

**BACKGROUND BRIEFING**

# *The US H1-B Visa Program*

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Following the economic downturn beginning in mid-2001, an increasingly heated debate has ensued in the United States concerning the numbers, scope and impact of educated, foreign-born workers on the high-tech labor markets. The stakes are potentially high: views about US “national competitiveness” and the global division of labor underpin much of the debate. In an early strategy paper on this topic, NAFFE looked at the “global jobs deficit” and the need to develop global, national and local strategies to address the problem. This background briefing is written with this need in mind: it assesses the impact of the H1-B visa program and uncovers some of the interests influencing the debate. It finds that the program is justified by erroneous employment assumptions and ends up pitting one group of workers (American) against others (foreign born).



## *Introduction*

Concern about U.S. immigration policy has traditionally focused on its impact on the low-wage labor market. However, beginning in the late 1980s, the scope of the immigration-policy debate has expanded to the issue of high-skilled, temporary workers, who boast education, training and talent equivalent to their American counterparts.<sup>1</sup> This has been met by opponents who fear that foreign-born workers will displace American workers. Nowhere has this tension been more evident than in the ongoing debate over the H-1B program. The discussion has largely focused on whether or not Congress should increase the visa cap to relieve what employers contend is a shortage of domestic labor. Opponents claim that the shortage is a myth and an excuse for employers to displace American workers with cheaper foreign-born labor.

The purpose of this briefing is to examine more closely the claims that big information technology (IT) firms make when lobbying Congress to increase the caps, specifically it looks at the common claim that there is a skilled-labor shortage. The briefing begins with an overview of the IT industry and the H-1B program; it continues with a discussion of the data. Our conclusion suggests that the H-1B program's rationale is based on insufficient data. Other factors, including the creation of a class of more exploitable workers seems to drive the program. In examining the H1B Visa Program, this briefing does *not* examine the actual practices of the firms employing said visa recipients (for example, whether or not firms find loopholes or actually comply with the various qualifying provisions), instead it concentrates on their claims justifying increased caps.

## *Defining "Information Technology"*

This note defines "information technology" in the same way that other studies addressing the H-1B issue have in the past. According to the U.S. Department of Commerce, information technology is the "study, design, development, implementation, support or management of computer-based information systems, particularly software applications and computer hardware." IT professions include Computer Programmers, Systems Analysts, Computer Engineers, and Computer Scientists.<sup>2</sup> The Bureau of Labor Statistics classifies these occupations as computer scientists and engineers, systems analysts, and computer programmers. However, IT positions are not necessarily restricted to the IT industry; on the contrary, they are found across many sectors. Companies outside IT industry also employ information technology workers. Though the typical IT worker is thought to be employed by a major software company, "the reality is that nine out of ten IT workers are found in banks, insurance companies, manufacturing plants or other non-IT businesses."<sup>3</sup>

## *Overview of the H-1B Program and History of the Legislation*

The H-1B program is a temporary worker visa category created by the 1990 Immigration Act (IMMACT) as a response to claims of an impending shortage of skilled labor. It allows US

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<sup>1</sup> For the purposes of this paper, "American workers" are those with US citizenship, "foreign-born workers" are those who have to enter the United States by applying for a visa.

<sup>2</sup> America's New Deficit: The Shortage of Information Technology Workers. Office of Technology Policy, U.S. Department of Commerce. Washington, DC. 1997, p. 5

<sup>3</sup> Information Technology Association of America, "2003 Workforce Survey" *National IT Workers Convocation*, May 23, 2003, p. 2

employers to recruit skilled workers from abroad for professional “specialty occupations.”<sup>4</sup> H-1B eligibility requires at least a bachelor’s degree or the equivalent; the employed recipient can remain in the United States up to six years with renewal.<sup>5</sup> Originally, Congress had set the cap at 65,000 H-1Bs per year but by 1997, the growing demand for H-1B workers created a visa shortage. In fact, the INS reported that the cumulative backlog had reached at least 30,000 by the end of 1998.<sup>6</sup> Congress responded with the American Competitiveness and Workforce Improvement Act (ACWIA), which reset the annual quota at 115,000 for 1999 through 2000 and to 107,500 for 2001 before returning to 65,000 for FY 2002.<sup>7</sup> After intense lobbying by IT firms in 2002, Congress voted to increase the number of H-1B visas to 195,000. This was known as the American Competitiveness Act in the 21<sup>st</sup> Century (AC21).<sup>8</sup> The H-1B cap has returned to its original level of 65,000 since October 1, 2003.<sup>9</sup>

