

H1-B VISAS: REACHING THE CAP

Question:

Last year the law was changed to nearly double the number of H-1B visas available for foreign professionals. Given that the cap has already been reached, will the Administration support raising the cap again?

Answer:

There is no reason to revisit the issue at this point. When the cap is reached, the remaining applications will be first in line on October 1, when applications will begin to be approved toward next year's cap. In the mean time, we need to continue to explore better ways to prepare American workers for jobs that demand high skills.



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NEWS RELEASE

June 11, 1999

INS Announces H-1B Procedures As Fiscal Year 1999 Cap Is Reached

WASHINGTON — The Immigration and Naturalization Service (INS) announced today that it will stop accepting H-1B visa petitions for Fiscal Year (FY) 1999 employment of H-1B workers. The INS has determined that the 115,000 annual cap on the H-1B visa category for FY 1999 will be reached on June 15, 1999, based on petitions already filed. As of May 31, 1999, INS had approved 108,386 H-1B visa petitions.

Petitions for First-Time H1-B Employment

INS will implement the following procedures for the remainder of FY 1999 (through September 30, 1999). These procedures will be published in the Federal Register on June 15, 1999.

- All FY 1999 petitions for first-time employment of H-1B workers that are received on or after June 15, 1999, will be returned along with the accompanying fees to petitioners. Petitioners may resubmit their petitions, at any time, and request employment beginning on or after October 1, 1999, when H-1B visas for FY 2000 become available.
- For FY 1999 petitions for first-time employment of H-1B workers that are received before June 15, 1999, INS will adjudicate the petitions and, if approvable, will grant the petitions with a valid start date of October 1, 1999, when H-1B visas for FY 2000 become available.
 - Petitioners may choose to withdraw their petitions and forfeit the fees by submitting a written request containing the receipt number of the H-1B petition, the name of the employer, and the name of the individual for whom the petition was filed. The request should be faxed to the **Immigration Services Division, Attention: H-1B Withdrawal, FAX (202) 305-0108**.
- H-1B petitions requesting first-time employment of H-1B workers beginning on or after October 1, 1999 (FY 2000) will be processed as received by INS and counted against the 115,000 cap for FY 2000.

(more)

INS Announces H-1B Procedures As Fiscal Year 1999 Cap Is Reached**Page 2**

Exceptions — Petitions for Current H-1B Workers

INS will continue to process petitions filed for current H-1B workers, since they are not affected by the visa cap. Such applications include petitions to:

- extend the stay for current H-1B workers;
- amend the terms of employment for current H-1B workers;
- allow current H-1B workers to change employers; and
- allow current H-1B workers to work concurrently in a second H-1B position.

Accommodation for Foreign Students and Exchange Visitors

Concurrently, INS is publishing in the *Federal Register* an interim regulation to accommodate certain foreign students (F visa category) and exchange visitors (J visa category) who are already in the country awaiting approval of an H-1B petition filed on their behalf by an employer. The regulation allows such individuals, and their dependent spouses and children, to remain in the United States while waiting for new H-1B visas to become available on October 1, 1999. However, **they are not permitted to work or engage in any other activity that would be in violation of their F or J immigration status.**

Exchange visitors who are subject to the 2-year foreign residence requirement are not covered by this regulation.

Background

The H-1B is a temporary visa category for nonimmigrant workers that includes specialty occupations which require a bachelor's degree or higher and fashion models of distinguished merit and ability. Typical H-1B occupations include architects, engineers, computer programmers, accountants, doctors and college professors. Initially, the maximum period of admission is three years, which may be extended for an additional three years.

The H-1B visa category was established by the Immigration Act of 1990. The American Competitiveness and Workforce Improvement Act of 1998 temporarily raised the number of H-1B visas available annually from 65,000 to 115,000 for fiscal years 1999 and 2000, and from 65,000 to 107,500 for fiscal year 2001, while requiring a new H-1B worker fee of \$500 paid by employers. The \$500 fee funds training and educational programs for U.S. workers.

Questions and Answers

Q. What is the receipt date (the date the INS received the petition) of the latest petition that will be granted H-1B status for FY 1999?

A. The INS estimates that approvable petitions with a receipt date of on or before April 9, 1999, will be granted H-1B status for FY 1999.

(more)

INS Announces H-1B Procedures As Fiscal Year 1999 Cap Is ReachedPage 3

Q. Have H-1B visas reached the 65,000 annual cap in the past?

- A. Yes, H-1B visas have reached the 65,000 annual cap for the past two years. In FY 1997, the 65,000 annual limit was reached on September 1, 1997. A total of 5,099 beneficiaries approved during the rest of the fiscal year (September 2, 1997 through September 30, 1997) were held in abeyance until the beginning of the new fiscal year, October 1, 1997, and were applied to the FY 1998 limit.

