

INS announces that 80,983 H-1B petitions have been ok'd

By Eli Rich

Guest columnist

The figure includes 19,431 that were approved from May through September 1998 (during the last fiscal year) that count against this year's cap, and an additional 61,552 H-1B petitions that have been approved from October 1, 1999 (when the new fiscal year began). Sources at the INS indicate that there are more than 50,000 cases still pending at the four INS Service Centers. Since only 34,000 visas remain available, many of the cases which have already been filed will not be approved in this fiscal year.

The recent surge in the number of H-1B visas filed is related to the mass filings for Indian technology workers by recruiting and consulting firms.

For the last three months, between 10,000-11,000 petitions have been approved each month. Given this rate, available H-1B numbers will be used up by early May 1999. After that, no new H-1B visas will be available until October 1, 1999. That means that the INS will not be able to approve pending H-1B petitions which are not approved by the time the annual cap is reached.

What will happen to your H-1B petition?

INS Headquarters is developing a process for allocating numbers fairly among the four INS Service Centers. While processing of H-1B petitions at the Nebraska and Vermont Service Centers only take 2-4 weeks, the processing time for an H-1B petition at INS Texas is considerably slower. The California Service Center is the slowest among the four Service Centers and takes four to five months to approve H-1B petitions.

The INS is considering a plan to give preference to cases filed in Texas and California rather than relying on a system where cases are counted against the cap in the order approved (which would favor applications filed in Vermont and Nebraska).

Should you file your H-1B petition now?

Because the INS has yet to announce that the cap has been reached, it still may be advantageous to file petitions in order to have them pending for approval at the beginning of Fiscal Year 2000 on October 1, 1999. The INS is also considering how it will handle petitions that are in the pipeline when the cap is reached. In past years, the INS approved the pending petitions. However, it is unknown what actions INS will take at this time.

Do not expect an increase in the cap: Congress enacted the American Competitiveness and Workforce Improvement Act (ACWIA) last

year to increase the H-1B annual cap from 65,000 to 115,000 visas in FY1999 and FY2000 and 107,500 visas in FY2001, after which time the annual cap returns to 65,000.

It is highly unlikely that Congress will pass legislation increasing H-1B visa numbers for this fiscal year or that it will re-consider the annual levels set before 2001.

Unfortunately, in passing the law Congress did not consider the predicted use of the program and the fact that the new cap may be reached despite the increase.

What are your other options? If you have already filed your H-1B petition, you must maintain legal status in the U.S. until your H-1B petition is approved. Otherwise, you will have to go back to your home country to obtain the visa before you can commence employment in the U.S. Also, failure to maintain legal status may subject you to bars of inadmissibility of three or ten years to return to the U.S.

Also, if you have already filed your H-1B petition, you can withdraw your petition, once we know that the cap has been reached and that you will have to wait until October 1, 1999 to obtain your work authorization. Withdrawing your H-1B petition will allow you to file a different employment-based petition, such as H-3 or O-1 petitions.

Persons who contemplate filing their petitions shortly (or those who withdraw their pending H-1B petitions) can file H-3 or O-1 petition in place of the H-1B petition.

The requirements of O-1 and H-3 petitions:

Both petitions require the U.S. employer to submit an employment-based petition on behalf of the foreign national. The O-1 visa is granted for "aliens with extraordinary ability in the science, art, or business." The hardest part in O-1 petition is to prove that the worker has "extraordinary merits" in his or her field of endeavor.

Normally, "extraordinary ability" requires more than a Bachelor's Degree, which is the requirement to qualify for the H-1B visa. The H-3 petition can be granted for up to two years for workers who are being trained by a U.S. employer. The advantage of the H-3 petition over the O-1 petition is the lesser degree of proof is which required to qualify the worker for the position.

More importantly, H-3 petitions are normally approved very quickly by the INS in a short few weeks.

Processing of Labor Condition Applications at the DOL Office:

Meanwhile, the Department of Labor, Region 9, has been experiencing a major breakdown. The DOL Office in San Francisco has not processed any Labor Condition Applications (LCAs) since January 19, 1999 until early March 1999 due to a computer system problem.

The Labor Condition Application must be submitted to the INS with the H-1B petition. In the absence of LCAs adjudication, the processing of H-1B petitions in the California Service Center is delayed even further as the INS cannot approve the H-1B petition without an ap-

proved LCA.

The DOL Office promised that analysts will devote all of their time to processing LCAs until the backlog is reduced. That DOL expects that it will take three to four weeks to eliminate the pending backlog.

The DOL is planning to implement an automated "one minute" labor condition application processing in H-1B cases in an attempt to expedite the processing of all H-1B petitions.

In the legislative arena, the DOL is preparing new regulations which should cause a great deal of concern to all U.S. employers.

Despite last year's legislative victory and the increase of the annual visa cap, U.S. employers are in jeopardy of losing the H-1B program as a usable means of hiring skilled foreign workers for key positions through the regulatory process.

Amancio 'Jojo' Liangco's "Immigrant's Story" will appear next week.

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National publication seeks



...a inyong pagluluto,



April 27, 1998

Administration Position Regarding H-1B Legislation

The Administration has committed to pursuing both reforms to the H-1B visa program and increased training opportunities for U.S. workers as part of any legislation that would temporarily raise the annual cap on H-1B visas. The following represents the Administration's position on major reforms and training initiatives.

I. Recruitment and Non-displacement of United States Workers Prior to Seeking Nonimmigrant Workers

(a) IN GENERAL -- Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended by inserting at the end the following new subparagraph:

(E)(I) The employer, prior to filing the application, has taken good faith, timely and significant steps to recruit and retain sufficient U.S. workers in the specialty occupation in which the non-immigrant whose services are being sought will be employed. Good faith steps to recruit and retain shall be defined as:

- (a) the employer taking the following two actions in a manner reasonably designed to recruit and retain U.S. workers:
 - (i) widespread advertising of the relevant job openings to both current and prospective employees (e.g., through America's Job Bank, participation in job fairs, the Internet, employer newsletters and electronic communications, general circulation publications, professional journals and magazines); and
 - (ii) offering meaningful monetary incentives to applicants (such as paying above the prevailing wage, paying bonuses, or providing stock options) above those already included in the base compensation package; or offering training subsidies, or a training program, that provides the means for its current employees to enhance their skills to qualify for jobs in the specialty occupation in which the nonimmigrant will be (or is) employed; and
- (b) The employer did not receive applications from any U.S worker with at least substantially equivalent qualifications and experience to the temporary foreign worker offered employment; or (ii) offered employment to a U.S. worker with at least substantially equivalent qualifications and experience to the temporary foreign worker offered employment, but the

offer of employment to the U.S. worker was refused; and

- (c) Offering compensation at least at the amount required by subparagraph (A).

(E)(II) The recruitment requirements of this subparagraph shall not apply to aliens with extraordinary ability, aliens who are outstanding professors and researchers, and certain multinational executives and managers described in section 203(b)(1). The recruitment requirements of this subparagraph shall also not apply to a scientist, mathematician, or engineer who has attained at least a master's degree or its equivalent in a scientific or engineering discipline, and who is coming temporarily to the United States to participate in a cooperative joint scientific activity carried out under an Agreement between the Federal Government and the alien's Government.