In addition to addressing caps, H-1B legislation reformed details of applicability for the temporary visa. The ACWIA includes worker protections for so-called “H-1B dependent” firms (those with over 15% of the workforce consisting of H-1B employees). These employers must attest that no U.S. workers are laid off for the three months before and the three months after hiring of an H-1B and must prove that they have made a significant effort to recruit U.S. workers.<sup>10</sup> Prior to 1998, there were no such requirements that restricted employers from filling jobs if they could not “prove” that no American could fill the job. The bill also states that H-1B workers must receive the same fringe benefits as U.S. workers. In addition, employers are required to pay a \$500 fee to file a Labor Condition Application (LCA) and are at risk of paying penalties for any violations.<sup>11</sup> These measures are intended to provide disincentives for employers to exploit nonimmigrant workers at the expense of American workers.

### *H-1B Recipients in the United States*

A study conducted by IEEE and the Sloan Foundation reported that more than 420,000 temporary foreign workers were employed in the United States under the H-1B program during 2000.<sup>12</sup> Estimates indicate that there are likely as many as 500,000 in the H-1B workforce as of 2001,

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<sup>4</sup> Thomas J. Espenshade, “High-End Immigrants and the Shortage of Skilled Labor,” *Office of Population Research*, Working Paper No. 99-5, June 1999, p. 1S

<sup>5</sup> US Visa Associates, [www.h1bvisalaw.com](http://www.h1bvisalaw.com)

<sup>6</sup> Espenshade, p. 2

<sup>7</sup> Legislative History of the Skilled Immigrant Visa, U.S. Department of Labor, p. 5

<sup>8</sup> *Ibid*, p. 8

<sup>9</sup> Norman Matloff, “Problems and Needed Reform for the H-1B and L-1 Work Visas,” Department of Computer Science, University of California, Davis, February 2004. Note: Professor Matloff is a major figure advocating against raising H1-B caps. His research and data is widely disseminated and forms the basis for many of the claims by anti-H1-B advocates.

<sup>10</sup> *Ibid*, p. 7

<sup>11</sup> Employers must state three important things on the LCAs: (1) the employment of H-1B workers will not adversely affect the working conditions of other workers similarly employed in the area; (2) the H-1B workers will be paid wages that are no less than the higher of the actual wage level paid by the employer to all others with similar experience and qualifications for the specific employment or the prevailing wage of the occupational classification in which they are placed; (3) no strike, lockout, or work stoppage in the applicable occupational classification was underway at the time the application was prepared. (GAO, September 2003)

and about half are working in the core IT industry.<sup>13</sup> A projection by Matloff suggests that as many as 890,000 H-1Bs were working in the U.S. over the course of 2000.<sup>14</sup> Almost one-third of H-1B recipients with petitions approved in 2002 were born in India, with the second highest percentage of H-1B recipients born in China, followed by Canada, the Philippines, and the United Kingdom.<sup>15</sup>

There have been numerous studies attempting to estimate the amount of H-1B workers in the United States at any given time. A 2003 report by the United States General Accounting Office (GAO) found that the,

Department of Homeland Security (DHS) has incomplete information on H-1B worker entries, departures, and changes in visa status. As a result, DHS is not able to provide key information needed to oversee the H-1B program and its effects on the U.S. workforce, including data on the number of H-1B workers in the United States at any time.<sup>16</sup>

There have been no reported changes to the ability of DHS with respect to H-1Bs since that time. Of the data that is available, i.e. approvals and renewals of Labor Condition Applications (LCA) and admission H-1B recipients by the INS every year, one can formulate a somewhat accurate picture of the H-1B population.<sup>17</sup> After reaching a high level in 2001, the number of H-1B petition approvals has recently declined substantially. The decline in petition approvals for systems analysis/programming positions constituted 70 percent of the decline in the total number of petition approvals from 2001 to 2002.<sup>18</sup>

