

# NATIONAL FOUNDATION FOR AMERICAN POLICY

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### H-1B VISAS ESSENTIAL TO ATTRACTING AND RETAINING TALENT IN AMERICA

BY STUART ANDERSON

#### EXECUTIVE SUMMARY

H-1B temporary visas have been an essential avenue for allowing high-skilled foreign nationals to work in America. The “Gang of 8” Senate immigration bill would dramatically change employment-based immigration policy, attempting through a variety of means to discourage or, in some cases, prohibit the use of H-1B visas, while providing more employer-sponsored green cards (for permanent residence). Research indicates measures to restrict the use of H-1B visas are not based on sound evidence and would represent a serious policy mistake that would shift more work and resources outside the United States and harm the competitiveness of U.S. employers. (A grant from the Ewing Marion Kauffman Foundation funded the research for this paper. The contents are solely the responsibility of the National Foundation for American Policy.)

**Table 1**  
**H-1B Statistics in a Snapshot**

<b>H-1B-Led Productivity Gains</b>	Growth in foreign STEM workers “may explain between 10 and 25 percent of the aggregate productivity growth . . . that took place in the U.S.” from 1990-2010.” (Peri, Shih, Sparber)
<b>H-1B and Increased U.S. Jobs</b>	Each additional 100 approved H-1B workers associated with an additional 183 jobs among U.S. natives from 2001-2010. (Zavodny)
<b>H-1B and Increased U.S. Wages</b>	“An increase in foreign STEM workers of 1 percent of total employment increased the wage of native college educated workers (both STEM and non-STEM) over the period 1990-2000 by 4 to 6 percent.” (Peri, Shih, Sparber)
<b>H-1B Professionals Earn Comparable or Higher Wages Than U.S. Workers in Same Age Grouping</b>	Median salary Electrical/Electronics Engineering age 20-39 H-1B: \$80,000 vs. U.S. worker: \$75,000. Median salary Systems Analysis/Programming age 20-29: H-1B: \$60,000 vs. U.S. worker: \$58,000. (GAO)
<b>H-1B and Patents</b>	“A 10 percent growth in H-1B admissions correlates with an 8 percent growth in Indian invention” relative to firms outside of the computer sector less reliant on H-1Bs. (Kerr and Lincoln)
<b>New H-1B Visas in U.S. Labor Force</b>	New H-1B visa holders are 0.087 percent of U.S. labor force. (DOL)
<b>H-1B Employer-Paid H-1B Fees</b>	\$4 billion in H-1B fees paid since 1999 (estimate) (USCIS)
<b>H-1B Employer Fees for Scholarships</b>	63,800 scholarships for U.S. students since 1999. (NSF)
<b>H-1B and Taxes</b>	Foreign-born with B.A. pays \$9,335 more a year in taxes than benefits received; \$20,254 more with M.A. (Zavodny)
<b>Onsite Audits of H-1B Employers</b>	14,433 H-1B site visits in FY 2010 and 15,648 in FY 2011. (USCIS)
<b>Percent of H-1B Visa Audits Referred for Fraud Investigations (FY 2010)</b>	1 percent (USCIS)
<b>Months Employers Wait for a Foreign Professional When H-1B Unavailable</b>	15 to 18 months to start work on new H-1B for FY 2013 and FY 2014; FY 2003 last year annual cap not reached. (USCIS)
<b>2011 Intel Science Talent Search Finalists With H-1B Parent</b>	60 percent of the 2011 finalists had a parent who entered U.S. on H-1B visa; 30 percent of the finalists had U.S.-born parents. (NFAP)

Source: National Foundation for American Policy. Data sourced in table and in report.

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The “Gang of 8” Senate immigration bill, S. 744, would place several new restrictions on the use of H-1B visas.<sup>1</sup> An examination of data and economic research reveals the premises on which these new restrictions rest are not supported by the facts.

First, rather than harming U.S. workers or the U.S. economy, H-1B visa holders contributed “between 10 and 25 percent of the aggregate productivity growth . . . that took place in the United States from 1990 to 2010,” according to economists Giovanni Peri, Kevin Shih and Chad Sparber.<sup>2</sup> Peri, Shih and Sparber also found, “An increase in foreign STEM workers of 1 percent of total employment increased the wage of native college educated workers (both STEM and non-STEM) over the period 1990-2000 by 4 to 6 percent.”<sup>3</sup> Madeline Zavodny found each added 100 approved H-1B workers were associated with an additional 183 jobs among U.S. natives.<sup>4</sup>

Second, S. 744 would artificially inflate the minimum required wage paid to H-1B visa holders under the belief that H-1B professionals are generally paid below that of comparable U.S. workers. In fact, the law already requires employers to pay H-1B professionals at least as much as comparable U.S. workers. Moreover, the Government Accountability Office found the median salary for H-1B visa holders age 20-39 was \$80,000 compared to \$75,000 for U.S. workers in Electrical/Electronics Engineering, and \$60,000 for H-1B professionals age 20-29 in Systems Analysis/Programming vs. \$58,000 for U.S. workers.<sup>5</sup> Other studies, including by University of Maryland economists Sunil Mithas and Henry C. Lucas, Jr., find H-1B professionals in information technology (IT) earned more than their native counterparts with similar experience and do not harm the prospects of U.S.-born workers.<sup>6</sup>

Third, employment in Computer and Math occupations rose by 12.1 percent between 2007 and 2012, the second highest of any U.S. job category during that period, according to the Bureau of Labor Statistics. Some argue the size of the wage growth in certain technology fields means companies are not having a difficult time filling positions. But wage growth can be hidden when the number of jobs in a sector grows. Statistically, adding more employees in an occupational category tends to limit average wage growth (newer workers tend to earn less than incumbent workers), while a field like construction, which lost 25 percent of its jobs between 2007 and 2012, shows reasonable average wage growth, since newer, lesser paid workers were the most likely to lose their jobs.

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<sup>1</sup> *Analysis: Senate Bill's H-1B and L-1 Visa Provisions Are a Reversal of Fortune for American Competitiveness*, NFAP Policy Brief, National Foundation for American Policy, April 2013.

<sup>2</sup> Giovanni Peri, Kevin Shih and Chad Sparber, “STEM workers, H-1B Visas and Productivity in U.S. Cities,” January 29, 2013.

<sup>3</sup> *Ibid.*

<sup>4</sup> Madeline Zavodny, *Immigration and American Jobs*, American Enterprise Institute and the Partnership for a New American Economy, December 2011.

<sup>5</sup> *H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program*, Government Accountability Office, GAO-11-26, January 2011.

<sup>6</sup> S. Mithas and H.C. Lucas, “Are Foreign IT workers Cheaper? U.S. Visa Policies and Compensation of Information Technology Professionals,” *Management Science* (56:5) 2010.

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Also, it is not really possible to gauge the demand for professionals with technology skills by counting only “STEM occupations,” as suggested in a recent Economic Policy Institute report. According to the National Science Foundation, over 4 million people in America use their science & engineering degree in their jobs even though their occupation is not formally classified as a science & engineering occupation. The competition for labor in high tech fields is global, which means employers can fill vacancies or complete projects outside the U.S. that would not appear in domestic “shortage” data. Still, large technology companies today report many job openings.<sup>7</sup>

Fourth, India-based companies do not use up most of the yearly H-1B allotment, as some believe. Between FY 2006 and FY 2011, the top 25 India-based companies utilized between 6 and 15 percent of the new H-1B visa approved for initial employment, and 19.9 percent in FY 2012. In FY 2012, the 26,865 new H-1B visas approved for the top 25 India-based companies equaled only 0.017 percent of the U.S. labor force. Many of these companies perform services under contract for U.S. companies attempting to focus on core business functions.

Fifth, education levels for new H-1B visa holders are high, with 58 percent having earned a master’s degree or higher. New H-1B visa holders in the United States accounted for 0.087 percent of the U.S. labor force in 2012.<sup>8</sup>

Sixth, rather than harming U.S. students, as some contend, a large proportion of the approximately \$4 billion in government fees paid by employers since 1999 for H-1B visa holders have provided over 63,000 scholarships for U.S. students in science and technology fields, according to the National Science Foundation. A key part of the next generation of outstanding scientists and engineers, the children of H-1B visa holders accounted for 60 percent of the finalists at the 2011 Intel Science Talent Search competition for top U.S. high school students.