(F)(I) The employer --

- (a) has not and will not -- within the 90-day period immediately preceding and the 90-day period immediately following the filing of the application, and within the 90-day period immediately preceding and the 90-day period immediately following the filing of any visa petition supported by the application -- lay off or otherwise displace any United States worker, including a worker obtained by contract, employee leasing, temporary help agreements, or otherwise displace any United States worker, including a worker obtained by contract, employee leasing, temporary help agreement, or other similar basis, who has substantially equivalent qualifications and experience in the specialty occupation in which the nonimmigrant will be (or is) employed; and

(F)(II) For purposes of this subparagraph, the term "laid off," with respect to an employee, means the employee's loss of employment, other than a discharge for cause or a voluntary departure or voluntary retirement. The term "laid off" does not apply to any case in which employment is relocated to a different geographic area and the affected employee is offered a chance to move to the new location with the same wages and benefits, but elects not to move to the new location.

(G) The employer offered compensation as required by subparagraph (A).

(b) For purposes of this subsection, the term "United States worker" means --

- (I) a citizen or national of the United States
- (II) an alien lawfully admitted to the United States for permanent residence; or
- (III) an alien authorized to be employed by this Act or by the Attorney General.

II. Wage Comparability

Section 212(n)(1)(A)(I) of such Act is amended by inserting “(including the value of benefits and additional compensation)” after “wages.” Section 212(n)(1)(A)(I)(I) is amended by inserting “(including the value of benefits and additional compensation)” after “actual wage level.”

III. Job Contractors

In the case of an employer that is a job contractor (within the meaning of regulations promulgated by the Secretary of Labor to carry out this subsection), the contractor will not place any H-1B employee with another employer unless such other employer has executed an attestation that the employer is complying and will continue to comply with the requirements of this paragraph in the same manner as they apply to the job contractor.

IV. Enforcement

(a) Independent Authority to Investigate

Section 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(n)) is amended --

(I) in paragraph (2)(A), by striking the first sentence and inserting the following:

“The Secretary may conduct investigations pursuant to a complaint or, absent a complaint, where the Secretary has reasonable cause to believe that:

- (a) there is a pattern or practice of complaints by U.S. workers against the employer, or of unsuccessful recruitment by the employer, of violations by the employers;
- (b) the employer’s U.S. workforce is comprised of more than 10% nonimmigrant workers or the employer is making application that would result in more than 10% nonimmigrant workers in its U.S. workforce;
- (c) an employer has laid off or otherwise displaced more than 10% of its U.S. workforce or 100 U.S. workers (whichever is fewer) in any one year period (or has announced the intent to make such a lay-off).

The Secretary shall establish a process for the receipt, investigation, and disposition of complaints or other cases of noncompliance with this section.”

(II) in paragraph (2)(C), by inserting “, or that the employer failed to cooperate in the conduct of the Secretary’s investigation or has intimidated, discharged, or otherwise discriminated against any person because that person has asserted a

right or has cooperated in an investigation under this paragraph” after “a material fact in an application.”

(III) in paragraph (2), by adding at the end the following new subparagraph:

“(E) The Secretary may issue subpoenas requiring the attendance and testimony of witnesses or the production of any records, books, papers, or documents in connection with any investigation or hearing, conducted under this paragraph. In conducting a hearing, the Secretary may administer oaths, examine witnesses, and receive evidence. For the purpose of any hearing or investigation provided for in this paragraph, the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49 and 50), relating to the attendance of witnesses and the production of books, papers, and documents, shall apply.”

V. Sanctions

Section 212(n)(2)(C) is amended to read:

“If the Secretary finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B); a substantial failure to meet a condition of paragraphs (1)(C) or (1)(D); a willful failure to meet a condition of paragraph (1)(A); a violation(s) of paragraphs (1)(E) or (1)(F) that is willful, or reflects a pattern or practice of violations, or is a violation that affects a significant number of individuals; or a misrepresentation of a material fact in the application (but any misrepresentation of a material fact relating to paragraphs (1)(E) or (1)(F) must be willful, or reflects a pattern or practice of violations, or is a violation that affects a significant number of individuals) —

- (i) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$5,000 per violation) as the Secretary determines to be appropriate,”

VI. Application Fee

(3)(A) The Secretary of Labor shall require payment of a fee by the employer for each position for which an application is filed under this subsection. The fee shall be in an amount prescribed by the Secretary of Labor, and shall be paid to the Department of Labor. . . .

- (ii) During the period ending September 30, 2001, such a fee shall not exceed \$250 for each position.

. . .

- (v) It shall be unlawful for an employer to require, as a condition of employment by

such employer, that the fee prescribed under this paragraph or any part of the fee, be paid directly or indirectly by the alien whose services are being sought.

- (vi) Any person or entity that is determined, after notice and opportunity for an administrative hearing, to have violated clause (v) shall be subject to a civil penalty of \$5,000 for each violation, to an administrative order requiring the payment of any fee described in this paragraph, and the disqualification for 1 year from petitioning for foreign skilled temporary workers under this subsection.
- (vii) Any amount determined to have been paid, directly or indirectly, toward the filing fee described in paragraph (3)(A) by the alien whose services were sought, shall be repaid from the fund to such alien.

VII. Training

The Administration strongly supports the creation of Regional Skills Alliances and expansion of the National Science Foundation (NSF)'s advanced technical education programs. The Administration does not support providing scholarships or loans to individuals, including the expansion of the State Student Incentive Grant (SSIG) program.

VIII. New Visa Category Proposal

A new program (H-1C) that creates temporary visas for use only by non-immigrants with very high skill levels. In particular:

- The program would be authorized for four years beginning in FY1998.
- There would be a maximum of 25,000 visas for FY1998, FY1999, and FY2000, and a maximum of 15,000 visas for FY2001.
- Only employers whose number of H-1B and "H-1C" employees in the prior year constitutes no greater than one-half of their U.S. based workforce are eligible to apply.
- Only individuals with a minimum of a master's degree (or equivalent degree) in math, science, or engineering; or a bachelor's degree in math, science, or engineering and five years of experience in the specialty occupation; or who will earn at least \$75,000 per year (exclusive of benefits) are eligible for an "H-1C" visa.
- Requires a \$500 fee for each position for which an application is filed for training, enforcement, and administration of the program.
- The "H-1C" visas would be issued for a 3-year period, and renewable for an additional 3 years.

- All of the requirements of the “H-1C” visa program would be the same as would exist under the reformed H-1B program.

Retain: worked out in reg (??)

Here why include training program

April 23, 1998

Administration Position Regarding H-1B Legislation

The Administration has committed to pursuing both reforms to the H-1B visa program and increased training opportunities for U.S. workers as part of any legislation that would temporarily raise the annual cap on H-1B visas. The following represents the Administration's position on major reforms and training initiatives.

Retain =
(i) focused internally
and either (ii) Commerce
or (iii) Labor

I. Recruitment and Non-displacement of United States Workers Prior to Seeking Nonimmigrant Workers

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Recruit =
good faith
(i) and (ii)
to develop
existing
employees

(E)(I) The employer, prior to filing the application, has taken good faith, timely and significant steps to recruit and retain sufficient U.S. workers in the specialty occupation in which the non-immigrant whose services are being sought will be employed. Good faith steps to recruit and retain shall be defined as:

(a) the employer taking at least two of the following actions in a manner reasonably designed to recruit and retain U.S. workers:

① adverb
② for
③ monetary

(i) widespread advertising of the relevant job openings to both current and prospective employees (e.g., through America's Job Bank, participation in job fairs, the Internet, employer newsletters and electronic communications, general circulation publications, professional journals and magazines);

offering to
applicants meaningful

(ii) provision of meaningful monetary incentives above those already required (such as paying above the prevailing wage, paying bonuses, or providing training subsidies);

meaningful

or training \$ for workers

(iii) making substantial efforts to keep the employer's workforce informed of the training opportunities available in the local community, including the full range of federal tax incentives, loans, and scholarships, state and local tax incentives, loans, and scholarships, and courses of study taught at local universities, community colleges, and proprietary training institutions.