### *H-1Bs in the IT Sector*

There is clear evidence that H-1Bs have been concentrated in the IT sector (irrespective actual industry of employment). First-time estimates show that the share of the foreign-born workers in the IT labor force rapidly doubled from 10 to 20 percent between 1994 and 2000. The H-1B workforce drove most of this increase.<sup>19</sup> There were 375,000 foreign-born workers in the central IT workforce as of 1999 while demographic estimates place the numbers who were H-1Bs at roughly 255,000 workers.<sup>20</sup>

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<sup>12</sup> Lindsay Lowell, "H-1 B Temporary Workers: Estimating the Population," 2000

<sup>13</sup> Lindsay B. Lowell, "Foreign Temporary Workers In America: Policies that Benefit the U.S. Economy," 1999.

<sup>14</sup> This probably an upper limit for all H-1Bs regardless of employment sector; see Matloff, February 2004.

<sup>15</sup> INS Data, 2002

<sup>16</sup> United States General Accounting Office, "Better Tracking Needed to Help Determine H-1B Program's Effect on the American Workforce," September 2003.

<sup>17</sup> Assuming that those approved actually come, and assuming no returns before the eligibility of the H-1Bs stay expires.

<sup>18</sup> GAO, September 2003, p. 23

<sup>19</sup> Lindsay B. Lowell "Evolution of the Foreign Temporary (H-1B) Workforce and Shortages in Information Technology," in Wayne Cornelius (ed.), *The International Migration of the Highly Skilled: Demand, Supply, Development Consequences, and the Role of U.S. Universities*. San Diego, 2001.

<sup>20</sup> Lindsay B. Lowell, "Information Technology and Foreign-born Workers in Contingent Jobs," November 2000, p. 21

The characteristics of H-1Bs have also changed over time. Based on INS data, in 1989 the biggest H-1B occupations were in nursing and health care; they made up about 28% of all recipients. Today, the majority of H-1B recipients are located in computer-related and engineering occupations and make up over 60%.<sup>21</sup> This indicates a new phenomenon of H-1B dependency in particular occupations within the US economy. Leading employers of H-1Bs are concentrated among IT giants like Intel, Dell Computer, Microsoft, and IBM. The majority (63%) of H-1B recipients in computer-related occupations were from India (INS Data, 2002). It was reported that Indian nationals accounted for 77,000 of H-1B Visas in the IT industry (30,000 in 2002 alone).<sup>22</sup>

According to an industry report by *CyberEducation*, of the decreasing number of high-tech degrees awarded between 1990 and 1996, a significant number went to foreign nationals who are subject to the H-1B visa cap.<sup>23</sup> By 1998, H-1Bs already accounted for 28% of all information technology industry hires requiring at least a Bachelor's degree.<sup>24</sup> The Federal Reserve Bank reports that H-1Bs take up 50% of programmer jobs.<sup>25</sup> Furthermore, of the "top 100 employers of H-1Bs," reported in 2000, 80% were located in the IT sector.<sup>26, 27</sup>

Often left out of the discussion when determining the number of H-1Bs in the country at any given time, are those recipients who were already in the United States on a student or other non-immigrant visa. The GAO found that of the 36 main employers of H-1Bs that they interviewed, "about two-thirds of employers said that most H-1B workers hired were already in the United States on foreign-student visas or working for another employer on an H-1B visa when they were recruited."<sup>28</sup> These temporary immigrants, who have been around in the country for a significant amount of time prior to H-1B approval, have contributed a substantial amount to the country, including skills in the workforce, an addition of human capital, and certain contributions in higher education. It is unclear what goes to be said about these H-1Bs and whether or not they have been accurately aggregated with the general H-1B-recipient population.

Since fiscal year 2000, the statistics have changed to some extent; whereas 65 percent of all approved petitions were for IT-related positions in 2000, IT-related occupations constituted 40 percent of all petitions approved in 2002 for H-1B recipients, most prominently, in systems analysis and programming (31 percent).<sup>29</sup> There is also a *positive* relation between the decrease in H-1B approvals and the decrease in employment of U.S. citizens in this area of the IT sector. The

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<sup>21</sup> INS data, 2002

<sup>22</sup> *Economic Times*, January 15, 2004

<sup>23</sup> Watts, 2001, p. 7. *CyberEducation* is a publication of AeA which describes itself as "a nationwide non-profit trade association that represents all segments of the technology industry."