Seventh, significant government oversight of H-1B visas currently exists. In FY 2010 and FY 2011, U.S. Citizenship and Immigration Services conducted approximately 30,000 on site audits of employers of H-1B visa holders. In FY 2010, only 1 percent of the audit visits resulted in referrals for a fraud investigation.

In sum, the premises on which new restrictions have been proposed for H-1B visas are mistaken, overstated or based on incorrect information. For most skilled foreign nationals it is not practical to become permanent residents (green card recipients) before being allowed to start work in the United States. The research shows Congress should expand the number of green cards and H-1B visas but without burdening employers or visa holders with new rules and limitations that will harm the competitiveness of U.S. companies.

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<sup>7</sup> Written Testimony of Brad Smith, General Counsel and Executive Vice President, Legal and Corporate Affairs, Microsoft Corporation, Before the Senate Judiciary Committee, on the Border Security, Economic Opportunity, and Immigration Modernization Act, S.744, April 22, 2013. Smith lists 10,000 job openings among five well-known tech companies.

<sup>8</sup> *Characteristics of Specialty Occupational Workers (H-1B): Fiscal Year 2011*, Department of Homeland Security, March 12, 2012, p. 10; 0.087 percent is derived from USCIS H-1B data on approved initial employment and DOL labor force statistics.

## **WHAT ARE H-1B VISAS?**

H-1B visas are temporary visas that allow foreign nationals to work in the United States on short-term projects, for longer-term work or as a prelude to a green card (permanent residence). H-1B status is generally good for up to 6 years (with a renewal after three years). A reason H-1Bs visas are economically important is that without such visas skilled foreign nationals generally could not work or remain in the United States.<sup>9</sup>

Under the law, when hiring an H-1B professional, companies must pay the higher of the prevailing wage or actual wage paid to “all other individuals with similar experience and qualifications for the specific employment in question.”<sup>10</sup> Companies must also comply with a complex series of rules related to, among other things, the placement of employees at off-site facilities. Prior to 1990, going back to the 1950s, H-1s generally could not enter the United States if they intended to stay permanently (i.e., they could only fill positions expected to be temporary or project-oriented). Congress changed the law in 1990 to provide “dual intent,” which allowed H-1B visa holders to intend to become permanent residents (green card recipients), while also placing an annual limit of 65,000.

## **AVOIDING THE TRAP OF GREEN CARDS YES, H-1Bs NO**

H-1B status is generally the only realistic way for a skilled foreign national from abroad or an outstanding international student at a U.S. university to work long-term in the United States. In other words, maintaining the viability and utility of H-1B visas is not an ideological issue. Rather, it is a practical issue. Despite its low annual quota, which has been exhausted before the end of every fiscal year for the past decade, H-1B visas are crucial for retaining and attracting talent in the United States. Therefore, a trade-off of being expansive on green cards in exchange for making H-1B or L-1 visas extremely cumbersome to use would, at minimum, leave U.S. employers no more competitive than they are today, and could leave some companies worse off. (L-1 visas are used for intracompany transferees of managers, executives and professionals with specialized knowledge.)

The vast majority of highly skilled immigrants (green card holders) working in the United States today have worked in H-1B status during their career.<sup>11</sup> The only exceptions are likely certain individuals in the employment-based first preference (EB-1) or second preference (EB-2), L-1 visa holders, and foreign nurses (because H-1B visas are often denied to nurses). Otherwise, employment-based immigrants generally work first in H-1B

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<sup>9</sup> While other visa categories exist, they carry significant restrictions that limit their applicability to most skilled foreign nationals, such as an L-1 visa, which requires working abroad for a company for at least a year and then qualifying as a manager, executive or an employee with “specialized knowledge” under USCIS regulations to reenter the United States.

<sup>10</sup> Section 212(n)(1) of the Immigration and Nationality Act.

<sup>11</sup> To obtain their green cards, over 90 percent of employment-based immigrants each year adjust their status inside the United States from a temporary visa category, primarily H-1B and L-1 status. *2012 Yearbook of Immigration Statistics*, U.S. Department of Homeland Security.

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temporary status. If the category had never existed or had been more severely restricted the typical skilled immigrant would likely not be living and working in America today.

Adam S. Cohen, assistant general counsel and manager of immigration services at Memorial Sloan-Kettering Cancer Center, notes that foreign nationals working in H-1B status while at a cancer research facility include physicians, researchers, research technicians, information technology specialists and lab technologists.<sup>12</sup> Marie Bleakley, a cancer researcher, came to the Seattle-based Fred Hutchinson Cancer Research Center as a medical fellow in 2002, worked on an H-1B visa, and was sponsored for her employment-based green card by the center.<sup>13</sup> “Marie Bleakley’s research could fundamentally alter the standard approach to blood stem-cell transplantation,” according to the Fred Hutchinson Cancer Research Center. Two current lab personnel of Dr. Ulrike Peters, who is leading or co-leading several cancer research programs at Fred Hutchinson, received degrees in the United States and the center sponsored their H-1B petitions.<sup>14</sup>

A policy of relying solely on the green card process to retain or attract talented foreign-born scientists, engineers and other professionals is likely to work poorly. Most proposals to provide more employment-based green cards focus on international students with graduate degrees from a U.S. university in a science, technology, engineering or math (STEM) field. This is the part of S. 744 on green cards most likely to survive a legislative conference with the U.S. House of Representatives. However, there are many highly skilled individuals who either have obtained a degree abroad or not in a subject area defined strictly as STEM. In the past, even cancer researchers did not meet the legislative definition of STEM. If H-1B visas become unduly burdened, restricted or cost prohibitive, then those individuals will likely have no way to work in the United States.

A related problem is many individuals enter the U.S. to work on specific, cutting-edge or time-sensitive projects, not intending to stay here permanently. If an American goes to work on a project or for a few years in France he or she does not expect to become a French citizen or permanent resident of France.

Third, another risk of a “green card yes, H-1B no” policy is for those currently waiting for their green cards. A recent NFAP analysis of S. 744 noted, “Individuals now waiting for green card processing could be forced to leave the country if they require a renewal of H-1B status to keep working and their new employer cannot meet the new

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<sup>12</sup> Stuart Anderson, *The Contributions of Immigrants to Cancer Research in America*, National Foundation for American Policy, NFAP Policy Brief, February 2013, p. 7.

<sup>13</sup> Ibid.

<sup>14</sup> Fred Hutchinson Cancer Research Center.

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conditions established in the Senate bill. The portability provisions in the bill would not help such individuals if a new employer were not able to comply with the bill's new H-1B provisions."<sup>15</sup>

**THE MARKET HAS DETERMINED H-1B VISA USE**

The market has determined the use of H-1B visas. When Congress raised the limit to 195,000 a year in FY 2002 and 2003, in both years fewer than 80,000 visas were issued against the cap, leaving 230,000 H-1B visas unused in those two years. Firms did not hire more H-1Bs in those years just because the cap was higher. (See Table 2.)

The key legislative issue involving H-1Bs has been the annual quota of 65,000, which is low relative to the size of the U.S. labor force. The low annual quota has meant for several months at a time (often over a year) employers could not hire skilled foreign nationals to work in the United States on new H-1B visas. On Friday, April 5, 2013, U.S. Citizenship and Immigration Services (USCIS) said it received "a sufficient number of H-1B petitions to reach the statutory cap for fiscal year (FY) 2014," as well as the exemption for 20,000 advanced degree holders. "After today, USCIS will not accept H-1B petitions subject to the FY 2014 cap or the advanced degree exemption," the agency announced.<sup>16</sup>

In April 2013, U.S. Citizenship and Immigration Services received approximately 124,000 H-1B petitions, about 40,000 over the combined 85,000 annual limit, which required USCIS to set up a lottery system to "select a sufficient number of petitions needed to meet the caps."<sup>17</sup> Companies make investment decisions based on predictability; jobs flow based on those investments. The low annual quota and placing hiring choices for important personnel in the hands of a lottery – as USCIS has done to distribute the supply of approved H-1B petitions – encourages increased investment outside the United States.