In FY 1998, the 65,000 annual limit was reached on May 11, 1998. A total of 19,431 beneficiaries approved during the rest of the fiscal year (May 12, 1998 through September 30, 1998) were held in abeyance until the beginning of the new fiscal year, October 1, 1998, and were applied to the FY 1999 limit.

Q. How many H-1B visas have been approved in past years?

- A. FY 1998 = 65,000; FY 1997 = 65,000; FY 1996 = 55,141; FY 1995 = 54,178;
FY 1994 = 60,279; FY 1993 = 61,591; FY 1992 = 48,645.

Q. What are the top ten countries of birth of the beneficiaries of H-1B petitions?

- A. For the first half of FY 1999, the top ten countries are:
- | | | | |
|---------------|-------------|-------------|---------------------|
| India = 46% | China = 10% | Canada = 4% | Philippines = 3% |
| Taiwan = 2% | Korea = 2% | Japan = 2% | United Kingdom = 2% |
| Pakistan = 2% | Russia = 2% | | |

Q. What are the top occupations of the beneficiaries of H-1B petitions?

- A. The INS will begin compiling complete information on the occupations of H-1B beneficiaries, as well as their education and compensation, beginning in FY 2000, as required by the American Competitiveness and Workforce Improvement Act of 1998.

- INS -

Questions and Answers (Internal)

June 11, 1999

H-1B

Q. Is INS planning on drafting permanent procedures for when the cap is reached?

A. This Notice explains the procedures for this fiscal year. The INS intends to propose regulations in the coming months for notice and comment prescribing the method to be used in subsequent fiscal years.

Q. Members of Congress have expressed concern over how INS counts the number of approved visas. Do you feel that you are getting an accurate count?

A. The process for counting H-1B petitions against the annual cap is an accurate count of new H-1B beneficiaries as described below.

Not all H-1B petitions approved in a year are counted against the cap. The petitions applied against the annual cap include petitions for which (1) the basis of classification is new employment, and (2) the requested action of the petition is either (a) to enable the beneficiary to obtain a visa or be admitted from outside the U.S., or (b) to change the status of an alien already in the United States to H-1B from another temporary status. By using only the above criteria, the following H-1B approved petitions and their beneficiaries are NOT counted against the cap: (1) petitions requesting extensions of H-1B worker status, (2) workers moving from one company to another (sequential employment), and (3) workers applying for a second (concurrent) job. Dependent spouses and children of the H-1B beneficiaries are also not counted against the cap.

After the H-1B petitions are uploaded from the individual INS Service Centers into the INS mainframe system, only those approved petitions that meet the above criteria are counted in the national mainframe system. These petitions are analyzed to remove duplicate beneficiaries, so that a beneficiary will only be counted once against the fiscal year's annual cap. Further analysis is done to remove any petitions from consideration that have been revoked. The resultant tally becomes the number of petitions counted against the annual cap.

Q. How long is the extension of the F and J visas? What happens to a student who is denied a visa? Is the extension over upon denial?

A. The INS is changing its regulations to extend the duration of status for certain students (F classification) and exchange visitors (J classification) until either October 1, 1999, or the date the INS adjudicates the request to change status to H-1B whichever is later. This extended period of stay does not apply to students or exchange visitors who work without authorization or who violate the conditions of the F or J visa classification.

H1-B Questions & Answers for Internal Use Only

Page 2

Q. What are the top ten countries?

Rank for FY98	Country of Birth	Percent of H-1B petitions
1	India	42%
2	China	11%
3	Canada	3%
4	Taiwan	3%
5	Philippines	3%
6	United Kingdom	3%
7	Japan	2%
8	Germany	2%
9	Pakistan	2%
10	France	2%

Rank for First Half of FY99	Country of Birth	Percent of H-1B Petitions
1	India	46%
2	China	10%
3	Canada	4%
4	Philippines	3%
5	Taiwan	2%
6	Korea	2%
7	Japan	2%
8	United Kingdom	2%
9	Pakistan	2%
10	Russia	2%

Q. What are the top 20 firms?

A. INS' most recent data on this issue, which is for FY 1998, indicates that the following twenty companies account for approximately 60 percent of the petitions filed and approved for H-1B status in FY 1998:

RANK	COMPANY NAME (as it appears on the petition)	Percent of H-1B Petitions for FY98
1	Mastech	11%
2	Tata Consultancy	7%
3	Computerpeople	6%
4	Oracle Corp.	5%
5	Price Waterhouse Coopers LLP	4%
6	Lucent Technologies	3%
7	Motorola Inc.	2%
8	Syntel Inc.	2%
9	Intelligroup	2%
10	Comsys Technical Serv	2%
11	Deloitte Touche LLP	2%
12	KPMG Peat Marwick LLP	2%
13	Cisco Systems Inc.	2%
14	Keane	2%
15	Ernst Young LLP	2%
16	Intel Corp.	2%
17	SAI Software Consultants Inc.	2%
18	Indotronix Intl.	2%
19	Complete Business Solutions	1%
20	Computer Horizons	1%

H1-B Questions & Answers for Internal Use OnlyPage 3

Q. What are the top occupations?

A: The INS will begin compiling complete information on H-1B beneficiaries' occupations, education, and compensation beginning in Fiscal Year 2000 as required by the American Competitiveness and Workforce Improvement Act of 1998.

Q. There has been some talk about abuses in the H-1B program. There was one case in particular in which a company was petitioning for engineers when in fact the workers were in far less technical positions. What is INS doing to ensure that employers are using these visas for the types of skill they are meant for?

A. The INS records only approved H-1B cases against the annual cap of 115,000. The INS is responsible for detecting and deterring the fraudulent use of the H-1B program and investigates reported abuse, where applicable. The INS works collaboratively with the Department of State and the Department of Labor to ensure the integrity of the H-1B program.

Q. With respect to the abuse issue, how does INS adjudicate these visas? What kind of documentation does a company need to present about the alien worker and the position. What does INS do to verify this information?

A. INS adjudicators have to thoroughly review all documentation such as transcripts, college diplomas, testimonials, achievement awards, etc. to assure that the alien beneficiary is qualified. The content of documents has to be scrutinized to make sure the beneficiary has the perquisites for the classification. Equivalency of foreign degrees are a major concern. In the past employers may have attempted to use the H-1B to recruit para-professionals. It is the responsibility of the INS not to approve para-professional petitions.

Careful scrutiny for inconsistencies in the petition package, including INS requests for evidence and requests for overseas investigations by INS or consular officers, is used as needed to detect unqualified beneficiaries or fraudulent claims.

Q. Is the INS planning on doing anything for universities or other educational institutions who need professors and teachers to start prior to the October 1, date?

A. The 115,000 allotment of H-1B numbers is available on a national basis to qualified aliens sponsored by U.S. employers without respect to the specialty occupation of the H-1B worker or the nature of the employer's business. The INS understands that there is a seasonal nature to the demand for H-1B workers by college and university employers and that demand is heavier in the summertime months preceding the start of an academic year.

H1-B Questions & Answers for Internal Use OnlyPage 4

Q. Why is INS keeping the fee for employers who decide to withdraw an application rather than accept an October 1 date?

A. The general INS regulations explain that filing fees will not be refunded if an applicant or petitioner withdraws an application or petition.

Q. In the press materials you say employers not wishing to have an October 1 date can contact INS and withdraw the application. How do they do that? Is there a number to call or an office to write to?

A. Withdrawal requests are to be faxed to the Immigration Services Division, **Attention: H-1B Withdrawal**, at (202) 305-0108. The request must contain the receipt number of the H-1B petition, the name of the company and the name of the individual for whom the request was made.

Q. Can employers give signing bonuses to alien workers prior to the approval of the H-1B petition or is it necessary to wait until an H-1B is granted and employment can commence?

A. INS has determined that a "hire" would not take place if the company gives the alien money upon signing a contract of employment, therefore, employees may receive bonuses prior to an H-1B petition being granted. "Hire" is "the actual commencement of employment of an employee for wages or other remuneration." "Employment" is "any service or labor performed by an employee for an employer within the U.S." Because, in this case, the alien would not be actually commencing employment with the company until being granted H1-B status, a "hire" will not have taken place at the time of the signing of the employment contract. The I-9 requirements will not be triggered until the alien actually starts performing labor or services for the company.

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May 26, 1999

The Honorable Doris Meissner
 Commissioner
 Immigration and Naturalization Service
 425 I Street, NW
 Washington, D.C. 20536

Dear Commissioner Meissner:

I understand that with four months remaining in the current fiscal year, the pool of available visas under the H-1B program is nearing exhaustion despite the fact that Congress last year raised the annual cap on H-1B visas from 65,000 to 115,000. I am concerned that many H-1B visa numbers are being obtained on the basis of fraudulent applications, thereby disadvantaging employers who use these visas legitimately.

Testimony at a May 5 hearing on Visa Fraud before the Subcommittee on Immigration and Claims clearly established that pervasive fraud in the H-1B program has had a major impact on the availability of the numerically limited visas. Witnesses from the INS and Department of State described a recent investigation by the U.S. Consulate at Chennai, India of 3,247 H-1B petitions. The results were staggering - 45% of the cases could not be authenticated and 21% were identified as outright fraudulent. Chennai issued more than 15,000 H-1B visas in fiscal year 1998. A significant portion of those visas may have been issued on basis of fraudulent or unverifiable documentation.