Commerce

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(w/Labor iii) Pick 2 of 4

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recruit/retain
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Labor

- (iii) ~~operating an employer-financed training program at the employer's facility or financing or otherwise providing for a training program elsewhere which provides the means for its employees to enhance their skills to qualify for jobs in the specialty occupation in which the nonimmigrant will be (or is) employed; and~~

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to local community
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(setting up §127
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c) write

With respect to current employees who have applied for the available position, that the employer has considered whether these applicants could be given additional training within a reasonable period of time to be able to fill the available position.

The employer did not receive applications from any U.S. worker with substantially equivalent qualifications and experience to the temporary foreign worker offered employment; or (ii) offered employment to a U.S. worker with substantially equivalent qualifications and experience to the temporary foreign worker offered employment, but the offer of employment to the U.S. worker was refused.

Offering compensation at least at the amount required by subparagraph (A).

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(including those
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employer's workforce
who, with additional
training w/in a
reasonable period of
time, would be
able to fill the position)
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(F)(II) For purposes of this subparagraph, the term "laid off," with respect to an employee, means the employee's loss of employment, other than a discharge for cause or a voluntary departure or voluntary retirement. The term "laid off" does not apply to any case in which employment is relocated to a different geographic area and the affected employee is offered a chance to move to the new location with the same wages and benefits, but elects not to move to the new location.

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(b) the employer's U.S. workforce is comprised of more than 10 percent

*feel strongly,
but willing
to concede.*

~~or of unsuccessful recruitment by the employer;~~ OK.
~~or of violations by the employer;~~
or of unsuccessful ~~recruitment~~ recruitment by the employer.

nonimmigrant workers or the employer is making application that would result in more than 10 percent nonimmigrant workers in its U.S. workforce;

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*Sanction
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(ii) During the period ending September 30, 2001, such a fee shall not exceed \$250 for each position.

. . .

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(vi) Any person or entity that is determined, after notice and opportunity for an administrative hearing, to have violated clause (v) shall be subject to a civil penalty of \$5,000 for each violation, to an administrative order requiring the payment of any fee described in this paragraph, and the disqualification for 1 year from petitioning for foreign skilled temporary workers under this subsection.

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- Only employers whose number of H-1B and "H-1C" employees in the prior year constitutes no greater than one-half of their U.S. based workforce are eligible to apply.

- Only individuals with a minimum of a master's degree (or equivalent degree) in math, science, or engineering are eligible for an "H-1C" visa.
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- All of the requirements of the "H-1C" visa program would be the same as would exist under the reformed H-1B program.

→ Cece Rouse
Julie Fernandez

based on conversations here
This morning, here's what we can accept at
Dor. Need help selling to DOC? elsewhere?

April 24, 1998 Noon

Franklin

4/24/98

Recruit/Retain

(E)(I) The employer, prior to filing the application, has taken timely and significant steps in good faith to recruit and retain sufficient United States workers in the specialty occupation in which the nonimmigrant whose services are being sought will be (or is) employed. Good faith steps to recruit and retain United States workers shall include:

- isn't this redundant?
- Scay. Daken wants (a) to be about outreach
- (iv) flex time; day care
- (iv) Publicity about local training opp.
- (a) Good faith recruitment by the employer in the United States offering compensation at least at the amount required by subparagraph (A); and
 - (b) The employer taking at least two of the following steps in a manner reasonably designed and carried out to recruit and retain United States workers in the specialty occupation:
 - (i) widespread advertising in the U.S. for the position in the specialty occupation in which the nonimmigrant will be (or is) employed to both current employees of the employer and potential applicants - e.g., through America's Job Bank, participation in job fairs, the Internet, employer newsletters and electronic communications, general circulation publications, professional and trade journals and magazines;
 - (ii) offering to applicants meaningful monetary incentives significantly above and beyond those otherwise required, such as paying above the required wage or paying bonuses and training subsidies not included in the base compensation package; or
 - (iii) operating an employer-financed training program at the employer's facility or financing or otherwise providing for a training program elsewhere which provides the means for its employees to enhance their skills to qualify for jobs in the specialty occupation in which the nonimmigrant will be (or is) employed; and
 - (c) The employer ~~does not~~ receive applications from any United States worker or offers employment to any United States worker who has at least substantially equivalent qualifications and experience in the specialty occupation in which the nonimmigrant will be (or is) employed.

Displacement

(F)(I) The employer has not and will not - within the 90-day period immediately preceding and the 90-day period immediately following the filing of the application, and within the 90-day period immediately preceding and the 90-day period immediately following the filing of any visa petition supported by the application - lay off or otherwise displace any United States worker, including a worker obtained by contract, employee leasing, temporary help agreement, or other similar basis, who has substantially equivalent qualifications and experience in the specialty occupation in which the nonimmigrant will be (or is) employed.

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Wage Comparability

1. Add in requirement to pay 100 percent of the prevailing wage.
2. Require payment of the higher of the prevailing wage or the actual wage, plus the same benefits and any additional compensation provided to employees similarly-employed by the employer.

Enforcement

(I) in paragraph (2)(A), by striking the first sentence and inserting the following:

"The Secretary shall establish a process for investigation pursuant to a complaint or, absent a complaint, where the Secretary ~~has reasonable cause to believe that:~~

- lots of complaints*
- Double Check #s*
- How do we determine # of employees in the application?*
- Industry likes*
- 33*
- 500*
- >100*
- #s are arbitrary*
- Warn = 500 applies to employees & more than 100*
- max layoff = more than 33% of workforce or 500 (fewer) employees > 100*
- Corporate entity*
- (a) ~~has received~~ there is a pattern of complaints against the employer, ~~or of unsuccessful recruitment by the employer, or of violations by the employer,~~ *a pattern of* ~~or of unsuccessful recruitment by the employer,~~
 - (b) the employer's U.S. workforce is comprised of more than 10 percent nonimmigrant workers or the employer is making application that would result in more than 10 percent nonimmigrant workers in its U.S. workforce; or
 - (c) the employer has laid off or otherwise displaced more than 10 percent of its U.S. workforce or ~~250~~ *33* individuals (whichever is ~~less~~ *fewer*) in any one year period, or has announced its intent to make such lay off or displacement.

Sanctions

If the Secretary finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B); a substantial failure to meet a condition of paragraphs (1)(C) or (1)(D); a willful failure to meet a condition of paragraph (1)(A); a failure to meet a condition of paragraphs (1)(E) or (1)(F) that is willful, or reflects a pattern or practice of violations, or is a violation that affects a significant number of individuals; or a misrepresentation of a material fact in the application (but any misrepresentation of a material fact relating to paragraphs (1)(E) or (1)(F) must be willful, or reflect a pattern or practice, or affect a significant number of individuals) ---

New Visa Category

What is the "equivalent" of a Master's degree - Bachelor's plus ?? years experience?