This is not new for employers. And while large employers do their best to make contingency plans it is likely worse for smaller employers unlikely to have overseas operations. From FY 1997 to FY 2013, employers exhausted the supply of H-1B visas every year, except, as noted, when the ceiling was temporarily increased for the years FY 2001 to FY 2003. In late 2004, Congress approved an exemption of 20,000 from the annual cap for foreign nationals who receive an advanced degree from a U.S. university. (Congress had earlier approved an exemption from the 65,000 numerical limit for those hired by universities and nonprofit or government research institutes.)

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<sup>15</sup> *Analysis: Senate Bill's H-1B and L-1 Visa Provisions Are a Reversal of Fortune for American Competitiveness*, NFAP Policy Brief, National Foundation for American Policy, April 2013.

<sup>16</sup> Press Release, U.S. Citizenship and Immigration Services, April 5, 2013.

<sup>17</sup> "USCIS Reaches FY 2014 H-1B Cap," Press Release, U.S. Citizenship and Immigration Services, April 8, 2013.

**Table 2**  
**H-1B VISAS ISSUED AGAINST THE CAP BY YEAR**

<u>Year</u>	<u>CAP*</u>	<u>#Issued</u>	<u>#Unused</u>
1992	65,000	48,600	16,400
1993	65,000	61,600	3,400
1994	65,000	60,300	4,700
1995	65,000	54,200	10,800
1996	65,000	55,100	9,900
1997	65,000	65,000	0
1998	65,000	65,000	0
1999	115,000	115,000	0
2000	115,000	115,000	0
2001	195,000	163,600	31,400
2002	195,000	79,100	115,900
2003	195,000	78,000	117,000
2004	65,000	65,000	0
2005	65,000	65,000	0
2006	65,000	65,000	0
2007	65,000	65,000	0
2008	65,000	65,000	0
2009	65,000	65,000	0
2010	65,000	65,000	0
2011	65,000	65,000	0
2012	65,000	65,000	0
2013	65,000	65,000	0
2014	65,000	65,000	0

Source: Department of Homeland Security; National Foundation for American Policy.  
\*Does not include exemptions from the cap. Exemptions from the cap include those hired by universities and non-profit research institutes and 20,000 individuals who received a master's degree or higher from a U.S. university.



## **H-1Bs AND EDUCATION LEVELS**

Official data for FY 2011 show 58 percent of recent H-1B professionals earned a master's degree or higher, according to the Department of Homeland Security. Forty-two percent earned a master's degree, 11 percent earned a Ph.D. and 5 percent a professional degree.<sup>18</sup>

## **WAGE STATISTICS CAN BE MISLEADING ON TECH JOBS**

Employment in the category Computer and Math Occupations rose by 12.1 percent between 2007 and 2012, more than any job category except for Personal Care and Service Occupations, according to the Bureau of Labor Statistics.<sup>19</sup> However, some argue that if there were a genuine "shortage" of technology professionals in America wages in certain fields would be increasing more. There are both technical and practical reasons why wage statistics are poor indicators of the current difficulties employers face in finding key personnel in technology fields, particularly since the sector has experienced job growth.

First, wage growth can be hidden when the number of jobs in a sector grows. In fact, a sector with negative job growth can actually look better from a wage perspective. For example, if firm A has 10 employees making an average of \$75,000 a year and adds two new workers at \$60,000, the average wage in Firm A will drop to \$72,500. However, if Firm B has 10 employees with an average salary of \$75,000 and lays off two recent hires earning \$60,000, then the average wage of Firm B will actually rise to \$78,750.

Jobs in Applications Software Developers (called Computer Software Engineers, Applications in 2007) increased by 18 percent between 2007 and 2012. But as an example of how misleading wage data can be, note that the wage growth for Applications Software Developers between 2007 and 2012 was actually lower than that of the Construction sector. The reason? The total number of jobs in Construction declined by 25 percent between 2007 and 2012, shedding many lower-paid jobs and thereby making the wage growth appear higher in the category from a statistical perspective. Similarly, the number of jobs overall in the U.S. economy (All Occupations) fell by 3 percent between 2007 and 2012, which also makes wage comparisons with computer sector jobs misleading.<sup>20</sup>

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<sup>18</sup> *Characteristics of Specialty Occupational Workers (H-1B): Fiscal Year 2011*, Department of Homeland Security, March 12, 2012, p. 10.

<sup>19</sup> Bureau of Labor Statistics Occupational and Employment Statistics. Personal Care and Service Occupations include a variety of jobs, such as hairdressers, fitness trainers and morticians.

<sup>20</sup> Data available from U.S. Department of Labor.



**Table 3**  
**Job Growth in Major Occupation Groups: 2007-2012**

<b>MAJOR OCCUPATION GROUP</b>	<b>PERCENTAGE CHANGE IN EMPLOYMENT, 2007 TO 2012</b>
<b>Personal Care and Service Occupations</b>	14.1 percent
<b><i>Computer and Mathematical Occupations</i></b>	<i>12.1 percent</i>
<b>Healthcare Practitioners and Technical Occupations</b>	11.2 percent
<b>Healthcare Support Occupations</b>	8.0 percent
<b>Business and Financial Operations Occupations</b>	6.7 percent
<b>Management Occupations</b>	6.4 percent
<b>Community and Social Service Occupations</b>	5.0 percent
<b>Protective Service Occupations</b>	3.9 percent
<b>Legal Occupations</b>	2.4 percent
<b>Food Preparation and Serving Related Occupations</b>	2.4 percent
<b>Education, Training, and Library Occupations</b>	0.7 percent
<b>Arts, Design, Entertainment, Sports, and Media Occupations</b>	-0.6 percent
<b>ALL OCCUPATIONS</b>	-3.0 percent
<b>Sales and Related Occupations</b>	-3.5 percent
<b>Building, Grounds Cleaning and Maintenance Occupations</b>	-3.6 percent
<b>Farming, Fishing, and Forestry Occupations</b>	-4.5 percent
<b>Architecture and Engineering Occupations</b>	-5.2 percent
<b>Installation, Maintenance, and Repair Occupations</b>	-5.9 percent
<b>Office and Administrative Support Occupations</b>	-8.2 percent
<b>Transportation and Material Moving Occupations</b>	-8.9 percent
<b>Life, Physical, and Social Science Occupations</b>	-12.1 percent
<b>Production Occupations</b>	-15.3 percent
<b>Construction and Extraction Occupations</b>	-25.8 percent

Source: Bureau of Labor Statistics Occupational and Employment Statistics

In general, it is better not to use the term “shortage” in a labor context because a labor shortage is not likely to endure and U.S. government policies can both mask and cause such “shortages.” For example, it is likely the current data may not show an obvious “shortage” of agricultural labor for the primary reason that so much of the labor for picking crops is supplied by undocumented immigrants due to the lack of good policies for the legal admission of such workers.

Similarly, it may be difficult to document a shortage in high technology fields because employers are not static actors; they take actions to overcome an ability to find the right person for the job. If an employer cannot find the needed talent for particular work, then it can a) abandon the project, or b) outsource the work abroad. In neither

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case would the inability to fill the position show up as a “shortage.” When hospitals and restaurants can’t find doctors, nurses or waiters they don’t construct buildings and leave them empty to illustrate the “shortage.” Instead, they simply don’t expand.

It is not possible to gauge accurately the demand for professionals with technology skills in the U.S. economy by measuring only graduates with STEM degrees and those working in “STEM occupations,” since that methodology, which was suggested in a recent Economic Policy Institute report, would ignore millions of people who work in jobs where a science & engineering degree is important to the job.<sup>21</sup> According to the National Science Foundation, over 4 million people in America use their science & engineering degree in their job even though their occupation is not formally classified as a science & engineering occupation. “Counting these people . . . as part of the S&E workforce increases the (SESTAT) S&E workforce estimate from 4.9 million to 9.1 million, an 84 percent increase,” explains the National Science Foundation.<sup>22</sup>

The U.S. is part of a global economy and, as such, the demand for labor is global as well. Compared to many years ago, relatively few technology products or services are produced with solely domestic labor or supply inputs. Given that employers unable to find workers in the U.S. can often employ people abroad, it is challenging to find accurate measurements domestically to determine employers’ difficulty in finding highly skilled talent. Also, job categories change from year to year in the technology sector, with some individuals who used to be called “programmers” likely placed in a new category, making comparisons on wages difficult. And a few decades ago, companies like Google and Facebook, and such things as mobile apps, did not even exist.

