-1B Employer (FY07)
 - Offshore Outsourcing Firm and Subsidiary of Oracle
 - Received 374 H-1Bs but applied for 17 Greencards
Immigration Yield = 4.5%
 - “Most of the people coming through us have no intention of settling in the United States. These are folks who are coming here to do a job, have fun while they can in the United States and then use this experience in different parts of the world.
- Shahab Alam, executive of I-Flex to NPR Marketplace Radio
 - “More than 90% of Oracle's visa workers are trying to stay in the United States and are on the path to permanent residency, Hoffman says.”
- InformationWeek interview of Robert Hoffman, VP of Oracle and Co-Chair of Compete America
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H-1B Reality

■ Prevent Offshoring

- The H-1B “has become the outsourcing visa” ...
"If at one point you had X amount of outsourcing, and now you have a much higher quantum of outsourcing, you need that many more visas."
 - Indian Commerce Minister Kamal Nath to International Herald Tribune
 - 8 of top 10 H-1B Employers are Offshore Outsourcing Firms
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Eight of Top Ten H-1B Employers Are Offshore Outsourcing Firms

FY 07 H-1B Ranking	Employer	# H-1Bs	NASSCOM Ranking (Indian IT Trade Body)
1	INFOSYS TECHNOLOGIES LIMITED	4,559	2
2	WIPRO LIMITED	2,567	3
3	SATYAM COMPUTER SERVICES LTD	1,396	4
4	COGNIZANT TECH SOLUTIONS US CORP	962	Offshore Outsourcer, US HQ
5	MICROSOFT CORP	959	
6	TATA CONSULTANCY SERVICES LIMITED	797	1
7	PATNI COMPUTER SYSTEMS INC	477	7
8	US TECHNOLOGY RESOURCES LLC	416	Offshore Outsourcer, US HQ
9	I-FLEX SOLUTIONS INC	374	8
10	INTEL CORPORATION	369	

H-1B & L-1 And Offshore Outsourcing Business Model

- Offshore Outsourcing Firms Typically Disclose Guestworker Risk to Shareholders
 - “As of March 31, 2006, the majority of our technology professionals in the United States held either H-1B visas ... or L-1 visas”
 - Infosys Annual Report filing with US SEC (Form 20-F)
 - For more on business model, see my article in Technological Forecasting & Social Change
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Some Announcements

- EDS Accelerates Low-cost Headcount Target to 45k from 20k
 - Purchased Mphasis (#17 H-1B employer) – “inorganically” to grow low-cost headcount
 - Accenture’s India Headcount Surpasses US in Aug 2007
 - Has 35k in India vs. 30k in the US
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Some Announcements

- IBM \$6 billion Investment Announced at Historic Analyst Meeting Held in Bangalore in June 2006
 - Headcount in India
 - 6k in 2003 to (~2% of worldwide headcount)
 - 23k in 2004 to (~7%)
 - 39k in 2005 to (~13%)
 - 55k+ in 2006 (~18%)
 - 74k in 2008
 - 100k by 2010
 - Cutting in US and Western Europe
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Why So Many Announcements?

Giving Away Competitive Advantage

- Offshore Outsourcers Are Market Leaders
 - IT Offshore Outsourcing Companies Successfully Capturing US Customers – *Without US Workers*
 - H-1B and L-1 guestworker programs provide competitive advantage to firms
 - Traditional IT Services Companies (IBM, EDS, CSC, ACS) Adopt Offshore Business Model
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Why So Many Announcements?

<u>Name</u>	<u>HQ</u>	<u>Market Cap</u>	<u>FY Sales</u>	<u>Profit Margin (5 yr Avg)</u>
Infosys	India	\$19,877	\$1,592	27.93%
Wipro	India	\$15,268	\$1,627	20.59%
Electronic Data Systems	US	\$12,517	\$25,865	2.74%
Computer Sciences Corp	US	\$10,015	\$14,059	3.23%

Dollar figures in millions; Retrieved from Reuters.com on November 13, 2005

H-1B Loopholes

- No Labor Market Test
 - No shortage of American workers necessary
 - Widely held mistaken belief that a shortage is needed
 - Prevailing Wage Is Less Than Market Wage
 - No Compliance Oversight/Assurance
 - H-1B Dependency Requirements Ineffective
 - L-1B Labor for Hire Constraints Ineffective
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LCA Process