<sup>24</sup> U.S. Department of Commerce, "Digital Economy 2000," Economics and Statistics Division, June 2000.

<sup>25</sup> Norman Matloff, "Problems and Needed Reforms of H-1B Visas," UC Davis, February 9, 2004, p. 3

<sup>26</sup> As defined by the Immigration and Naturalization Services in 2000.

<sup>27</sup> Bryan Christian and Lindsay B. Lowell, *Employers of Foreign Temporary Workers (H-1Bs) in Information Technology*. Institute for the Study of International Migration, School of Foreign Service, Georgetown, May 19, 2000, p. 1

<sup>28</sup> GAO, September 2003, p. 9

<sup>29</sup> GAO September 2003, p. 16 (see appendix)

number of H-1B petition approvals for systems analysis/programming positions dropped by 106,671 to 56,184, and the estimated number of U.S. citizen systems analysts/programmers employed decreased by 147,005 to 1,577,427.<sup>30</sup> This might suggest that many of these jobs have been destroyed due to a number of reasons. Firms might no longer have use for certain positions because of better technology. Moreover, firm executives have discovered even less costly alternatives to H-1Bs such as other, less cumbersome, L-1 visa and the practice of both domestic and offshore outsourcing.<sup>31</sup>

### *Continuing Practice of Seeking (& Finding) Loopholes*

Since our description has focused on immigration policy thus far, it is reasonable to briefly examine the issue of L-1 Visas which have been used in conjunction with H-1B visas. During the past decade, use of L-1 visas for foreign employees of multinational businesses in the IT sector has tripled.<sup>32</sup>

The L-1 visa is an intra-company transfer visa that can be used by companies to bring their foreign-based professional workers *into* the United States on a *temporary* basis, has provided a useful loophole for U.S. employers to the H-1B program. L-1 visas do not have an annual cap and are not subject to prevailing wage laws.<sup>33</sup> Department of State statistics show that the use of L-1 visas has increased substantially since fiscal year 1998. The number of L-1 visas issued in fiscal year 1998 was 38,307 and rose to 41,739 in fiscal year 1999, peaked in fiscal year 2001 at 59,384, and decreased only slightly in fiscal year 2002 to 57,721.<sup>34</sup>

The existence and extensive use of cheaper alternatives suggests that the issue of H-1Bs should not place temporary immigrants and natives in opposing camps. Rather, it should be seen in the context of profit-maximizing IT executives playing off one group of workers against another in the hope of reducing labor costs.

### *Setting the Stage for H-1B Politics: Skilled Labor Shortages?*

US employer demand for highly-skilled workers remained modest until the late 1990s. But a burst in economic growth in 1997 enticed major corporations—led by Microsoft and other IT giants—to lobby for greater access to the worldwide pool of IT labor. Executives advocated for more H-1Bs with a few distinct, often-compelling sounding arguments. The IT sector, the claim goes, generates one third of recent productivity growth. Any obstacles to its growth will therefore damage other sectors.<sup>35</sup> Any slackening of growth is therefore followed by the claim that one needs to free up the tech sector and allow it to drive growth. This makes the call for more H-1Bs seem more legitimate. U.S. IT employers maintain that access to a global IT talent pool is essential in maintaining a healthy competitive economy.

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<sup>30</sup> See Appendix GAO, September 2003, p. 19

<sup>31</sup> This requires a whole discussion in and of itself, but is nevertheless important in addressing American policy for nonimmigrants.