## **HIGH FEES, FREQUENT AUDITS, DENIALS, AND 15-MONTH DELAYS: H-1B PROBLEMS HELP MAKE THE CASE**

Ironically one of the best ways for employers to demonstrate they need the ability to hire skilled foreign nationals on H-1B visas is how difficult it is to deal with the H-1B process. In other words, given the fees, uncertainties, delays, denials and audits, it is unlikely any responsible businesses would subject themselves to the process if there were readily available practical alternatives. As detailed in the next sections, employers hiring H-1B visa holders are subject to high fees, long delays, frequent government audits and government processing that creates uncertainty.

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<sup>21</sup> Hal Salzman, Daniel Kuehn, and B. Lindsay Lowell, *Guestworkers in the High-Skill U.S. Labor Market*, EPI Briefing Paper, Economic Policy Institute, April 24, 2013.

<sup>22</sup> National Science Board, *Science and Engineering Indicators 2012*, National Science Foundation, 2012, p. 3-10.

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In addition to paying the required wage, employers must pay legal and government fees for an H-1B that could reach \$9,540 for an initial petition and another \$9,540 for an extension, according to the American Council on International Personnel and Society for Human Resource Management.<sup>23</sup> The estimated cost to sponsor a foreign national all the way from an H-1B petition through the green card process for permanent residence could reach approximately \$50,000.<sup>24</sup>

**Table 4**  
**Costs to Sponsor H-1B Visa Holder**

<b>EMPLOYER COSTS FOR H-1B VISAS</b>	<b>AMOUNT</b>
<b>Attorney Fees</b>	\$1,000 to \$3,000
<b>Training and Scholarship Fee</b>	\$1,500 (\$750 if fewer than 25 employees)
<b>Anti-Fraud Fee</b>	\$500
<b>Application Fee</b>	\$325
<b>Consular Processing</b>	\$190
<b>Visa Fee</b>	\$0 to 800 (based on reciprocity)
<b>Premium Process Fee</b>	\$1,225 (optional)
<b>Employers 50% of U.S. Workforce in H-1B/L-1 Status</b>	\$2,000
<b>H-4 Dependent</b>	\$740 to \$1,630
<b>H-1B Extension (Potentially All the Same Fees Apply)</b>	\$1,325 to \$9,540
<b>TOTAL H-1B FEES</b>	<b>\$2,575 to \$20,710</b>
<b>COST TO SPONSOR FOREIGN NATIONAL FOR PERMANENT RESIDENCE (Green Card)</b>	<b>\$8,300 to \$30,904 (not incl. family members)</b>

Source: *Navigating the U.S. Employment-Based Immigration System*, American Council on International Personnel and the Society for Human Resource Management, 2013, pp. 62-63.

**LONG DELAYS WHEN WORK CAN START**

If an American is hired for a job, then he or she can usually start working immediately. But if an employer wants to hire a foreign national on an H-1B visa, then it might be more than a year before the H-1B professional could start the job. That is because when the H-1B annual limit is exhausted, an employer must wait until the next April to submit a new application and then, if the application is approved, the individual still generally cannot work until the next fiscal year begins (October 1). In June 2012, the *San Jose Mercury News* explained, "Companies that didn't file a visa petition before this week must wait until April 2013 to try again and won't be able to employ an H-1B worker until October 2013."<sup>25</sup>

<sup>23</sup> *Navigating the U.S. Employment-Based Immigration System*, American Council on International Personnel and the Society for Human Resource Management, 2013, pp. 62-63.

<sup>24</sup> *Ibid.*

<sup>25</sup> Matt O'Brien, "H-1B Work Visas Run Out," *San Jose Mercury News*, June 12, 2012.

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The same situation with the H-1B cap occurred in 2013 as well, only earlier. A reasonable question to ask: Would any employer *not* hire a qualified and available U.S. worker if the alternative was to wait 15 or 18 months in the hope that an H-1B visa *might* be available in the next fiscal year and then a foreign national *might* be able to start work several months after that?

## **AUDITS THROUGH THE ROOF**

While critics call for increased oversight of H-1Bs it is unclear whether anyone involved in the policy debate is aware that U.S. government auditors conducted over 30,000 site visits to employers using H-1B visas in FY 2010 and FY 2011.<sup>26</sup> That is an extraordinary number of audits considering in a typical year there are about 27,000 employers of new H-1B visa holders and almost 70 percent hire only one H-1B professional.<sup>27</sup> As a result, many employers receive multiple visits from U.S. Citizenship and Immigration Services to check on compliance with H-1Bs. “Several members report numerous site visits for a single employer in one location,” noted the American Immigration Lawyers Association. “A large U.S. professional services provider reports well over 100 site visits in calendar year 2011. In all cases, no fraud was found and no compliance issues were found.”<sup>28</sup>

## **DENIALS CREATE GREAT UNCERTAINTY**

If the low H-1B quota did not create enough uncertainty, then the changing adjudication standards practiced by U.S. Citizenship and Immigration Services (USCIS) would give any employer pause. NFAP obtained data from USCIS that revealed, “Denial rates for H-1B petitions increased from 11 percent in FY 2007 to 29 percent in FY 2009, and remained higher than in the past for H-1Bs at 21 percent in FY 2010 and 17 percent in FY 2011.”<sup>29</sup> And the problem of changing standards could be seen for existing employees transferred into the country as well. The February 2012 NFAP report found, “Denial rates for L-1B petitions filed with USCIS, which are used to transfer employees with ‘specialized knowledge’ into the United States, rose from 7 percent in FY 2007 to 22 percent in FY 2008, despite no change in the law or relevant regulation. The denial rates stayed high for L-1B petitions at 26 percent in FY 2009, 22 percent in FY 2010 and 27 percent in FY 2011.”<sup>30</sup> And often the problem is not just a denial but the bureaucratic procedures themselves. The report noted, “In addition, 63 percent of L-1B petitions in FY 2011 were at least temporarily denied or delayed due to a Request for Evidence.”<sup>31</sup>

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<sup>26</sup> USCIS Fraud Detection & National Security (FDNS) Directorate Answers AILA Administrative Site Visit & Verification Program (ASVVP) Questions, June 7, 2011, and AILA Verification and Documentation Liaison Committee, USCIS NDNS Meeting, March 28, 2012. According to USCIS, “14,433 H-1B site visits were conducted in FY 2010” and 15,648 were conducted in FY 2011.

<sup>27</sup> *H-1B Visas By the Numbers: 2010 and Beyond*, NFAP Policy Brief, National Foundation for American Policy, March 2010.

<sup>28</sup> *Ibid.*, June 7, 2011.

<sup>29</sup> *Analysis: Data Reveal High Denial Rates for L-1 and H-1B Petitions at U.S. Citizenship and Immigration Services*, NFAP Policy Brief, National Foundation for American Policy, February 2012.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

## **ECONOMIC BENEFITS OF H-1B VISA HOLDERS**

Critics of H-1Bs make their arguments primarily based on a difficult to prove and hypothetical “counterfactual,” arguing if H-1B visa holders had not been allowed into the country, then more Americans would have jobs. There is no evidence that U.S. workers showed significant gains during the many long periods – ranging from months to more than a year – when, in effect, an H-1B moratorium existed that prevented companies from hiring foreign nationals on new H-1B visas due to the annual quota having been reached. In contrast, as the next sections illustrate, there is a strong body of evidence that being open to high skilled foreign nationals has benefited the U.S. economy, including advances in productivity, patents, job creation, tax revenue and entrepreneurship.