Non-government witnesses who testified at the May 5 hearing, including a representative of large corporations that rely on the H-1B program to obtain key personnel and two immigration attorneys, agreed that fraud is a serious problem in the H-1B program. They expressed concern that the large number of fraudulent petitions severely reduces the number of visas available to legitimate employers.

While the INS service centers and Department of State consular officers have had some notable successes in the battle against fraud in the H-1B program, much more needs to be done. In particular, INS management should provide more active leadership and greater support to field officers who are working to expose fraud. At the May 5 hearing, I was astounded when

Honorable Doris Meissner
Page Two

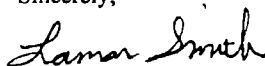
William R. Yates, Acting Deputy Associate Commissioner of the Immigration Services Division, said that even when fraud scams are exposed, those who have benefitted from the fraud are not placed in removal proceedings. Failure to take action to deport aliens in such cases will only encourage more fraud. It also very damaging to the morale of personnel at the INS and Department of State who have spent time and resources investigating these fraud schemes. Why should they even bother if the INS is not going to take appropriate action under the law?

To preserve the maximum number of H-1B visas for use by legitimate employers, greater emphasis must be placed on the detection and elimination of fraud. I urge that you take action to ensure that the following procedures are implemented at all four INS service centers:

- Investigate all questionable applications before a petition is approved. That way an H-1B number will not be tied up while the case is being investigated. Only large, well-established companies with a proven track record should receive routine approvals.
- When Department of State consular officers return a previously approved petition to an INS service center because they have identified fraud or questionable documents, the service center should move expeditiously to revoke the petition so the H-1B number can be recaptured for use by another employer.
- Take the strongest possible action against companies and individuals that file fraudulent petitions. When the evidence is sufficient, refer such cases to the U.S. Attorney for criminal prosecution. At a minimum, companies that have previously submitted fraudulent or questionable procedures should be prevented from filing new petitions.
- Initiate removal proceedings against aliens who have obtained entry into the U.S. on the basis of a fraudulent H-1B petition. We should send a clear message that fraud will not be tolerated.

I would appreciate your urgent attention to the above recommendations so as to free up the maximum number of H-1B visas for use under the cap during the current fiscal year.

Sincerely,



Lamar Smith, Chairman
Subcommittee on Immigration and Claims

H-1B Fraud

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H 1 B Mtg. 7/23

- Plan to Address Fraud

- State Dept. - not a coordinated anti-fraud effort but mainly focus on ~~to~~ training of consular officers.

See Dep Sec. testimony = anti-fraud program ^{training} ^{knowledge of} ^{officer to} ^{response} ^{legit}
to Visa denial is their weapon + return to INS but INS has final say.

Process (Consular) 40%
petitioner w/ INS

Labor - 7 day
Still by
turn and
INS - 30 day

- ER ~~take~~ a specific inquiry that includes labor condition - pay prevailing wage + no strike or lock out - files w/ ~~INS~~ INS - Job must require a 4 yr. degree + has 4 yr. degree or equivalent.
- ~~State~~ take letter to Visa officer to get a Visa
- State has little basis to deny visa except for a technicality.
- Obvious indicator of fraud - will send it back to INS.

In US applications

- 40% of applications are from in U.S. from ~~the~~ students
- Only a paper process - no interviews unless INS requests hand.

F498 + F499 - Indian Kunt'l top ranking users.
42% 46%
10% China

Chennai area - ^{Grand} has moved to Bombay

(2)

- 2 ~~ways~~ kinds of Fraud:
- ER - not real - Post office, donut shop, etc. ^{accountant}
 - alien worker not qualified.
 - ER - ~~violate labor laws~~ / Job shops - hired by other IBMs ^{Tang Shu}
visa violation if paying below wage.)

~~Plans~~

Proposals

- Legislation ^{work of expatriate + less than 4yr. degree - source of fraud}
- More resources - on investigations
- Referrals

Barehity - ER get a visa for worker on condition until they find a work for them - don't need to pay them. Leg. require ER to pay at day that time
Speculation - will ~~be~~ be paid.
U.S. Attorney - not prosecuting the case.

Rep. Lamar Smith

- (a) Investigate all suspicious cases
 - (b) If State Dept return visa - cancel visa so return up ~~again~~ again
 - (c) Prosecute Fraudulent Companies
 - (d) ~~Eliminate~~ Prevent fraudulent people
 - (e) Initiate removal or ban if people applied
- (Q+A - INS)

(3)

- INS does not have the field resources.
- Profiting of Congress.
- Leg. 1.5% of fee - take portion of fee for investigation.
Maybe able to do this already.