DRAFT

April 23, 1998

Administration Position Regarding H-1B Legislation

The Administration has committed to pursuing both reforms to the H-1B visa program and increased training opportunities for U.S. workers as part of any legislation that would temporarily raise the annual cap on H-1B visas. The following represents the Administration's position on major reforms and training initiatives.

I. Recruitment and Non-displacement of United States Workers Prior to Seeking Nonimmigrant Workers

(a) IN GENERAL -- Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended by inserting at the end the following new subparagraph:

(E)(I) The employer, prior to filing the application, has taken good faith, timely and significant steps to recruit and retain sufficient U.S. workers in the specialty occupation in which the non-immigrant whose services are being sought will be employed. Good faith steps to recruit and retain shall be defined as:

(a) the employer taking at least two of the following actions in a manner reasonably designed to ~~attract~~ ^{recruit} and retain U.S. workers:

(i) widespread advertising of the relevant job openings to both current and prospective employees (e.g., through America's Job Bank, participation in job fairs, the Internet, intranet, employer newsletters, general circulation publications, professional journals and magazines);

(ii) provision of meaningful monetary incentives (such as paying above the prevailing wage, ^{or paying bonuses and training subsidies} ~~or paying bonuses and training subsidies~~ not included in the base compensation package); ^{providing training or allowing profit sharing.}

~~(iii) operation of an employer financed training program at the employer's facility or financing (or otherwise providing for) a training program elsewhere which provides the means for its employees to enhance their skills to meet the needs of the employer.~~

(iii) making substantial efforts to keep the employer's workforce informed of the training opportunities available in the local community, including the full range of federal tax

(b) ^{for} ~~With respect to current employees who have applied to or expressed interest in the available position, that the employer has considered whether these applicants could be given additional training within a reasonable period of time to be able to fill the available position.~~

(c) The employer did not receive applications from any U.S. worker ^{with} ~~or offered employment to any U.S. worker who has~~ substantially equivalent qualifications and experience to the temporary foreign worker offered employment; or (ii) offered employment to a U.S. worker w/ substantially equivalent qualifications and experience to the temporary foreign worker offered employment; but the offer of employment to the U.S. worker was refused.

(E)(II) The recruitment requirements of this subparagraph shall not apply to aliens with extraordinary ability, aliens who are outstanding professors and researchers, and certain multinational executives and managers described in section 203(b)(1). The recruitment requirements of this subparagraph shall also not apply to a scientist, mathematician, or engineer who has attained at least a master's degree or its equivalent in a scientific or engineering discipline, and who is coming temporarily to the United States to participate in a cooperative joint scientific activity carried out under an Agreement between the Federal Government and the alien's Government.

(F)(I) The employer --

- (a) has not, within the 90-day period prior to the filing of the application, laid off or otherwise displaced any United States worker (as defined in subparagraph (B)), including a worker obtained by contract, employee leasing, temporary help agreement, or other similar basis, who has substantially equivalent qualifications and experience in the specialty occupation in which the nonimmigrant is intended to be (or is) employed; and
- (b) will not lay off or otherwise knowingly displace, during the 90-day period following the filing of the application, or during the 90-day period immediately preceding and following the filing of any visa petition supported by the application, any United States worker, including any worker obtained by contract, employee leasing, temporary help agreement, or other similar basis who has substantially equivalent qualifications and experience in the specialty occupation in which the nonimmigrant is intended to be (or is) employed.

(F)(II) For purposes of this subparagraph, the term "laid off," with respect to an employee, means the employee's loss of employment, other than a discharge for cause or a voluntary departure or voluntary retirement. The term "laid off" does not apply to any case in which employment is relocated to a different geographic area and the affected employee is offered a chance to move to the new location with the same wages and benefits, but elects not to move to the new location.

(G) The employer offered compensation as required by subparagraph (A).

(b) For purposes of this subsection, the term "United States worker" means --

- (I) a citizen or national of the United States
- (II) an alien lawfully admitted to the United States for permanent residence; or
- (III) an alien authorized to be employed by this Act or by the Attorney General.

II. Wage Comparability

Section 212(n)(1)(A)(I) of such Act is amended by inserting “(including the value of benefits and additional compensation)” after “wages.” Section 212(n)(1)(A)(I)(I) is amended by inserting “(including the value of benefits and additional compensation)” after “actual wage level.”

III. Job Contractors

In the case of an employer that is a job contractor (within the meaning of regulations promulgated by the Secretary of Labor to carry out this subsection), the contractor will not place any H-1B employee with another employer unless such other employer has executed an attestation that the employer is complying and will continue to comply with the requirements of this paragraph in the same manner as they apply to the job contractor.

IV. Enforcement

(a) Independent Authority to Investigate

Section 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(n)) is amended --

(I) in paragraph (2)(A), by striking the first sentence and inserting the following:

“The Secretary may conduct investigations pursuant to a complaint or, where there is no complaint, where the Secretary has reasonable cause to believe that:

- (a) there is a pattern or practice of complaints by U.S. workers against the employer;
- (b) an employer whose domestic workforce is comprised of more than 10% H1B workers or is seeking to employ H1B workers as more than 10% of its U.S. workforce;
- (c) an employer has laid off or otherwise displaced more than 15% of its U.S. workforce or 500 U.S. workers (whichever is fewer) in any one year period (or has announced the intent to make such a lay-off).

The Secretary shall establish a process for the receipt, investigation, and disposition of complaints or other cases of noncompliance with this section.”

(II) in paragraph (2)(C), by inserting “, or that the employer failed to cooperate in the conduct of the Secretary’s investigation or has intimidated, discharged, or otherwise discriminated against any person because that person has asserted a right or has cooperated in an investigation under this paragraph” after “a material fact in an application.”

(III) in paragraph (2), by adding at the end the following new subparagraph:

“(E) The Secretary may issue subpoenas requiring the attendance and testimony of witnesses or the production of any records, books, papers, or documents in connection with any investigation or hearing, conducted under this paragraph. In conducting a hearing, the Secretary may administer oaths, examine witnesses, and receive evidence. For the purpose of any hearing or investigation provided for in this paragraph, the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49 and 50), relating to the attendance of witnesses and the production of books, papers, and documents, shall apply.”

V. Sanctions

Section 212(n)(2)(C) is amended to read:

“If the Secretary finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B); a substantial failure to meet a condition of paragraphs (1)(C) or (1)(D); a willful failure to meet a condition of paragraph (1)(A); a violation(s) of paragraphs (1)(E) or (1)(F) that is willful, or reflects a pattern or practice of violations, or is a violation that affects a significant number of applicants, employees, or former employees; or a mis-representation of a material fact contained in (1)(A), (1)(B), (1)(C) or (1)(D) —

- (i) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$5,000 per violation) as the Secretary determines to be appropriate,”

Note: This language is incomplete. Our goal is to craft language that permits the Secretary to retain all of her current authority to sanction employers, but that limits that authority with regard to the two new attestations.

VI. Application Fee

(3)(A) The Secretary of Labor shall require payment of a fee by the employer for each position for which an application is filed under this subsection. The fee shall be in an amount prescribed by the Secretary of Labor, and shall be paid to the Department of Labor. . . .

- (ii) During the period ending September 30, 2001, such a fee shall not exceed \$250 for each position.

. . .

- (v) It shall be unlawful for an employee to require, as a condition of employment by such employer, that the fee prescribed under this paragraph or any part of the fee, be paid directly or indirectly by the alien whose services are being sought.