<sup>32</sup> [http://quickstart.clari.net/qs\\_se/webnews/wed/cc/Bdc-cpst.RtVD\\_DSG.html](http://quickstart.clari.net/qs_se/webnews/wed/cc/Bdc-cpst.RtVD_DSG.html)

<sup>33</sup> Madeline Zadovny, H-1B Program and Its Effects on Information Technology Workers, Federal Reserve Bank of Atlanta: *Economic Review*, Third Quarter 2003

<sup>34</sup> INS Data, 2002

<sup>35</sup> U.S. Department of Commerce, “Digital Economy” 2000, p. 43

Much of the policy debate concerning H-1Bs is therefore driven by the question of whether or not a skilled-labor shortage truly exists. Employers insist that present supplies of native-born workers with necessary skills and experience are inadequate and that greater access to the global pool will prevent the shortage. Defenders of the worker shortage thesis often cite a concern with an aging population of IT workers leaving the industry and a lack of younger future employees graduating with majors in the science and technology fields.

### *No Strong Evidence of Worker Shortage*

Current statistical methods for measuring labor supply are far from conclusive, and do not allow for precise identification of IT workers shortages. However, certain observations give us an idea about the state of the IT sector. A common indication of a worker shortage on which economists rely, is the upward pressure of wages, which may indicate that demand exceeds supply of IT labor. Generally, free markets alleviate shortages through the price mechanism. When workers are scarce at current wages, we expect employers to bid up wages, which attracts workers to enter. Thus we should expect to see some type of combination of rising employment and wages. *If there were a shortage, one might expect employers to be hiring more than firing.*

A UC Berkley study was conducted in 1998 to determine if there was a shortage of high-tech workers, by looking at their wage growth.<sup>36</sup> If there were a labor shortage, one would expect to see earnings of high-tech workers increase more rapidly than earnings of other workers. However, this did not occur. The study found that high-tech engineers and managers have experienced lower wage growth than their counterparts. The study reports: “In the entire economy, a professional with 20 years of experience in 1985 earns 48% more than a professional with no experience, and by 1995 this increases to 73%. In the high-tech industries, an engineer or professional with 20 years of experience earned 55% more than a new-hire in 1985 but only 59% more in 1995.” This is strong evidence against the existence of a labor shortage.

The National Research Council (NRC) was mandated by Congress to investigate the impact of H-1Bs on the IT workforce and whether age discrimination is prevalent in the IT industry.<sup>37</sup> The NRC committee did not find the “shortage” of high-tech workers, that the industry had been bemoaning in their congressional lobbying efforts. Rather, the committee found that employment conditions could best be described as “tightness.”<sup>38</sup> Alan Merten, chair of the NRC workforce committee and George Mason University president, told the *Washington Post* “We feel [the population of foreign workers] is so large that we are totally dependent on it, and it depresses wages.”<sup>39</sup> Therefore, though there might be shortages in specific occupations, there is no evidence of across-the-board shortages. Isolated shortages are likely to be confined to higher-end occupations.

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<sup>36</sup> Clair Brown, Ben Campbell and Greg Pinsonneault, *The Perceived Shortage of High-tech Workers* UC-Berkeley, Department of Economics.

<sup>37</sup> The NRC is part of the National Academies (comprising the National Academic of Sciences, National Academy of Engineering, and Institute of Medicine among others). They are private non-profit institutions that provide science, technology and health policy advice under a Congressional charter.

<sup>38</sup> NRC, “Report on Tech Workers”

<sup>39</sup> FAIR, Specifically addressing the role of the H-1B workers, the commission found that “...the current size of the H-1B workforce relative to the overall Category 1 IT workforce is large enough to exert a nonnegligible moderating force that keeps wages from rising as fast as might be expected in a tight labor market.”

The lack of consensus on the existence of a real labor shortage implies that actual labor market situation is not the driving force behind this policymaking. The GAO openly challenged the Commerce Department's study, alleging that the latter's a shortage of information technology workers thesis is so methodologically flawed that its conclusions cannot be taken seriously.<sup>40</sup>

If the present studies are not enough to convince one that data is insufficient to indicate a labor shortage, the actions of IT firms might help persuade more critical discussion of the H-1B issue. The firms most vocal about the shortage are the same firms with the highest firing and hiring rates. In the first half of 1999, 21 major IT companies laid off more than 120,000 workers.<sup>41</sup> In 2001, the economy shed 500,000 IT jobs.<sup>42</sup> Furthermore interviewing rates for some of these firms are significantly low, indicating that they are not even making an effort to recruit U.S. workers. If firms are so desperate to find workers to fill positions, their pickiness is counterintuitive to some extent. This is reflected in disinterest shown towards older workers and in their tendencies to put over half of new computer science graduates into semi-tech positions like customer support while hiring younger H-1Bs instead of older Americans.<sup>43</sup>