Once issued, need to go through ~~hurdles~~ hurdles.

Coordinate INS + State investigations
Prosecute hand

Consular officer can revoke labor cert. if there's fraud
& not reviewable. (Labor Certifying Agency - LCA) - can only
reject if ~~fraud~~ part of labor in
Lyons.

an - Close loopholes - INS

Change in Regs - can do things but ~~usually~~ once

More Coordination

Prosecutions

~~LABOR~~

Labor problem - H I B fee - labor

Streamlining ~~for~~ good ~~actors~~ actors in the permanent program

(4)

- multinational corps - ~~F~~ shamlien process
- Credentialing Agency - INS will review - b/c they are accredited.

Summary?

Possible hrs on fraud. so INS pulling this together.

US Attorney privilege to prosecute

WETF - use this

8/5/99 - ~~10/12/99~~ Rep. Lamar Smith hrs on #5

- INS is not testifying

- INS mtg w/ Co. on methodology. - Wed 7/28, but

mail ~~John~~ agency

- Frank ~~Plan~~ Plan

7/28/99 10:51 AM DRAFT

**FRAUD IN THE H-1B PROGRAM
SUMMARY OF NEC MEETING
FRIDAY, JULY 23, 1999**

Chair: Brian Kennedy, NEC

**Participants: Irene Bueno, DPC
John Fraser, DOL
Earl Gohl, DOL
Larry Matlack, OMB
Darrell Park, OMB
Ed Odom, DOS
Jill Esposito, DOS
Harry Gallagher, INS
Jackie Bednarz, INS
Tom K.,**

Purpose: To develop an Administration anti-fraud plan.

What has caused the H-1B fraud issue to become so visible?

- Immigration benefit fraud hearing before the House Subcommittee on Immigration and Claims, May 5, 1999. DOS and INS testimony concerning fraud in the H-1B and L-1 visa programs.**
- Follow up letter from Congressman Lamar Smith to INS Commissioner Meissner concerning fraud in the H-1B**

program (letter dated May 26, 1999)

- Wall Street Journal article "Fraud Concerns Grow Over Employment-Visa Program," July 12, 1999.
- Upcoming H-1B cap hearing before House Subcommittee on Immigration and Claims scheduled for August 5, 1999. Administration not invited to testify.

What anti-fraud measures can the Administration accomplish under existing law?

➤ **Deterrence Measures**

- Strengthen INS regulations to close gaps and inhibit abuses (e.g., require the employer establish it is a viable business. Restrict credential evaluations for H-1B workers foreign education.)
- Strengthen DOS authorities (confer unreviewable authority to consular officers to invalidate a Labor Condition Application where fraud is involved)
- Examine DOL procedures to determine whether DOS and INS can provide tips/complaints about unscrupulous H-1B employers
- Publicize efforts INS, DOS, and DOL are taking to combat fraud

➤ **Detection Measures**

- Target high-risk H-1B cases (type of employer, type of worker skillset)
- Replicate the "Chennai" (India) pilot
- Leverage resources among DOS, DOL, INS (e.g., use new DOL investigative resources to conduct employer site visits)
- Improve inter-agency communications/coordination (e.g., hasten development of e-communications; consider development of an extra-net for

interagency use)

➤ **Prosecution Measures**

- **Educate DOJ/Executive Office of the U.S. Attorneys about white collar/H-1B fraud to increase acceptance rate of prosecutions**
- **Consider prosecuting H-1B employers under exploitation statutes**

➤ **Miscellaneous**

- **Prepare a public message/"good story" of Administration efforts at Chennai and other successful anti-fraud efforts**
- **Prepare response to the May 26th letter from Rep. Lamar Smith**
- **Quantify the incidence of fraud in the H-1B program (e.g., INS, DOL, and DOS to cull all relevant statistical information on H-1B fraud)**

What other steps can the Administration consider?

- **Develop a legislative package**
- **Examine budget requests for CJS and Labor/Ed**

POLITICS & POLICY

Fraud Concerns Grow Over Employment-Visa Program

By MARJORIE VALBRUN

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON — The proposed employee from Casablanca was no Ingrid Bergman, but she did turn out to be playing a role.

Using a law designed to bring skilled, foreign workers to the U.S., a local business filed a petition to hire the worker from Morocco as "comptroller" to "direct the financial activities of the company." The Immigration and Naturalization Service dutifully approved the request for a H-1B temporary work visa for foreigners with knowledge in specialty occupations.