- (vi) Any person or entity that is determined, after notice and opportunity for an

administrative hearing, to have violated clause (v) shall be subject to a civil penalty of \$5,000 for each violation, to an administrative order requiring the payment of any fee described in this paragraph, and the disqualification for 1 year from petitioning for foreign skilled temporary workers under this subsection.

- (vii) Any amount determined to have been paid, directly or indirectly, toward the filing fee described in paragraph (3)(A) by the alien whose services were sought, shall be repaid from the fund to such alien.

VII. Training

The Administration strongly supports the creation of Regional Skills Alliances and expansion of the National Science Foundation (NSF)'s advanced technical education programs. The Administration does not support providing scholarships or loans to individuals, including the expansion of the State Student Incentive Grant (SSIG) program.

VIII. New Visa Category Proposal

A new program (H-1C) that creates temporary visas for use only by non-immigrants with very high skill levels. In particular:

- The program would be authorized for four years beginning in FY1998.
- There would be a maximum of 25,000 visas for FY1998, FY1999, and FY2000, and a maximum of 15,000 visas for FY2001.
- Only employers whose number of H-1B and "H-1C" employees in the prior year constitutes no greater than one-half of their U.S. based workforce are eligible to apply.
- Only individuals with a minimum of a master's degree (or equivalent) in math, science, or engineering are eligible for an "H-1C" visa.
- Requires a \$500 fee for each position for which an application is filed for training, enforcement, and administration of the program.
- The "H-1C" visas would be issued for a 3-year period, and renewable for an additional 3 years.
- All of the requirements of the "H-1C" visa program would be the same as would exist under the reformed H-1B program.

DRAFT

April 23, 1998

Administration Position Regarding H-1B Legislation

The Administration has committed to pursuing both reforms to the H-1B visa program and increased training opportunities for U.S. workers as part of any legislation that would temporarily raise the annual cap on H-1B visas. The following represents the Administration's position on major reforms and training initiatives.

I. Recruitment and Non-displacement of United States Workers Prior to Seeking Nonimmigrant Workers

(a) IN GENERAL — Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended by inserting at the end the following new subparagraph:

(E)(I) The employer, prior to filing the application, has taken good faith, timely and significant steps to recruit and retain sufficient U.S. workers in the specialty occupation in which the non-immigrant whose services are being sought will be employed. Good faith steps to recruit and retain shall be defined as:

(a) the employer taking at least two of the following actions in a manner reasonably designed to ~~attract~~ ^(recruit) and retain U.S. workers:

(i) widespread advertising of the relevant job openings to both current and prospective employees (e.g., through America's Job Bank, participation in job fairs, the Internet, intranet, employer newsletters, general circulation publications, professional journals and magazines);

(ii) provision of ~~meaningful~~ monetary incentives (such as paying above the prevailing wage, or paying bonuses, and training subsidies not included in the base compensation package);

(iii) ^{Insert A} operation of an employer-financed training program at the employer's facility or financing (or otherwise providing for) a training program elsewhere which provides the means for its employees to enhance their skills to meet the needs of the employer.

providing training subsidies, for allowing profit sharing

(b) With respect to current employees who have applied to ^{for} or expressed interest in the available position, that the employer has considered whether these applicants could be given additional training within a reasonable period of time to be able to fill the available position.

(c) The employer ~~must~~ ^{Insert B} receive applications from any U.S. worker or offered employment to any U.S. worker who has substantially equivalent qualifications and experience to the temporary foreign worker offered employment.

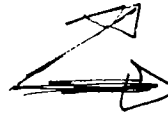
did not fail to

INSERT A

- (iii) making substantial efforts to keep the employer's workforce informed of the training opportunities available in the local community, including the full range of federal tax incentives, loans, and scholarships, state and local tax incentives, loans, and scholarships, and courses of study taught at local universities, community colleges, and proprietary training institutions;
- (iv) provides flextime, job sharing, retention bonuses, day care, or other similar initiatives.

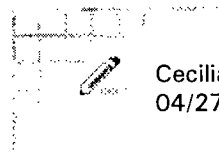
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(i) did not receive applications from any U.S. worker with substantially equivalent qualifications and experience to the temporary foreign worker offered employment; or (ii) offered employment to a U.S. worker with substantially equivalent qualifications and experience to the temporary foreign worker offered employment, but the offer of employment to the U.S. worker was refused.



Message:

using economics
to bridge the
racial divide



Cecilia E. Rouse
04/27/98 12:54:26 PM

Record Type: Record

To: Julie A. Fernandes/OPD/EOP
cc:
Subject: OMB Comments on H-1B Legislation

----- Forwarded by Cecilia E. Rouse/OPD/EOP on 04/27/98 12:56 PM -----



Debra J. Bond

04/27/98 12:47:58 PM

Record Type: Record

To: Sally Katzen/OPD/EOP, Cecilia E. Rouse/OPD/EOP
cc: See the distribution list at the bottom of this message
Subject: OMB Comments on H-1B Legislation

Below are our comments on what we understand to be the latest draft Administration position regarding H-1B legislation. It includes a description for the training section that replaces the short paragraph now in the draft. DOL should be finished with revisions to the legislative language later today. Please let me know if you have any questions regarding these comments.

I. Recruitment and Non-displacement on United States Workers Prior to Seeking Nonimmigrant Workers.

In addition to the edits below, we suggest keeping both the Commerce and Labor provisions with modification. The employer would then have four options of which they must do at least two.

Section (E)(I)(a)(iii) drafted by Commerce: Suggest the following change "making substantial efforts to keep the employer's workforce informed of the training opportunities available in the local community, **including such as** the full range of federal tax..." The reason for the change is that it is highly unlikely that the normal employer will know the full range of federal tax incentives, etc.

Section (E)(I)(a)(iii) drafted by DOL: Suggest the following change "operating an employer financed training program at the employer's facility or financing or otherwise providing for a training program elsewhere which provides the means for its employees to enhance their skills ~~to qualify for jobs in the specialty occupation in which the nonimmigrant will be (or is) employed.~~" While we understand the intent, we think this is a hollow provision. It sets too

high of a bar for employers to meet. The consequence is that no employers will do (iii), instead the employer will advertise and pay the US worker \$10 more than normal. We want employers to offer training to their employees, therefore the provision should be a reachable goal; that is, it should be for upgrading skills (for retention) but not necessarily in the specialty occupation.

Section (E)(I)(d): Suggest deleting this provision as it is redundant to Section (G).

II. Wage Comparability.

The drafting of this provision provides an incentive to an employer to use the DOL established "prevailing wage rate" versus the "actual wage rate" in order to avoid paying benefits. Suggest redrafting as follows. We believe DOL agrees with this formulation.

(a) Section 212(n)(1)(A) is amended by inserting a new subparagraph (ii) and changing the current subparagraph (ii) to subparagraph (iii).

(ii) is offering and will offer during the period of authorized employment to aliens admitted or provided status as a nonimmigrant described in section 101(a)(15)(H)(i)(b) benefits and additional compensation that are at least the same level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question.

III. Job Contractors. No comments

IV. Enforcement.

It seems like the following phrase under (I) should appear first before the language on DOL independent authority. "The Secretary shall establish a process for the receipt, investigation, and disposition of complaints or other cases of noncompliance with this section."

Section (a)(I)(a): We agree with DOL that a pattern of violations should be included in this section as a reasonable cause for an investigation.