## **WAGE AND PRODUCTIVITY GAINS**

Economists Giovanni Peri (UC, Davis), Kevin Shih (UC, Davis) and Chad Sparber (Colgate University) researched H-1B visas and found in a recent study: “An increase in foreign STEM (science, technology, engineering and math) workers of 1 percent of total employment increased the wage of native college educated workers (both STEM and non-STEM) over the period 1990-2000 by 4 to 6 percent.”<sup>32</sup>

Peri and his colleagues also found significant gains from H-1B visa holders for the country overall: “The productivity growth and skill biased growth due to growth in foreign STEM workers may explain between 10 and 25 percent of the aggregate productivity growth and 10 percent of the skill-bias growth that took place in the U.S. during the period 1990-2010.”<sup>33</sup> This implies a higher H-1B cap would bring increased economic gains to the country.

## **H-1Bs AND JOB CREATION**

Some people assume if a foreign national fills a job, then that means an American who could have filled that job is out of luck. Yet the flow of jobs in an economy and within companies is much more dynamic than allowed for in such a simple one-for-one, zero-sum analysis.

Economist Madeline Zavodny, a professor of economics at Agnes Scott College, captured the dynamic nature of the economy in a study on the foreign-born and employment, concluding, “The findings here suggest that expanding the H-1B program for skilled temporary foreign workers would increase employment for U.S. natives.”<sup>34</sup> The study for the American Enterprise Institute and Partnership for a New American Economy examined the

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<sup>32</sup> Peri, Shih and Sparber.

<sup>33</sup> Ibid.

<sup>34</sup> Madeline Zavodny, *Immigration and American Jobs*, p. 5.

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years 2001 to 2010. Zavodny found, “Each additional 100 approved H-1B workers being associated with an additional 183 jobs among US natives.” She concluded the “results give clear evidence” that H-1B visas “correspond to greater job opportunities for US-born workers.”<sup>35</sup>

Zavodny believes her analysis likely understates the positive effect of skilled foreign nationals on U.S. employment. “There are two reasons to think that this study, which uses annual, state-level data over a ten-year period, may actually underestimate the job-creating effects of highly skilled immigrants. First, it does not capture long-run effects if the economy benefits more from immigrants in the long run than in the short run (as suggested by other recent research). Second, it does not capture ‘spillover effects’ if immigrants create jobs in states other than the one where they work (for example, more immigration in California leads businesses to also create new jobs at a subsidiary in Indiana).”<sup>36</sup>

The results confirmed similar findings from the National Foundation for American Policy, which found evidence H-1B visa holders are associated with increases in employment at U.S. technology companies in the Standard and Poor’s (S&P) 500.<sup>37</sup> The study found an association between companies filing for H-1B visa holders and later increases in employment at these technology companies.<sup>38</sup>

The findings in both studies are consistent with information from tech companies on the dynamic process of job creation. Bill Gates noted Microsoft’s own internal findings that H-1Bs lead to increased complementary employment: “Microsoft has found that for every H-1B hire we make, we add on average four additional employees to support them in various capacities.”<sup>39</sup> Discussions with executives at eBay and other tech companies revealed the same experiences. It is well understood by job creators that hiring talented individuals leads to growth and innovation.

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<sup>35</sup> Ibid., p. 11.

<sup>36</sup> Ibid.

<sup>37</sup> *H-1B Visas and Job Creation*, NFAP Policy Brief, National Foundation for American Policy, March 2008. While the study acknowledged that H-1B applications could indicate broader hiring, the analysis controlled for the overall business climate and found little change in the result that H-1B professionals are associated with increased hiring at large technology companies.

<sup>38</sup> Correlation is not the same as causation. However, making inferences based on association is common in much significant research, such as that showing a connection between higher levels of education and higher wages.

<sup>39</sup> Written Testimony of William H. Gates Chairman, Microsoft Corporation And Co-Chair, Bill & Melinda Gates Foundation Before the Committee on Science and Technology United States House of Representatives, March 12, 2008, p. 14.

*H-1B Visas Essential to Attracting and Retaining Talent in America***H-1Bs AND PATENTS**

A paper by economists William R. Kerr (Harvard Business School) and William F. Lincoln (University of Michigan) concluded, “We find that fluctuations in H-1B admissions levels significantly influence the rate of Indian and Chinese patenting in cities and firms dependent upon the program relative to their peers. Most of our specifications also find weak crowding-in effects or no effects at all for native patenting. We conclude that total invention increases with higher admission levels primarily through the direct contributions of immigrant inventors.”<sup>40</sup>

Kerr and Lincoln found, “A 10 percent growth in H-1B admissions correlates with an 8 percent growth in Indian invention” relative to firms outside of the computer sector less reliant on H-1Bs.<sup>41</sup>

Similarly, according to a study by Keith Maskus, an economist at the University of Colorado, for every 100 international students who receive science or engineering Ph.D.'s from American universities, the nation gains 62 future patent applications.<sup>42</sup>

**SKILLED FOREIGN NATIONALS AND TAXES**

“Highly educated immigrants pay far more in taxes than they receive in benefits,” according to an analysis by economist Madeline Zavodny. “In 2009, the average foreign-born adult with an advanced degree paid over \$22,500 in federal, state, and Federal Insurance Contributions Act (FICA, or Social Security and Medicare) taxes, while their families received benefits one-tenth that size through government transfer programs like cash welfare, unemployment benefits, and Medicaid.”<sup>43</sup> For foreign-born with a bachelor’s degree, annual “tax payments average \$13,039, while their families receive cash and in-kind transfers valued at \$3,704,” a net of \$9,335 a year.<sup>44</sup>

A March 2009 study by Arlene Holen for the Technology Policy Institute found “highly skilled immigrants pay substantially more in taxes than they receive in federal benefits.” According to the research, “Relaxation of H-1B caps under the Comprehensive Immigration Reform Act of 2007 could have increased labor earnings and GDP by

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<sup>40</sup> William R. Kerr and William F. Lincoln, “The Supply Side of Innovation: H-1B Visa Reforms and U.S. Ethnic Invention,” Harvard Business School, Working Paper, 09-005, 2009, p. 30.

<sup>41</sup> *Ibid.*, p. 29.

<sup>42</sup> Stuart Anderson, “The Nation’s Future is Stuck Overseas,” *The New York Times*, November 16, 2005; Keith E. Maskus, Gnanaraj Chellaraj, and Aaditya Mattoo, “The Contribution Of Skilled Immigration and International Graduate Students To U.S. Innovation,” March 17, 2005.

<sup>43</sup> Madeline Zavodny, *Immigration and American Jobs*, p. 4.

<sup>44</sup> *Ibid.*, p. 12.



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\$60 billion in the tenth year following enactment and improved the federal budget's bottom line by \$64 to \$86 billion over ten years."<sup>45</sup>

**H-1B FEES AND SCHOLARSHIPS**

Since 1999, the H-1B fees paid by companies have funded 63,800 scholarships for U.S. students in math and science through the National Science Foundation, as well as hands-on science programs for 216,000 elementary, middle and high school students and 7,700 teachers. More than 55,000 U.S. workers have received training through the H-1B fees paid by companies.<sup>46</sup>

Updating NFAP estimates based on previous data received from U.S. Citizenship and Immigration Services, U.S. employers have paid approximately \$4 billion in fees associated with petitioning H-1B visa holders since 1999. About \$3 billion is from the \$1,500 fee associated with scholarships and job training (\$750 for employers with 25 or fewer full-time employees). Another approximately \$1 billion is from the \$500 anti-fraud fee on new H-1B and L-1 visas. These estimates do not include other filing fees or the additional fees levied against certain employers to pay for border security, nor the money employers pay at the state and local level that fund public education.<sup>47</sup>

**H-1B VISA HOLDERS PAID COMPARABLE TO U.S. WORKERS WITH SIMILAR EXPERIENCE**

There is little evidence foreign nationals working on H-1B visas are underpaid as a group. A study by Madeline Zavodny, then a research economist at the Federal Reserve Bank of Atlanta, called into question the assertion that widespread underpayment of H-1B professionals exists. Zavodny found, "H-1B workers [also] do not appear to depress contemporaneous earnings growth." As to unemployment, the study concluded that the entry of H-1B computer programmers "do not appear to have an adverse impact on contemporaneous unemployment rates." The study also noted that some results "do suggest a positive relationship between the number of LCA [Labor Condition] applications and the unemployment rate a year later." Zavodny concluded: "None of the results suggest that an influx of H-1Bs as proxied by Labor Condition Applications filed relative to total IT employment, lower contemporaneous average earnings. Indeed, many of the results indicate a positive, statistically significant relationship." This would mean H-1B employment is actually associated with better job conditions for natives, according to the study, which could be because H-1B professionals are complementary to native professionals.<sup>48</sup>

<sup>45</sup> Arlene Holen, *The Budgetary Effects of High-Skilled Immigration Reform*, Technology Policy Institute, March 2009.