But when the visa application was forwarded to the U.S. consulate office in Casablanca, the office made a discovery: The company that referred to itself as the "corporate body" is a doughnut shop in Maryland, owned by the prospective worker's sister and brother-in-law. What's more, the 23-year-old worker speaks no English and has no prior work experience relevant to U.S. accounting standards.

Skirting the Law

What seemed like a routine visa request turned out to be another increasingly common attempt to skirt the law. Critics say such cases also help explain why a newly increased cap on the annual number of H-1B visas was reached in record time—just six and a half months after Congress nearly doubled the yearly ceiling to 115,000 from 65,000.

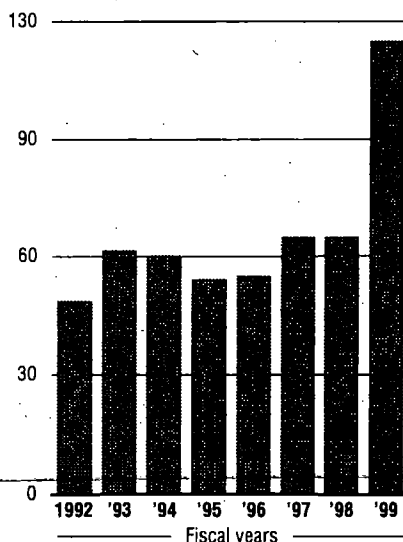
Last month, the INS announced it would stop accepting applications for this fiscal year, shutting out employers who had hoped to bring in new employees. GOP Rep. Elton Gallegly of California, a member of the House immigration subcommittee, says the H-1B visa program should no longer be supported by the government "until we get a handle on identifying and aggressively mitigating the fraud and abuse."

Such efforts are politically sensitive, however. The program's corporate advocates, including high-technology companies in Silicon Valley, say the abuses are

A New Import for American Business

With More Visas for Skilled Workers...

H-1B visas*, in thousands

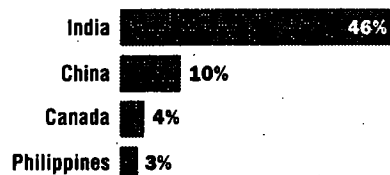


*For foreign workers in highly skilled occupations

Source: U.S. Department of Justice, Immigration and Naturalization Service

Some Countries Benefit...

Countries with the highest percentage of total recipients of H-1B visas



... As Do Some Companies

Companies with highest percentage of petitions for H-1B visas* in fiscal 1998

Mastech	11%
Tata Consultancy	7
Computerpeople	6
Oracle	5
PriceWaterhouseCoopers	4
Lucent Technologies	3

Smith of Texas, chairman of the House subcommittee on immigration. The phony applicants prevent legitimate foreign specialty workers—mostly computer programmers and engineers—from being employed here. The abuses also further aggravate a shortage of workers in the high-tech industry, which is highly dependent on H-1B visas.

As proof of their contentions of widespread fraud, critics point to India, where more H-1B visas are issued than anywhere in the world. Indian nationals account for more than 40% of all H-1B visa recipients. The U.S. consulate in Chennai (formerly Madras), India, issued more than 20,000 H-1B visas last fiscal year, more than any other post in India, according to Bill Yates, acting deputy executive associate commissioner of immigration services at

tech companies and other businesses that aggressively lobbied Congress for the increase in the H-1B visa cap question the scope of the alleged fraud. Lynn Frendt Shotwell, legal counsel of the American Council on International Personnel Inc., says the 45% of claims that couldn't be verified in India was an inaccurate measurement since the claims were part of a group singled out precisely because they seemed suspicious.

"I don't think it's reflective of the program at large. I think the fraud numbers are overstated," she says, adding that she

believes the level of fraud is under 5% overall.

Rep. Smith begs to differ. "The fraud number from the State Department speaks for itself," he replies.

Legitimate Applicants Hurt

Critics also argue that the lengthy and cumbersome application process hurts legitimate applicants and companies more than fraud. State Department administrators say they do try to avoid delaying legitimate businesses while they weed out suspect ones.

Sandy Boyd, assistant vice president for policy at the National Association of Manufacturers, an industry trade group, says there is no way to accurately determine the level of fraud because the INS doesn't keep detailed data on all H-1B visas issued. Knowing which companies are heavy users of the program, and may be more prone to abuse it, would better identify where to look for the fraud, she says.

"We'd like to know how the 115,000 visas are used," says Ms. Boyd, who also helps lead the American Business for Legal Immigration. "Who used them? What are the occupations? Where have those visas gone? Just basic data."

As required by law, the INS plans to begin compiling complete information on the occupations of H-1B beneficiaries, as well as their education and compensation, in the next fiscal year that begins in October.