Section (a)(I)(c): Suggest the following to add specificity about the type of worker. Suggest inserting "with substantially equivalent qualifications and experience" after "250 US workers." As drafted, the language is wide-open and not targeted on the issue. That is, did the employer lay-off workers affected by the visa application? As drafted, consolidating a shipping operation that affected 250 workers would open a company to an investigation even though the action was unrelated to visa applications.

V. Sanctions. No comments.

VI. Application Fee.

Suggest the following fee language (drafted by OMB and DOL).

Section 212(n) of the Immigration and Nationality Act (8 USC 1182(n)) is amended by adding the following new paragraph:

"(3)(A) The Secretary of Labor shall establish, by regulation, a fee to be paid by an employer for each position for which an application is filed for certification of a nonimmigrant temporary worker under section 101(a)(15)(H)(i)(b) and (c).

(B) The fee shall be set at a level that --

(i) will ensure recovery of the full costs of providing adjudication and application services; and,

(ii) finances activities authorized under Section XXXXX (the Regional and Industry Special Skills Training Fund).

[NOTE: In the training language, we authorize the Secretary to use up to \$1 million of the fees for the National Alliance for High Technology Skills. Do you want that covered here as well -- e.g., in (i)?]

(C) During the period ending September 30, 2001, such a fee shall not exceed \$250 for each position.

(D)(i) It shall be unlawful for an employer to require, as a condition of employment by such employer, that the fee prescribed under this paragraph or any part of the fee be paid directly or indirectly by the alien whose services are being sought.

(ii) Any person or entity that is determined, after notice and opportunity for an administrative hearing, to have violated clause (I) shall be subject to a civil penalty of \$5,000 for each violation, to an administrative order requiring the payment of any fee described in this paragraph, and the disqualification for one year from petitioning for temporary nonimmigrant workers under this subsection.

(iii) Any amount determined to have been paid, directly or indirectly, toward the filing fee described in paragraph (3)(A) by the alien whose services were sought, shall be repaid **by the employer** to such alien. (NOTE: Change from draft which paid the alien out of the fund).

(E) Notwithstanding any other provision of law, all fees, as described in this paragraph as are designated by the Secretary of Labor in regulations shall be deposited as offsetting receipts into a separate account entitled "Temporary Worker Fee Account" in the Treasury of the United States. All deposits into the "Temporary Worker Fee Account" shall remain available until expended by the Secretary to reimburse any appropriation for expenses related to activities described in subparagraph (B)."

VII. Training. The training section in this draft did not appear to be up to date. Suggest the following to replace the current short paragraph.

The Secretary of Labor, in consultation with the Secretaries of Commerce and Education, shall make competitive grants to eligible entities, including Regional Alliances, to enhance the capability of industries with significant skill shortages utilize the U.S. labor market to meet their needs.

- Eligible entities, including Regional Alliances, are consortia of two or more of the following: employers; labor organizations; private industry councils established under the Job Training Partnership Act; State or local governments; postsecondary educational institutions; nonprofit organizations representing business or industry; and nonprofit training organizations.
- Eligible activities include identification of national, State, regional, and local skill needs; development of strategies to enhance the focus of training and education on industries with significant skill needs or on rapidly expanding occupations; and the provision of training or retraining to upgrade the skills of incumbent workers for continued employment with an employer.
- The grants would be limited to no more than two annual awards, and financed through employer-paid application fees, available to the Secretary through the Temporary Worker Fee account.
- Grant applications would be required to demonstrate collaboration with private industry councils and labor organizations in the development of a proposal.
- Preference would be given to applications that demonstrate significant collaboration with major stakeholders in the State and local workforce development system and non-federal matching funds. Where the application would finance training for incumbent workers, an equal match from non-federal funds would be required.
- At the federal level, a National Alliance for High Technology Skills would be established to complement the activities of Regional Alliances and develop strategies for training U.S. workers to meet future demands for high technology skills.

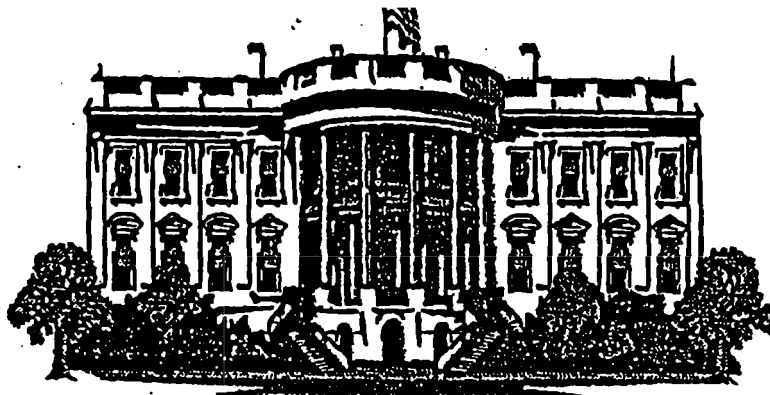
VIII. New Visa Category Proposal.

The fourth bullet refers to "a master's degree (or equivalent degree)." How is "(or equivalent degree)" being defined? Is this language trying to get at the foreign degree comparability issue or is it going toward a lesser degree with some experience? If the former, suggest clarifying the section. If the latter, suggest a bachelor's degree plus 3 years experience (to be consistent with other sections in the INA).

The fifth bullet refers to a \$500 fee for H-1C visas while H-1B visas could only be a maximum of \$250. It was our understanding that the H-1B fee would be used for the same purposes as the H-1C (training, enforcement, and administration of the program). Therefore it is difficult to argue that the H-1C visa should be costed differently. Suggest making the H-1C visa fee parallel to the H-1B visa fee.

Message Copied To:

Barbara Chow/OMB/EOP
Barry White/OMB/EOP
Larry R. Matlack/OMB/EOP
Maureen H. Walsh/OMB/EOP
Sandra Yamin/OMB/EOP



THE WHITE HOUSE

Domestic Policy Council

DATE: 4/28

FACSIMILE FOR: John Fraser

PHONE: () - 219 8305 FAX: () - 219 4753

FACSIMILE FROM: Julie Fernandes

PHONE: () - 456-6558 FAX: () - 456-5581

NUMBER OF PAGES (INCLUDING COVER): 7

- ☐ FOR YOUR REVIEW
- ☐ PER MY E-MAIL OR VOICE-MAIL MESSAGE TO YOU
- ☐ PER YOUR REQUEST

COMMENTS: _____

April 28, 1998

Draft Proposals Regarding Reform to the H-1B Visa Program

The Administration has committed to pursuing both reforms to the H-1B visa program and increased training opportunities for U.S. workers as part of any legislation that would temporarily raise the annual cap on H-1B visas. The following are some draft proposals for reform of the H-1B visa program.

I. Recruitment and Non-displacement of United States Workers Prior to Seeking Nonimmigrant Workers

(a) IN GENERAL -- Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended by inserting at the end the following new subparagraph:

(E)(I) The employer, prior to filing the application, has taken good faith, timely and significant steps to recruit and retain sufficient U.S. workers in the specialty occupation in which the non-immigrant whose services are being sought will be employed. Good faith steps to recruit and retain shall be defined as:

- (a) the employer taking the following two actions in a manner reasonably designed to recruit and retain U.S. workers:
 - (i) widespread advertising of the relevant job openings to both current and prospective employees (e.g., through America's Job Bank, participation in job fairs, the Internet, employer newsletters and electronic communications, general circulation publications, professional journals and magazines); and
 - (ii) offering meaningful monetary incentives to applicants (such as paying above the prevailing wage, paying bonuses, or providing stock options) above those already included in the base compensation package; or offering training subsidies, or a training program, that provides the means for its current employees to enhance their skills to qualify for jobs in the specialty occupation in which the nonimmigrant will be (or is) employed; and
- (b) The employer did not receive applications from any U.S. worker with at least substantially equivalent qualifications and experience to the temporary foreign worker offered employment; or (ii) offered employment to a U.S. worker with at least substantially equivalent qualifications and experience to the temporary foreign worker offered employment, but the offer of employment to the U.S. worker was refused; and
- (c) Offering compensation at least at the amount required by subparagraph

(A).