<sup>46</sup> FY 2013 National Science Foundation Budget Request to Congress, EHR – 19-20.

<sup>47</sup> Data updated from *Mandatory H-1B Visa Fees Exceed \$3 Billion in Past Decade*, NFAP Policy Brief, National Foundation for American Policy, March 2011. See also *U.S. Businesses Pay Over \$91 Billion a Year to Support Education*, NFAP Policy Brief, National Foundation for American Policy, May 2007.

<sup>48</sup> Madeline Zavodny, "The H-1B Program and Its Effects on Information Technology Workers," Federal Reserve Bank of Atlanta, *Economic Review*, Third Quarter 2003.

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A 2010 study by University of Maryland researchers Sunil Mithas and Henry C. Lucas, Jr. found foreign-born professionals in information technology (IT) earned more than their native counterparts. “[C]ontrary to popular belief, non-U.S. citizen IT professionals are not paid less compared to American IT professionals. More broadly, the evidence in this study provides indirect evidence that visa and immigration policies so far have not had any adverse impact on the wages of American IT professionals due to any relatively lower compensation of foreign IT professionals.”<sup>49</sup>

The study examined the skills and compensation of over 50,000 IT professionals in the United States between 2000 and 2005. Similar to Zavodny, Mithas and Lucas conclude, “To the extent supply of high-skill foreign IT professionals in the U.S. economy might induce skill-biased technical change (Acemoglu 1998), they not only benefit American professionals with whom they are complements by increasing the skill premium for all IT professionals, but they also create spillover effects in upstream and downstream sectors of the economy.”<sup>50</sup>

Other economists have also found the notion of H-1B professionals being woefully underpaid to be a myth. “Using unique individual level data, obtained through a FOIA from USCIS, on the holders of H-1B visas issued in 2009, our analysis does not support the notion that H-1B workers are relatively low-skilled or have lower earnings than U.S. born workers,” according to a paper by economists Magnus Lofstrom and Joseph Hayes with the Public Policy Institute of California. “In fact, we find that overall H-1B workers in STEM occupations have higher earnings than their otherwise observationally similar U.S. born counterparts. In our occupation-specific analysis we find that H-1B workers in two of the five occupation groups analyzed (the largest occupation group, IT, and post-secondary education) have higher earnings than their otherwise observationally similar U.S. born counterparts. In the other three occupation groups (health, engineering and math and sciences) we fail to find convincing evidence of lower earnings among H-1B workers.”<sup>51</sup> Lofstrom and Hayes conclude, “Overall, the data point towards a picture of comparatively highly skilled workers with earnings at least on par with those of U.S. born workers.”<sup>52</sup>

## **GAO FINDINGS ON WAGES**

Critics of H-1B visas focus their arguments on the contention that employers hire H-1B professionals because they will work at wages below similarly qualified U.S. workers. In fact, in many ways, the entire case against H-1Bs is built on this argument. Otherwise, it would be necessary to concede employers hire both skilled foreign nationals and Americans based on merit, which is what the evidence suggests.

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<sup>49</sup> S. Mithas and H.C. Lucas, p. 762.

<sup>50</sup> Ibid., p. 762.

<sup>51</sup> Magnus Lofstrom and Joseph Hayes, “H-1Bs: How Do They Stack Up to U.S. Workers?” IZA Discussion Paper #6259. December 2011, pp. 14-15.

<sup>52</sup> Ibid., p. 15.

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In a 2011 report, the Government Accountability Office (GAO) compared the median reported salaries of U.S. workers to H-1B professionals in the same fields and age groups, finding H-1B professionals generally earned the same or more as their U.S. counterparts.<sup>53</sup> To conduct the research, the GAO analyzed Current Population Survey (CPS) data on U.S. workers and information on H-1B salaries from the U.S. Citizenship and Immigration Services (USCIS) CLAIMS database.

In the category Systems Analysis, Programming, and Other Computer-Related Occupations, the median salary for an H-1B professional is higher (\$60,000 vs. \$58,000) than for a U.S. professional in the age group 20-29 and the same (\$70,000) in ages 30-39.<sup>54</sup> (See Table 5 below.)

**Table 5**  
**Median Reported Salaries of H-1B and U.S. Workers: Systems Analysis, Programming, and Other Computer-Related Occupations**

Age Group	H-1B	U.S. Workers
20-29	\$60,000	\$58,000
30-39	\$70,000	\$70,000

Source: *H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program*, Government Accountability Office, GAO-11-26, January 2011, Table 1. Salaries are 2008.

The results show that when discussing salaries, it is important to compare apples with apples. In other words, one should not assume something is wrong when a difference in years of experience (or skill level or language ability) results in different salaries for individuals.<sup>55</sup>

In the category Electrical/Electronics Engineering Occupations, in the age group 20-39, the median salary for an engineer in H-1B status was higher than for a U.S. engineer – \$80,000 vs. \$75,000.<sup>56</sup> (See Table 6.)

<sup>53</sup> *H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program*, Government Accountability Office, GAO-11-26, January 2011.

<sup>54</sup> All reported salaries in this section can be found at GAO, p. 42, Table 1.

<sup>55</sup> In GAO analysis, in the age group 40-50, any wage advantage disappears for H-1B professionals and becomes a U.S. professional advantage. However, one should not assume this means that employers begin to underpay H-1B visa holders once they reach age 40. Nearly 90 percent of H-1B visa holders are between the ages of 20 and 39; only 9 to 10 percent are 40 or older. It is likely the salaries reflect some combination of superior quality or work experience for U.S. professionals age 40 to 50 vs. individuals on an H-1B visa in that age range. In other words, foreign nationals with more desirable skills or work experience may be more likely to have entered the U.S. labor market years earlier than in the 40 to 50 range captured in these data.

<sup>56</sup> Note that the GAO stated in some categories it needed to combine age groups to have sufficient sample sizes.

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**Table 6**  
**Median Reported Salaries of H-1B and U.S. Workers: Electrical/Electronics Engineering Occupations**

<b>Age Group</b>	<b>H-1B</b>	<b>U.S. Workers</b>
<b>20-39</b>	\$80,000	\$75,000

Source: *H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program*, Government Accountability Office, GAO-11-26, January 2011, Table 1. Salaries are 2008.

## **INDIA-BASED COMPANIES AND H-1B VISAS**

A contentious issue in the H-1B policy debate has been the use of the visas by India-based companies. While India-based companies are prominent among the top 10 users of H-1B visas, largely because their business models for supplying services to U.S. companies requires many IT professionals able to work on projects of limited duration at different locations around the country (and world), there are many recognizable U.S. companies on the list of the top 30 H-1B users in FY 2012. These U.S. companies include Microsoft, Amazon, Google, Intel, Apple, Facebook and others.<sup>57</sup> (See Appendix.)

In FY 2012, there were 26,865 new H-1B petitions (for initial employment) approved for the top 25 India-based companies on the U.S. Citizenship and Immigration Services (USCIS) list.<sup>58</sup> That represents a tiny proportion of the U.S. labor force, only 0.017 percent. Even if one added in H-1B use by some U.S. companies with significant operations in India, such as IBM and Cognizant, the proportion of the U.S. labor force would rise to only 0.026 percent.