Meantime, business groups say that companies with clean records should be given fast-track approval, bypassing the long delays and paperwork. "It seems to me it would help focus enforcement priorities where they ought to be focused," Ms. Boyd says.

increased cap on the annual number of H-1B visas was reached in record time—just six and a half months after Congress nearly doubled the yearly ceiling to 115,000 from 65,000.

Last month, the INS announced it would stop accepting applications for this fiscal year, shutting out employers who had hoped to bring in new employees. GOP Rep. Elton Gallegly of California, a member of the House immigration subcommittee, says the H-1B visa program should no longer be supported by the government "until we get a handle on identifying and aggressively mitigating the fraud and abuse."

Such efforts are politically sensitive, however. The program's corporate advocates, including high-technology companies in Silicon Valley, say the abuses are exaggerated. What's more, the deep-pocketed executives of these companies are being heavily courted by presidential hopefuls Vice President Al Gore and GOP front-runner Texas Gov. George W. Bush, both of whom support the visa program. Recently, while wooing high-tech executives in Palo Alto, Calif., Mr. Bush called for raising the visa cap, saying that companies facing worker shortages would otherwise be hurt.

While the cases of abuse sometime involve small businesses such as family-owned dry cleaners and mom-and-pop grocery stores, more often, officials say, the violators are larger, more-sophisticated front companies. These concerns, acting as foreign subsidiaries here but with little more than a U.S. post-office box, apply for visas for bogus employees who are unqualified workers desperate to live and work in America.

In other cases, companies secretly act as employment agencies, advertising their services abroad while petitioning for visas here on behalf of foreigners who have paid the concerns exorbitant fees. Once the visas are issued, the agencies then either attempt to find real jobs for the "workers" in the U.S. or let them fend for themselves once they arrive. Sometimes potential employees commit the fraud—without a company's knowledge—by applying for jobs even though they lack the requisite experience or education.

"Every fraudulent H-1B visa has real impact on U.S. companies filing legitimate applications," says GOP Rep. Lamar

subcommittee on immigration. The applicants prevent legitimate foreign specialty workers—mostly computer programmers and engineers—from being employed here. The abuses also further aggravate a shortage of workers in the high-tech industry, which is highly dependent on H-1B visas.

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In May, Mr. Yates testified at a congressional hearing that as early as 1996 the State Department consulate in India determined that among visas issued there, a "significant percentage of H-1B petitioners, almost all of whom were computer programmers, were misrepresenting their academic or professional credentials."

Investigation of Petitioners

As a result, the consulate and INS service centers last year began jointly investigating the education and work-experience claims on suspect applications submitted to the INS before the INS ruled on the petitions. By March 31 of this year, Mr. Yates said, the agencies determined that of 3,247 cases from India referred to the consulate's antifraud unit, 21% of the work-experience claims made to the INS were definitely not true and another 29% "were either probably or possibly fraudulent." In addition, the agencies couldn't verify the authenticity of close to 45% of the claims made on the H-1B petitions, he said.

Visa fraud isn't limited to H-1B visas. There are 10 different types of temporary work visas, and more than 400,000 of them were issued in 1996 alone. What makes H-1B visa fraud different is the volume of applications for such visas and the pressure it puts on thousands of U.S. employers who can't fill job openings. The fraud also forces legitimate H-1B visa applicants to wait months before they are approved, or until a fraudulent applicant is discovered and a slot made available.

But trade groups representing high-

aggressively lobbied Congress for the increase in the H-1B visa cap question the scope of the alleged fraud. Lynn Frenndt Shotwell, legal counsel of the American Council on International Personnel Inc., says the 45% of claims that couldn't be verified in India was an inaccurate measurement since the claims were part of a group singled out precisely because they seemed suspicious.

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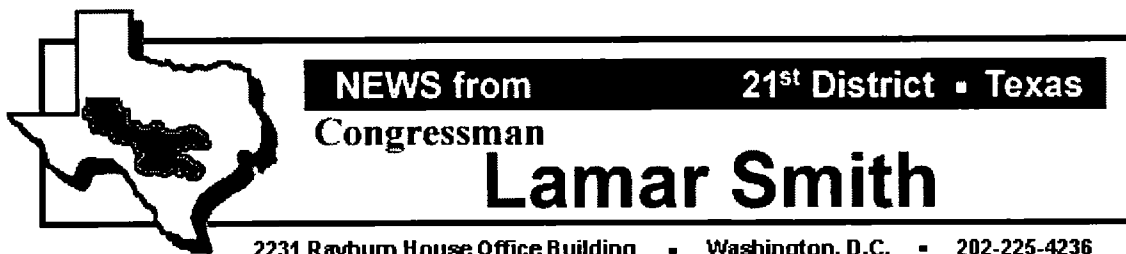
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2 So we've popped up w

another big idea



Clinton Administration Fails to Maximize Available H1-B Visas

FOR IMMEDIATE RELEASE

June 10, 1999

WASHINGTON, D.C. - Congressman Lamar Smith, Chairman of the House Immigration Subcommittee, issued the following statement Thursday on H1-B visas:

"The Clinton Administration has not taken seriously the growing number of fraudulently obtained H1-B visas. A former State Department Foreign Service Officer testified recently that H1-B visas 'have been misused, for example, by Chinese alien smugglers and Russian organized crime figures'.