(E)(II) The recruitment requirements of this subparagraph shall not apply to aliens with extraordinary ability, aliens who are outstanding professors and researchers, and certain multinational executives and managers described in section 203(b)(1).

The recruitment requirements of this subparagraph shall also not apply to a scientist, mathematician, or engineer who has attained at least a master's degree or its equivalent in a scientific or engineering discipline, and who is coming temporarily to the United States to participate in a cooperative joint scientific activity carried out under an Agreement between the Federal Government and the alien's Government.

(F)(I) The employer --

(a) has not and will not -- within the 90-day period immediately preceding and the 90-day period immediately following the filing of the application, and within the 90-day period immediately preceding and the 90-day period immediately following the filing of any visa petition supported by the application -- lay off or otherwise displace any United States worker, including a worker obtained by contract, employee leasing, temporary help agreements, or otherwise displace any United States worker, including a worker obtained by contract, employee leasing, temporary help agreement, or other similar basis, who has substantially equivalent qualifications and experience in the specialty occupation in which the nonimmigrant will be (or is) employed; and

(F)(II) For purposes of this subparagraph, the term "laid off," with respect to an employee, means the employee's loss of employment, other than a discharge for cause or a voluntary departure or voluntary retirement. The term "laid off" does not apply to any case in which employment is relocated to a different geographic area and the affected employee is offered a chance to move to the new location with the same wages and benefits, but elects not to move to the new location.

(G) The employer offered compensation as required by subparagraph (A).

(b) For purposes of this subsection, the term "United States worker" means --

- (I) a citizen or national of the United States
- (II) an alien lawfully admitted to the United States for permanent residence; or
- (III) an alien authorized to be employed by this Act or by the Attorney General.

II. Wage Comparability

Section 212(n)(1)(A)(I) of such Act is amended by inserting “(including the value of benefits and additional compensation)” after “wages.” Section 212(n)(1)(A)(I)(I) is amended by inserting “(including the value of benefits and additional compensation)” after “actual wage level.”

III. Job Contractors

In the case of an employer that is a job contractor (within the meaning of regulations promulgated by the Secretary of Labor to carry out this subsection), the contractor will not place any H-1B employee with another employer unless such other employer has executed an attestation that the employer is complying and will continue to comply with the requirements of this paragraph in the same manner as they apply to the job contractor.

IV. Enforcement

(a) Independent Authority to Investigate

Section 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(n)) is amended --

(I) in paragraph (2)(A), by striking the first sentence and inserting the following:

“The Secretary may conduct investigations pursuant to a complaint or, absent a complaint, where the Secretary has reasonable cause to believe that:

- (a) there is a pattern or practice of: complaints by U.S. workers against the employer; unsuccessful recruitment by the employer; or violations by the employer;
- (b) the employer’s U.S. workforce is comprised of more than 10% nonimmigrant workers or the employer is making application that would result in more than 10% nonimmigrant workers in its U.S. workforce;
- (c) an employer has laid off or otherwise displaced more than 10% of its U.S. workforce or 100 U.S. workers (whichever is fewer) in any one year period (or has announced the intent to make such a lay-off).

The Secretary shall establish a process for the receipt, investigation, and disposition of complaints or other cases of noncompliance with this section.”

(II) in paragraph (2)(C), by inserting “, or that the employer failed to cooperate in the conduct of the Secretary’s investigation or has intimidated, discharged, or otherwise discriminated against any person because that person has asserted a right or has cooperated in an investigation under this paragraph” after “a material fact in an application.”

(III) in paragraph (2), by adding at the end the following new subparagraph:

“(E) The Secretary may issue subpoenas requiring the attendance and testimony of witnesses or the production of any records, books, papers, or documents in connection with any investigation or hearing, conducted under this paragraph. In conducting a hearing, the Secretary may administer oaths, examine witnesses, and receive evidence. For the purpose of any hearing or investigation provided for in this paragraph, the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49 and 50), relating to the attendance of witnesses and the production of books, papers, and documents, shall apply.”

V. Sanctions

Section 212(n)(2)(C) is amended to read:

“If the Secretary finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B); a substantial failure to meet a condition of paragraphs (1)(C) or (1)(D); a willful failure to meet a condition of paragraph (1)(A); a violation(s) of paragraphs (1)(E) or (1)(F) that is willful, or reflects a pattern or practice of violations, or is a violation that affects a significant number of individuals; or a misrepresentation of a material fact in the application (but any misrepresentation of a material fact relating to paragraphs (1)(E) or (1)(F) must be willful, or reflects a pattern or practice of violations, or is a violation that affects a significant number of individuals) —

- (i) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$5,000 per violation) as the Secretary determines to be appropriate,”

VI. Application Fee

Section 212(n) of the Immigration and Nationality Act (8 USC 1182(n)) is amended by adding the following new paragraph:

“(3)(A) The Secretary of Labor shall establish, by regulation, a fee to be paid by an employer for each position for which an application is filed for certification of a nonimmigrant temporary worker under section 101(a)(15)(H)(i)(b) and (c).

(B) The fee shall be set at a level that --

- (i) will ensure recovery of the full costs of providing adjudication and application services; and,

(ii) finances activities authorized under Section XXXXX (the Regional and Industry Special Skills Training Fund).

(C) During the period ending September 30, 2001, such a fee shall not exceed \$250 for each position.

(D) (i) It shall be unlawful for an employer to require, as a condition of employment by such employer, that the fee prescribed under this paragraph or any part of the fee be paid directly or indirectly by the alien whose services are being sought.

(ii) Any person or entity that is determined, after notice and opportunity for an administrative hearing, to have violated clause (I) shall be subject to a civil penalty of \$5,000 for each violation, to an administrative order requiring the payment of any fee described in this paragraph, and the disqualification for one year from petitioning for temporary nonimmigrant workers under this subsection.

(iii) Any amount determined to have been paid, directly or indirectly, toward the filing fee described in paragraph (3)(A) by the alien whose services were sought, shall be repaid by the employer to such alien.

(E) Notwithstanding any other provision of law, all fees, as described in this paragraph as are designated by the Secretary of Labor in regulations shall be deposited as offsetting receipts into a separate account entitled "Temporary Worker Fee Account" in the Treasury of the United States. All deposits into the "Temporary Worker Fee Account" shall remain available until expended by the Secretary to reimburse any appropriation for expenses related to activities described in subparagraph (B)."

VII. Training

Any H-1B legislation should include a training component.

VIII. New Visa Category Proposal

A new program (H-1C) that creates temporary visas for use only by non-immigrants with very high skill levels. In particular:

- The program would be authorized for four years beginning in FY1998.
- There would be a maximum of 25,000 visas for FY1998, FY1999, and FY2000, and a maximum of 15,000 visas for FY2001.

Only employers whose number of H-1B and "H-1C" employees in the prior year constitutes no greater than one-half of their U.S. based workforce are eligible to apply.