IT industry lobbyists continue to claim that they hire H-1Bs because of their special skill sets and back up the argument of labor shortage with the fact that there has been a decline in employees with degrees in computer science and engineering. However, a significant decline in such degrees, is an imperfect indicator of declining labor supply, given that many IT workers acquire their skills through alternative education and training paths. Furthermore, it is unclear as to whether a lack of degrees in these fields is a cause or effect of the IT industry's current dependency on the H-1B program. Wages are an indication of the attractiveness of a career option to U.S. students and influence decisions regarding career paths. The program can have the effect, therefore, of discouraging the flow of U.S. students into this field.

Yet IT firms maintain adamantly that H-1Bs, because of their skill sets, create jobs through innovation and are good for the economy in the long run. Logically, this argument is attractive for nobody wants to deny the benefits of job creation. However, rates of entrepreneurship and innovation must be established before one can make the claim that that H-1Bs have this effect.

Opponents charge that H-1Bs are taking jobs that could be filled by native workers who represent a source of talent that could be retrained quickly to acquire the "hot skills" needed to fulfill certain jobs.<sup>44</sup> The issue then is whether or not IT employers are willing to retrain workers rather than to hire foreign counterparts. Given the rapidity of technological change, it will always be the case that programmers do not possess the latest skills, no matter how many programmers the system produces.<sup>45</sup> Yet employers are not willing to retrain, and instead advocate better education

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<sup>40</sup> Wayne A. Cornelius and Wayne J. Espenshade, *The International Migration of the Highly Skilled*, La Jolla, CA: Center for Comparative Immigration Studies at University of California, San Diego, 2001, p.7

<sup>41</sup> Julie R. Watts, "The H-1B visa: Free market solutions for business and labor," *Population Research and Policy Review*; Apr 2001; 20, 1-2, p. 143

<sup>42</sup> ITAA, "2003 Workforce Study," p. 3

<sup>43</sup> Norman Matloff, "A Missed Opportunity," *Backgrounders*, Center for Immigration Studies, March 2001

<sup>44</sup> Immigration of Scientists and Engineers

<sup>45</sup> Matloff, 2001

opportunities in science and engineering. This being a longer term solution makes many claim that it is merely a lobbyist's stalling tactic.

### *Incentives for IT Lobbyists to Push for More H-1Bs*

#### Cheap Labor

Empirical data shows that there other less obvious reasons for continuing to hire H-1B recipients, the obvious being for costs savings. Firstly, the idea of a nonimmigrant visa (NIV) in and of itself is usually defined by temporary employment. Since contingent jobs are a much cheaper option for employers, hiring H-1Bs can result in direct cost savings. Another common issue with cheap labor is directly related to the demographic makeup of H-1B recipients. Whereas most came from more developed countries in the late 1980s, the majority of today's H-1B recipients come from developing countries (see the section on H-1Bs and the IT Sector). Indian H-1B workers in particular are concentrated in H-1B positions and are even more disproportionately concentrated among those H-1Bs who have sought extensions.<sup>46</sup>

Studies indicate that unemployment in the IT industry by 1998 was found disproportionately in the older demographic of the IT sector. According to the U.S. Census Bureau Data in 1999, the unemployment rate for IT workers over 40 was over 5 times that of other workers in the same age group.<sup>47</sup> On the other hand, the H-1B population represents a considerably different age demographic. They tend to be younger with more advanced degrees in the same occupations as Americans. In fact a common reason for hiring H-1Bs is that they can provide the same services for lower pay and can provide a cheaper alternative to hiring older—perceived more expensive—Americans. In contrast to older American employees, who might have more experience, presenting qualifications that require higher pay, H-1Bs might accept less pay due to lack of experience in the workforce but still have top-of-the-line skills acquired from a graduate education to perform the same tasks.<sup>48</sup>