"For example, one investigation showed that 45 percent of H1-B applications from India could not be authenticated and 21 percent were outright fraudulent.

"That testimony led me to send a letter to Commissioner Meissner May 26 demanding that specific actions be taken to address visa fraud.

"Every visa handed out fraudulently takes one away from candidates qualified to fill high-tech jobs. The Clinton Administration should clean up the fraud and help the high-tech industry.

"America must produce more well-educated workers. We will not continue to lead the world in high-tech innovation unless we lead the world in math and science education at all levels."

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Committee on the Judiciary, Chairman, Subcommittee on Immigration and Claims * Chairman, Committee on Standards of Official Conduct * Committee on Science

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CongressDaily

May 28, 1999 / pg. 2 of 5

on to the letter: Reps. Jim DeMint of South Carolina; Mark Green and Paul Ryan of Wisconsin; Robin Hayes of North Carolina; Gary Miller and Doug Ose of California; Tom Tancredo of Colorado; and Lee Terry of Nebraska.

Meanwhile, Republican moderates and the Conservative Action Team are continuing their efforts to push the leadership to adopt an end-game strategy for passing FY2000 spending bills in a way that does not make inevitable a budget-busting omnibus package at the end of the fiscal year. An aide to one moderate said the Tuesday Group plans to talk to the CATs about teaming up again as fiscal conservatives to keep the pressure on the leadership. While some GOP moderates believe the spending cap will need to be raised, the aide said, "If we could do it without raising the caps, that would be great ... but I don't know if that is doable." He added that "conceptually, there's more agreement than not" between the two groups. — *by Lisa Caruso*

JUDICIARY**H-1B Limit Unlikely To Be Raised; Focus Turning To Fraud**

Despite concerns that the new, higher limit on H-1B visas for FY99 already is close to being reached, White House and congressional officials are unlikely to try to raise the cap further this year, possibly focusing instead on whether such visas are being unduly awarded. H-1B visas bring high tech workers to the United States for a stay of several years. Last year, the White House accepted a congressional proposal to raise the cap on such visas from 65,000 to 115,000 during FY99. The cap will remain at the same level during FY2000, decline to 107,500 in 2001, and then return to 65,000 in 2002, according to a Senate aide. In return, the White House and Congress agreed to use a portion of the visa fees to intensify training of high tech workers in the United States and provide scholarships for students seeking to enter high tech careers.

Last week, in remarks before Computer and Communications Industry Association officials who were concerned the caps may be too low, White House Chief of Staff Podesta offered his listeners no cause for optimism. He indicated the White House viewed last year's bill as a short-term fix to an existing worker shortage problem. Podesta said the long-term policy direction should emphasize training U.S. workers "to take over those jobs." A GOP Senate aide argued that the administration's reluctance so far this year to consider raising the caps has lessened the chance for action. "Because of the lack of time [left in the session] and the White House attitude, it would be difficult to accomplish," he said. A staffer with the House Judiciary Immigration and Claims Subcommittee indicated there was little enthusiasm on Capitol Hill for revisiting the issue.

Sources said some of this year's visa demand is left from last year, when the cap was lower. House Judiciary Immigration and Claims Subcommittee Chairman Lamar Smith, R-Texas, is urging that fraud be addressed. "I am concerned that many H-1B visa numbers are being obtained on the basis of fraudulent applications, thereby disadvantaging employers who use these visas legitimately," Smith wrote in a Wednesday letter to Immigration and Naturalization Service Commissioner Doris Meissner. Smith, who along with Senate Judiciary Immigration Subcommittee Chairman Spencer Abraham, R-Mich., led the effort last year to raise the caps, outlined evidence of fraud and urged steps the INS could take to mitigate the problem. Abraham earlier this month sent a letter to Meissner highlighting what he said is the overcounting of applicants. — *by Keith Koffler*

ENVIRONMENT**Superfund Reformers Find Trump Card In Funds For EPA**

House and Senate supporters of Superfund reform have shifted momentum dramatically into their favor during the past several weeks by stubbornly pledging to move their bills and threatening

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