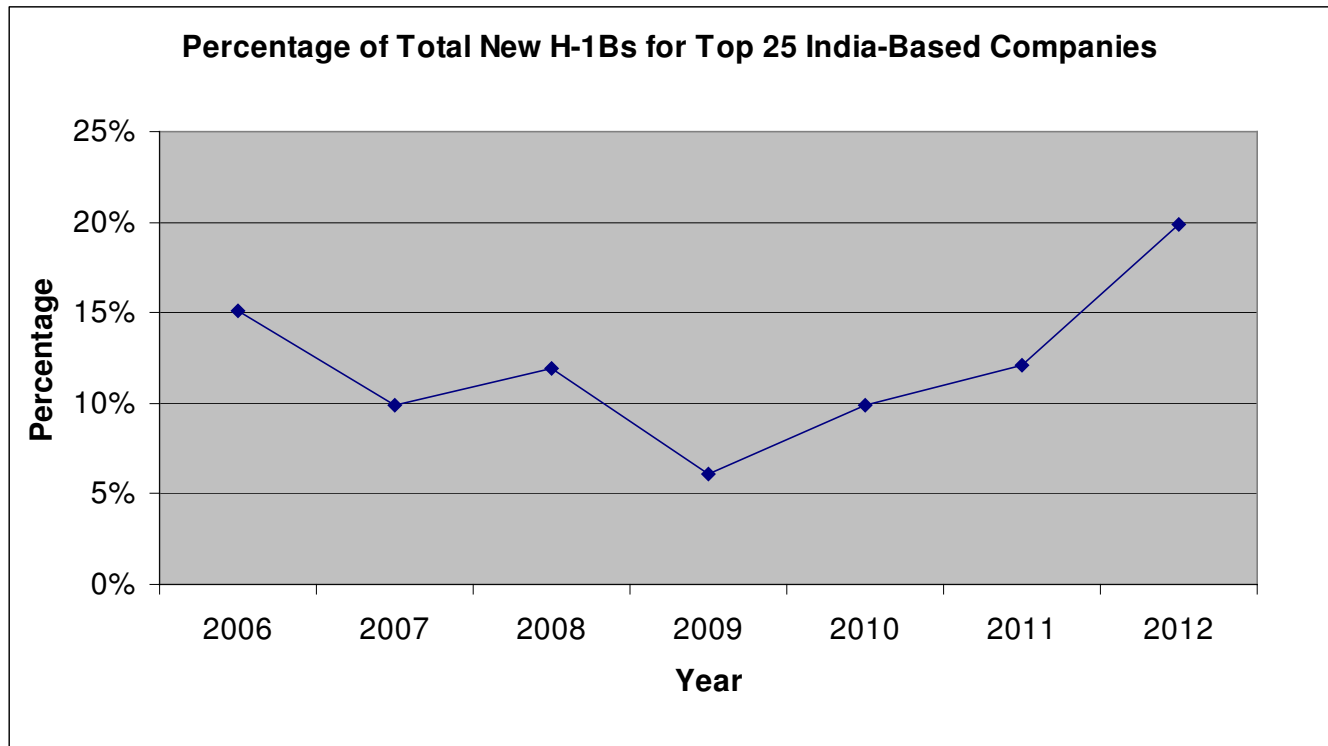
In FY 2012, India-based companies utilized 19.9 percent of the new H-1B petitions approved, while between FY 2006 and FY 2011, the proportion fluctuated between approximately 6 percent and 15 percent of the new H-1B petitions approved for initial employment. If one added in some other U.S. companies with large operations in India then the percentage would rise to about 27 percent in FY 2012.<sup>59</sup>

<sup>57</sup> USCIS data on H-1B approved petitions.

<sup>58</sup> NFAP analysis of USCIS H-1B data.

<sup>59</sup> NFAP analysis of USCIS H-1B data. It is possible FY 2012 was an anomaly for H-1B data because in every other fiscal year since 2004, the approvals for continuing employment outnumbered those for initial employment by approximately 20,000. For some reason those numbers flipped in only FY 2012, leading some to speculate the agency was in error. When asked USCIS said it could not explain why the FY 2012 data were so different but that they were correct.

**Table 7**



Source: National Foundation for American Policy analysis of U.S. Citizenship and Immigration Services data.

India-based companies provide services for U.S. businesses often aimed at allowing the businesses to focus on their core corporate functions. One must assume these are mutually beneficial contracts that make the U.S. businesses more profitable and, therefore, better able to employ more U.S. workers in the long run. Despite this, S. 744 would bar any company with 50 percent or more of their workforce in H-1B or L-1 status from hiring H-1B and L-1 visa holders (beginning in FY 2016); force the companies to pay much higher visa fees during an interim period while the ban is phased in; extend certain attestations on recruitment and nondisplacement beyond current law for such companies; and significantly limit work on client or customer sites. As noted in a NFAP legal analysis, those types of immigration law restrictions could place the United States in violation of the General Agreement on Trade in Services (GATS) and subject U.S. exporters to retaliation.<sup>60</sup>

Ron Somers, president, U.S.-India Business Council is concerned the proposed measures in the Senate bill would harm both U.S. and India companies and damage trade between the two countries. “[It] would create an uneven playing field and harm U.S.-based clients and such restrictions could unleash the unintended

<sup>60</sup> Jochum Shore & Trossevin, *Legal Analysis: Proposed Changes to Skilled Worker Visa Laws Likely to Violate Major U.S. Trade Commitments*, NFAP Policy Brief, National Foundation for American Policy, June 2010.

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consequence of delaying U.S. innovation, reducing local job creation, and worse, forcing companies to move projects offshore,” he said. “Indian firms have been partners in this growth cycle and helped American companies to become agile and more competitive in a fiercely competitive global marketplace.”<sup>61</sup>

**H-1B VISA HOLDERS ARE NOT INDENTURED SERVANTS**

Labeling H-1B visa holders “indentured servants” seems aimed at belittling foreign nationals, implying the only contribution they could make to U.S. employers is as “slaves.” However, the H-1B visa holder as indentured servant is a myth. “I was an H-1B visa holder for many years and I never felt like an indentured servant and I haven’t found anyone on an H-1B who feels he is indentured,” said Aman Kapoor, president of Immigration Voice. “An H-1B can always go home and can always change employers. It may take a few weeks but it happens all the time. Placing a label like ‘indentured servant’ is done deliberately to attach a negative label to a visa category, making it appear evil or bad. But it doesn’t conform with the real world.”<sup>62</sup>

Several other reliable legal sources confirm Kapoor’s experience. “H-1B workers switch employers all the time,” according to Warren Leiden, partner, Berry Appleman and Leiden. “They are eligible to switch as soon as the filing receipt is received from USCIS.”<sup>63</sup> Appearing before Senate Judiciary Committee, Brad Smith, general counsel and executive vice president of legal and corporate affairs at Microsoft, testified, “One criticism of the H-1B program we often hear is that H-1B workers are ‘indentured servants.’ To the contrary, the H-1B program already includes a very specific portability provision that allows H-1B workers to move very freely to new employers, and many of the H-1B workers we hire at Microsoft come to us from other companies. H-1B workers can begin working for a new company as soon as a petition from the new employer has been filed. The only limitation of this portability provision is the requirement to demonstrate continuity of employment.”<sup>64</sup>

Smith notes the Senate bill, “would further improve the mobility of H-1B workers by providing a 60-day grace period to look for a new job after initial H-1B employment ends, for any reason, and to transition to the new employer without having to leave the United States.” However, Aman Kapoor of Immigration Voice would like to see the mobility provisions improved even further for those waiting for green cards, the situation where most of the concerns are raised.<sup>65</sup> To the extent the increase in employment-based green cards in S. 744 relieves long waiting times, it would help address the most common situations that can limit mobility.

<sup>61</sup> Aziz Haniffa, “Raw Deal for H-1B Sponsors,” *India Abroad*, April 26, 2013.

<sup>62</sup> Interview with Aman Kapoor in *A Commission to Regulate Immigration? A Bad Idea Whose Time Should Not Come*, NFAP Policy Brief, National Foundation for American Policy, May 2009, pp. 8-9.

<sup>63</sup> Interview with Warren Leiden.

<sup>64</sup> Written Testimony of Brad Smith, General Counsel and Executive Vice President, Legal and Corporate Affairs, Microsoft Corporation, Before the Senate Judiciary Committee, on the Border Security, Economic Opportunity, and Immigration Modernization Act, S.744, April 22, 2013.

<sup>65</sup> *India Abroad*, April 26, 2013.