The NRC study reported that employers explicitly stated that they pay H-1Bs less than they pay Americans. INS data also shows that the median salary for computer-related H-1Bs is \$50,000<sup>49</sup> where as the median salary for Americans in the same jobs is \$66,230.<sup>50</sup> In addition, National Science Foundation studies show that the H-1B is paid between 20% to 50% less than American citizens performing the same work.<sup>51</sup> The issue of wage standard violation in the H-1B program continues to be a problem. In September, the GAO reported:” [The Department of] Labor is responsible for, among other things, ensuring that employers do not violate H-1B wage agreements, and continues to find instances of employers not paying H-1B workers the wages required by law.”<sup>52</sup>

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<sup>46</sup> Robert L. Bach, “Policy Making in International Labor Markets”, chapter 5, p. 119

<sup>47</sup> AFL-CIO Testimony

<sup>48</sup> Assuming that age correlates closely with experience.

<sup>49</sup> INS, *Report on Characteristics of Specialty Occupation Workers (H-1B) Fiscal Year 2001*, July 2002.

<sup>50</sup> Bureau of Labor Statistics, *2001 National Occupation and Wage Estimates*

<sup>51</sup> Edwin S. Rubenstein, “Reverse Brain Drain,” December 2001, <http://www.zazona.com/ShameH1B/Library/Archives/ReverseBrainDrain.htm>

<sup>52</sup> GAO, September 2003

## Benefits from “Indentured Servitude” Position of H-1B Employees

Equally important as the issue of cheap labor is the de facto “indentured servitude” to which H-1B workers, whose employers are sponsoring them for green cards, are subjected. Workers, who hold H-1B visas, are bound to a specific employer for their stay, making them vulnerable to the abuse of the program by employers. A typical programmer cannot suddenly leave the employer by leaving for another company, especially if his/her green-card status is still pending. In fact, many H-1Bs live in fear of being sued. It is a fear that is well-founded. Court records show that major IT companies have sued former workers who tried to leave for other jobs. The lawsuits sought damages ranging from \$10,000 to three months' salary.<sup>53</sup>

### *Limitations of Research Concerning H-1B Program*

Though the debate about whether a shortage of high-skilled labor exists, one thing remains clear. Policymaking needs to be based on more substantial data. Since data on the size, shape, and growth of the IT industry is limited by varying definitions of what constitutes “IT” and due to the ever-changing statistics of its make up, policymaking in this area is complicated. Policy in the past has been more of a response to pressure from special interest groups such as big IT corporations. However, clearly more adequate data will lead to better policy.

There is also the problem of limited data for H-1B visas. The Labor Condition Applications filed by employers who are seeking H-1B workers provide many details about the number of H-1Bs sought in any given year, the occupations into which employers are seeking recruiting, the wage rates offered, and whether the LCAs are certified or denied. While these details are advantageous, (since the INS only provides the number of entries by H-1B visas approved and the number of entries by H-1B holders each fiscal year) they can be misleading. One disadvantageous is that employers file LCAs for several times the number of visas eventually issued by the INS.<sup>54</sup> There are other sources typically used to examine foreign-born workers' effect on natives' employment outcomes such as the Current Population Survey, which is conducted by the Bureau of Labor of Statistics, but they do not indicate visa status and therefore would not allow for distinction between H-1Bs holders and other foreign-born workers.

### *Politicization of the Debate*

Since interpreting data of the H-1B visa has been a complex task, the debate has turned into a heavily politicized battle between interest group, in which the IT industry is clearly dominating. The Center for Responsive Politics reports that the computer services industry contributed \$22 million to politicians (almost evenly between democrats and republicans) in 2000, more than double that donated in the previous 2 years. Microsoft, Cisco, and Oracle were among the top four contributors and not surprisingly these firms also rank in the top ten in approvals for H-1Bs.<sup>55</sup>

To date, the majority of research done about the issue of H-1Bs has come from academics, non-profits, government agencies, and IT firms. However, highly publicized studies are often industry-backed and therefore lose credibility since there is a bias in the framing of the issue.