- Labor Condition Application process is “perfunctory” and nearly every application is approved (by computer – no human intervention)
 - Primary safeguard to ensure foreign & US workers do not get exploited is worthless
 - “rubber stamp”
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Examples of FY07 Certified LCAs

- Occupation Code 30 = Software Engineer

Twenty Five “Pizza Tossers” at **\$10/hr** for Jamie’s Pizza Hut in Phoenix

- LCA Case # I-07065-3077277

One “Business Systems Developer” at **\$18,000/yr** for Cornerstone First Financial in Washington DC

- LCA Case # I-07044-3030683

One “R&D Engineer” at **\$139,428.12/yr** for Nokia (a foreign firm) in San Diego

- LCA Case # I-07054-3049323
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Results – Some Employers Exploit Loopholes

■ Pay Below Market Wages

□ How Do We Know? Employers Say So...

- Government Accountability Office (GAO) conducted interviews of H-1B employers and reported, "Some employers said that they hired H-1B workers in part because these workers would often accept lower salaries than similarly qualified U.S. workers; however, these employers said they never paid H-1B workers less than the **required** wage."

□ Wage floor is unreasonably low ~ 17th percentile

□ Technical problems with OES wage determinations allow absurdly low wages (e.g., \$8.22/hr for computer programmers)

□ FY05 Median Wage for New H-1B Computer Occupations = \$50k

- Far below median wage for the profession and even below entry-level for Bachelors degree
 - Even at 75th percentile pay is \$60k
 - Far cry from \$100k claimed by Microsoft's Bill Gates
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Couple The Loopholes

- Ability to Pay Below-Market Wages

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No Labor Market Test

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Run on H-1Bs

Closing H-1B Loopholes

- **Institute a Labor Market Test**
 - Good faith effort to recruit Americans
 - Non-displacement of US workers
 - Secondary non-displacement
 - **Ensure H-1B Workers Get a Market Wage**
 - Is median wage right?
 - How do we account for educational and skill level
 - **Make Sure Employers Comply With Regulations**
 - Institute an auditing system
 - **Greater Transparency**
 - USCIS is more than 2 years late with H-1B report
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Other Interim Solutions

- Random Lottery
 - Is this fair?
 - Rank H-1B Applicant Priority By Salary
 - Work your way down the salary chain
 - Consequence may be that some relatively lower wage occupations get shut out
 - But of course many get shut out anyway
 - Alternative – have a rotation of occupations where top wages for each occupation has a chance
 - US DOL Begin Auditing Firms
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L-1 Visa

- No Cap
 - No LCA Process
 - No prevailing wage
 - No Compliance Oversight
 - 7 of Top 10 L-1 Employers are Offshore Outsourcing Firms
 - Tata Consultancy, Cognizant, Wipro, Satyam, HCL, Patni, Kanbay
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L-1 Visa

- Share of L-1 Visas Up from India Significantly
 - 2002: India 10%
 - 2005: India 48%
 - Since 2004 L-1B > L-1A
 - L-1B for workers with firm-specific “specialized knowledge” – closer substitute for H-1B
 - 2005 Law Limiting L-1 “Labor for Hire” Appears to be Ineffective
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Problems With Public Discussion

- Press Gets Basic Facts Wrong
 - Falsely Claiming Labor Market Test – Shortage Requirement
 - NY Times, Los Angeles Times, San Diego Union Tribune, Wall Street Journal
 - NY Daily News in an Editorial supporting H-1B expansion
 - Important to Restore Integrity to H-1B Program
 - A large share of American IT workers believe the H-1B program is a scam against them
 - Even if they are delusional, and I don't think they are, there are very important policy goals in ensuring they buy in to the program
 - Best ambassadors for the profession
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Policy Design Decision Points for High Skill Immigration

■ Who - Criteria

- ❑ Educational level (BS, MS, PhD, experience)
 - ❑ Location of Education
 - US university vs. Foreign university educated?
 - ❑ Experience level
 - ❑ Salary
 - ❑ Country of origin
 - ❑ Occupation
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Policy Design Decision Points for High Skill Immigration

- How Many
 - What is the appropriate cap?
 - Process
 - What rights should guestworkers have
 - Change jobs, object to working conditions
 - Should they be “probationary Americans” on path to citizenship?
 - Should Look at H-1B, L-1, & EB Together
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