*H-1B Visas Essential to Attracting and Retaining Talent in America***IMMIGRANT ENTREPRENEURS**

H-1B visa holders who eventually gain their green cards are an important source of entrepreneurs in America. “Immigrants have started nearly half of America’s 50 top venture-funded companies and are key members of management or product development teams in more than 75 percent of our country’s leading cutting-edge companies,” according to a December 2011 NFAP study. “The research finds that among the top venture-backed companies, immigrant founders have created an average of approximately 150 jobs per company in the United States.”<sup>66</sup>

A study for the National Venture Capital Association found “Over the past 15 years, immigrants have started 25 percent of U.S. public companies that were venture-backed, a high percentage of the most innovative companies in America . . . The largest U.S. venture-backed public companies started by immigrants include Intel, Solectron, Sanmina-SCI, Sun Microsystems, eBay, Yahoo!, and Google.”<sup>67</sup>

Duke University research that involved interviews with executives at U.S. technology and engineering companies found essentially the same results as the National Venture Capital Association study. “Of the 2,054 companies we interviewed, 25.3 percent reported that at least one of their key founders was an immigrant. Extrapolating from this sample, we estimate that all companies founded by immigrants from 1995 to 2005 produced \$52 billion in sales and employed 450,000 workers in 2005,” according to Vivek Wadhwa, AnnaLee Saxenian, Ben Rissing and Gary Gereffi.<sup>68</sup>

**THE CHILDREN OF H-1B VISA HOLDERS**

H-1B visa holders are also the source of a surprising addition to America’s technical and scientific knowledge base – their children. At the 2011 Intel Science Talent Search, the nation’s leading science competition for top high school students, the National Foundation for American Policy conducted interviews to determine the immigration background of the 40 finalists. The results: 70 percent of the Intel Science Talent Search finalists were the children of immigrants, with most of those the children of H-1B visa holders. The prevalence among the finalists of children of past H-1B visa holders is remarkable. The study found, “While former H-1B visa holders comprise less than 1 percent of the U.S. population, 60 percent of the finalists had parents who entered the U.S. on H-1B visas.” In comparison, 30 percent of the finalists had parents born in the United States. One conclusion

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<sup>66</sup> Stuart Anderson, *Immigrant Founders and Key Personnel in America’s 50 Top Venture-Funded Companies*, NFAP Policy Brief, National Foundation for American Policy, December 2011.

<sup>67</sup> Stuart Anderson and Michaela Platzer, *American Made: The Impact of Immigrant Entrepreneurs and Professionals on U.S. Competitiveness*, National Venture Capital Association, November 2006, p. 6.

<sup>68</sup> Vivek Wadhwa, AnnaLee Saxenian, Ben Rissing, and Gary Gereffi, “Skilled Immigration and Economic Growth,” *Applied Research in Economic Development*, vol. 5, issue 1, May 2008, p. 7.



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from this: if current immigration policies had been even more restrictive, many of the coming generation's top scientists and engineers would not be here in the United States today – because we never would have allowed in their parents.<sup>69</sup>

## **THOUSANDS OF AUDITS ANNUALLY, ONLY 1 PERCENT OF AUDITS REFERRED FOR POTENTIAL FRAUD**

A 2011 report by the USCIS Fraud Detection and National Security Directorate based on an extensive use of the agency's audit authority found a low percentage of H-1B cases referred for a fraud investigation. While USCIS audited more than 14,000 H-1B cases in FY 2010, including thousands of site visits to companies, only 1 percent of the cases audited (192) were referred for a fraud investigation. Only 3.5 percent (495) of the visas were revoked, which attorney R. Blake Chisam explains, "is an agency action that is not limited to fraudulent petitions, but may relate to petitions in which the H-1B worker simply no longer works for the petitioner."<sup>70</sup>

In a September 2008 USCIS study, 246 H-1B cases were reviewed for evidence of fraud and/or technical violations.<sup>71</sup> The USCIS report received a good deal of attention because of its estimate of an overall fraud rate of 13 percent in the H-1B cases examined. As R. Blake Chisam pointed out, a closer look at the report found "just 14 cases in which an H-1B beneficiary was being paid less than the prevailing wage. Of these, nine cases (3.7 percent of the reviewed cases) were determined to be fraudulent, while five cases (2 percent) were deemed to have technical violations."<sup>72</sup>

The bottom line: While the 13 percent fraud figure from the smaller sample of cases in the 2008 USCIS report received press attention, minimal fraud was found while conducting a far broader audit, according to USCIS. That means either compliance has improved in recent years or the 2008 report overstated the extent of fraud (or some combination of the two).

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<sup>69</sup> Stuart Anderson, *The Impact of the Children of Immigrants on Scientific Achievement in America*, NFAP Policy Brief, National Foundation for American Policy, May 2011.

<sup>70</sup> American Immigration Lawyers Association, "USCIS Fraud Detection & National Security (FDNS) Directorate Answers AILA Administrative Site Visit & Verification Program (ASVVP) Questions," June 7, 2011, available at AILA InfoNet Doc. No. 11062243. USCIS has not released data on the number of fraud referrals that resulted in actual findings of fraud; quotation from R. Blake Chisam, *DOL Threatens Personal and Commercial Privacy in Proposal Directed Against Skilled Foreign Nationals*, NFAP Policy Brief, September 2012, p. 15.

<sup>71</sup> U.S. Citizenship and Immigration Services, "H-1B Benefit Fraud and Compliance Assessment," September 2008, available at American Immigration Lawyers Association InfoNet Doc. No. 08100965.

<sup>72</sup> R. Blake Chisam, *DOL Threatens Personal and Commercial Privacy in Proposal Directed Against Skilled Foreign Nationals*, p. 15.

## CONCLUSION

The premises on which new H-1B restrictions have been proposed are not based on sound research or analysis. Even if Congress increases the quotas for employment-based green cards, H-1B visas will remain important, since for many individuals and business situations sponsoring and completing applications for green cards (permanent residence) before starting work in America will not be practical.

In their study on H-1B visas, University of Maryland economists Sunil Mithas and Henry C. Lucas, Jr., write, "Setting [H-1B] visa caps higher is perhaps less damaging than setting them too low because, if the economy does not need foreign professionals, then these visa caps will remain underutilized, as happened from 2001–2003. On the other hand, policies that restrict the supply of highly skilled professionals for U.S. firms may force U.S. companies to hire professionals overseas, thus defeating the very rationale invoked for reactive policy responses."<sup>73</sup> In enacting reforms, Congress should expand the number of green cards and H-1B visas without burdening employers or visa holders with new restrictions that will harm the competitiveness of U.S. companies.

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<sup>73</sup> Mithas and Lucas, p. 762.

**APPENDIX****Top 30 Employers of New H-1B Approved Petitions (FY 2012)**

<b>Top Employers - H-1B Approved Petitions for Initial Employment (FY 2012)</b>
Cognizant
Tata Consultancy Services
Infosys
Wipro Limited
Accenture
HCL America
Tech Mahindra (Americas)
IBM
Larsen & Toubro Infotech
Deloitte Consulting
Microsoft
Patni Americas
Syntel Consulting
Amazon
Google
Pricewaterhousecoopers
Synechron
Mphasis
Intel
Oracle
UST Global
Qualcomm Technologies
KPIT Infosystems
Hexaware Technologies
Cisco Systems
Cummins
Apple
Facebook
KPMG
Ernst & Young

Source: U.S. Citizenship and Immigration Services. Companies listed in same order as USCIS unless apparent that combining multiple entrants for the same company would result in a change in its ranking.

## ABOUT THE AUTHOR

Stuart Anderson is Executive Director of the National Foundation for American Policy, a non-profit, non-partisan public policy research organization in Arlington, Va. Stuart served as Executive Associate Commissioner for Policy and Planning and Counselor to the Commissioner at the Immigration and Naturalization Service from August 2001 to January 2003. He spent four and a half years on Capitol Hill on the Senate Immigration Subcommittee, first for Senator Spencer Abraham and then as Staff Director of the subcommittee for Senator Sam Brownback. Prior to that, Stuart was Director of Trade and Immigration Studies at the Cato Institute in Washington, D.C., where he produced reports on the military contributions of immigrants and the role of immigrants in high technology. He has an M.A. from Georgetown University and a B.A. in Political Science from Drew University. Stuart has published articles in the *Wall Street Journal*, *New York Times*, *Los Angeles Times*, and other publications. He is the author of the book *Immigration* (Greenwood, 2010).

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