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<sup>53</sup> Gary Cohn and Walter F. Roche Jr. “Indentured servants for high-tech trade,” *Sunspot* Maryland, February 21, 2000

<sup>54</sup> Lowell, 1999

<sup>55</sup> Ed Frauenheim, “Coming to America” in *TechWeek*, October 16, 2000

Much evidence points out that studies have been heavily influenced by the industry. For instance, the 2000 NRC Report entitled “Building a Workforce for the Information Economy” was made up of a board—which oversaw the projects— of sponsors such as Cisco Systems, Sun Microsystems, Intel, and Microsoft, all of which are at the forefront of lobbying for H-1B expansion.<sup>56</sup> The Chamber of Commerce and the National Science Foundation, which also frequently report on the H-1B issue, rely on the industry for data.

### *Shifting the Discussion Away from Policy Implications*

The purpose of this briefing is not to provide recommendations for the reform of the H-1B program. That is a topic of its own and needs considerable amount of reflection so as not to simplify a complex problem. What cannot be questioned is that, in the United States as well as other labor-importing countries today, the political process invariably works to legitimize the *employer’s wish* for lower-cost, high-skilled foreign labor.<sup>57</sup> The H-1B debate should not be framed as a zero-sum phenomenon in which “foreigners” gain at the expense of “natives” but rather as a practice by corporations whose short-term, profit maximizing behavior rides on the backs of workers, native- and foreign-born alike. Reformed H-1B policy, no matter how seemingly sound, will always be riddled with loopholes as long as the IT industry has a powerful and disproportional influence on the policy-making process.

### *Conclusions*

The H-1B debate must be put into the context of more general trends in U.S. policymaking. The debate should not stop at how to ensure that the program is not a cover for exploiting workers.

Policymaking surrounding the H-1B program (and perhaps more generally around immigration) is driven by domestic trends in the United States. The H-1B issue is part of a larger issue of the evolution of the American workforce into one that is distinctly low-wage. Permanent, stable good-paying jobs are being replaced more and more with lower-wage contingent jobs that offer less security and opportunities for advancement. IT executives are no different from those in the manufacturing sector, who have continually exploited lower-wage immigrants in temporary worker programs. The IT sector follows a route similar to older sectors of the labor market and holds a significant share of lower-end contingent jobs.

H-1Bs hold a considerable portion of the contingent jobs existing in the IT sector. Among average workers about 5 percent of natives but 13 percent of recently arrived foreign-born are found in contingent work where earnings are substantially less than in the IT core.<sup>58</sup> Since not all H-1Bs have the intention of being permanent residents after their stay, IT executives jump at the opportunity to offer them contingent positions. Temporary immigrants’ labor market power is reduced because they are effectively tied to a single employer during their stay.

Thus the “labor shortage” that so many firms back is not a shortage of labor but rather a shortage of cheap younger and more exploitable labor. If “labor shortage” continues to be defined by the IT industry we will encounter the same problems we see today, if not worse. There are currently many un- and under-employed bodies in the field, who would do anything to get their jobs back and get retrained. However, this may not be the case in the future if they continue to see that

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<sup>56</sup> “Building a Workforce for the Nation Economy

<sup>57</sup> Cornelius and Espenshade, p. 9

<sup>58</sup> Lowell, November 2000, p. 20

there is no future in the industry. Thus firms will always be able to cry labor shortage while paying lower wages. In the words of Vernon Briggs, a well-known economist who specializes in immigration policy, “Continuing to raise the cap on H-1Bs will guarantee that this ‘shortage’ will go on forever. It’s going to be a self-fulfilling prophecy because wages are not going to go up.”<sup>59</sup>

The tendency to create programs based on temporary employment stirs up a whirlwind of issues. It is important to evaluate whom is benefiting and losing from these programs. In crude terms, the idea of using foreign labor to satisfy temporary needs at the cheapest possible price seems ludicrous. The idea goes as follows: if workers at home have started to speak up and organize against the trend of contingent labor, then we need to find a solution that poses this threat less. Contingent foreign labor has become the answer, not just in lower-wage jobs, but in *all* sectors of the economy. Designing a nonpermanent residency program based on the will of political forces, such as big businesses, is an invitation to continue this trend.

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<sup>59</sup> Ed Fraumeni, 2000.