- Only individuals with a minimum of a master's degree (or equivalent degree) in math, science, or engineering; or a bachelor's degree in math, science, or engineering and five years of experience in the specialty occupation; or who will earn at least \$75,000 per year (exclusive of benefits) are eligible for an "H-1C" visa.
- Requires a \$500 fee for each position for which an application is filed for training, enforcement, and administration of the program.
- The "H-1C" visas would be issued for a 3-year period, and renewable for an additional 3 years.
- All of the requirements of the "H-1C" visa program would be the same as would exist under the reformed H-1B program.

→ Cece Rouse
Julie Fernandez

These are drafting -
not substantive issues -
disagree? April 27, 1998

F 4/27/98

Charles France

Administration Position Regarding H-1B Legislation

The Administration has committed to pursuing both reforms to the H-1B visa program and increased training opportunities for U.S. workers as part of any legislation that would temporarily raise the annual cap on H-1B visas. The following represents the Administration's position on major reforms and training initiatives.

I. Recruitment and Non-displacement of United States Workers Prior to Seeking Nonimmigrant Workers

(a) IN GENERAL - Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended by inserting at the end the following new subparagraph:

(E)(I) The employer, ^{in good faith} prior to filing the application, has taken (good faith) timely and significant steps to recruit and retain sufficient U.S. workers in the specialty occupation in which the non-immigrant whose services are being sought will be employed. Good faith steps to recruit and retain shall be defined as:

(a) the employer taking the following two actions in a manner reasonably designed to recruit and retain U.S. workers:

- (i) widespread advertising of the relevant job openings to both current and prospective employees (e.g., through America's Job Bank, participation in job fairs, the Internet, employer newsletters and electronic communications, general circulation publications, professional journals and magazines); and
- (ii) offering meaningful monetary incentives to applicants (such as paying above the prevailing wage, paying bonuses, or providing stock options) above those already included in the base compensation package; or offering training subsidies, or a training program, that provides the means for its current employees to enhance their skills to qualify for jobs in the specialty occupation in which the nonimmigrant will be (or is) employed; and

(b) The employer did not receive applications ^{from} ~~from any U.S. worker with at least substantially equivalent qualifications and experience to the temporary foreign worker offered employment~~ or ~~(i)~~ offered employment to a U.S. worker with at least substantially equivalent qualifications and experience to the ~~temporary foreign worker offered employment~~, but the offer of employment to the U.S. worker was refused, and

any

job applicant

nonimmigrant who will be (or is) employed.

- (c) Offering compensation at least at the amount required by subparagraph (A).

(E)(II) The recruitment requirements of this subparagraph shall not apply to aliens with extraordinary ability, aliens who are outstanding professors and researchers, and certain multinational executives and managers described in section 203(b)(1). The recruitment requirements of this subparagraph shall also not apply to a scientist, mathematician, or engineer who has attained at least a master's degree or its equivalent in a scientific or engineering discipline, and who is coming temporarily to the United States to participate in a cooperative joint scientific activity carried out under an Agreement between the Federal Government and the alien's Government.

(F)(I) The employer --

- (a) has not and will not -- within the 90-day period immediately preceding and the 90-day period immediately following the filing of the application, and within the 90-day period immediately preceding and the 90-day period immediately following the filing of any visa petition supported by the application -- lay off or otherwise displace any United States worker, including a worker obtained by contract, employee leasing, temporary help agreements, or ~~otherwise displace any United States worker, including a worker obtained by contract, employee leasing, temporary help agreement,~~ or other similar basis, who has substantially equivalent qualifications and experience in the specialty occupation in which the nonimmigrant will be (or is) employed; and

(F)(II) For purposes of this subparagraph, the term "laid off," with respect to an employee, means the employee's loss of employment, other than a discharge for cause or a voluntary departure or voluntary retirement. The term "laid off" does not apply to any case in which employment is relocated to a different geographic area and the affected employee is offered a chance to move to the new location with the same wages and benefits, but elects not to move to the new location.

*Why needed?
when do?*

(G) The employer offered compensation as required by subparagraph (A).

(b) For purposes of this subsection, the term "United States worker" means --

- (I) a citizen or national of the United States
- (II) an alien lawfully admitted to the United States for permanent residence; or
- (III) an alien authorized to be employed by this Act or by the Attorney General.

II. Wage Comparability

we would still want to see legislative language requiring 100% of
Section 212(n)(1)(A)(I) of such Act is amended by inserting "(including the value of benefits and
additional compensation)" after "wages." Section 212(n)(1)(A)(I)(I) is amended by inserting *prevailing*
"(including the value of benefits and additional compensation)" after "actual wage level." *wage*

III. Job Contractors

In the case of an employer that is a job contractor (within the meaning of regulations promulgated by the Secretary of Labor to carry out this subsection), the contractor will not place any H-1B employee with another employer unless such other employer has executed an attestation that the employer is complying and will continue to comply with the requirements of this paragraph in the same manner as they apply to the job contractor.

IV. Enforcement

(a) Independent Authority to Investigate

Section 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(n)) is amended —

(I) in paragraph (2)(A), by striking the first sentence and inserting the following:

"The Secretary may conduct investigations pursuant to a complaint or, absent a complaint, where the Secretary has reasonable cause to believe that:

- (a) there is a pattern ~~or practice~~ of complaints by U.S. workers against the employer, or of unsuccessful recruitment by the employer, of violations by the employers;
- (b) the employer's U.S. workforce is comprised of more than 10% nonimmigrant workers or the employer is making application that would result in more than 10% nonimmigrant workers in its U.S. workforce;
- (c) an employer has laid off or otherwise displaced more than 10% of its U.S. workforce or 100 U.S. workers (whichever is fewer) in any one year period (or has announced the intent to make such a lay-off).

The Secretary shall establish a process for the receipt, investigation, and disposition of complaints or other cases of noncompliance with this section."

(II) in paragraph (2)(C), by inserting ", or that the employer failed to cooperate in the conduct of the Secretary's investigation or has intimidated, discharged, or otherwise discriminated against any person because that person has asserted a right or has cooperated in an investigation under this paragraph" after "a material fact in an application."

(III) in paragraph (2), by adding at the end the following new subparagraph:

“(E) The Secretary may issue subpoenas requiring the attendance and testimony of witnesses or the production of any records, books, papers, or documents in connection with any investigation or hearing, conducted under this paragraph. In conducting a hearing, the Secretary may administer oaths, examine witnesses, and receive evidence. For the purpose of any hearing or investigation provided for in this paragraph, the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49 and 50), relating to the attendance of witnesses and the production of books, papers, and documents, shall apply.”

V. Sanctions

Section 212(n)(2)(C) is amended to read:

“If the Secretary finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B); a substantial failure to meet a condition of paragraphs (1)(C) or (1)(D); a willful failure to meet a condition of paragraph (1)(A); a violation(s) of paragraphs (1)(E) or (1)(F) that is willful, or reflects a pattern or practice of violations, or is a violation that affects a significant number of individuals; or a misrepresentation of a material fact in the application (but any misrepresentation of a material fact relating to paragraphs (1)(E) or (1)(F) must be willful, or reflects a pattern or practice of violations, or is a violation that affects a significant number of individuals) —

- (i) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$5,000 per violation) as the Secretary determines to be appropriate,”

VI. Application Fee

(3)(A) The Secretary of Labor shall require payment of a fee by the employer for each position for which an application is filed under this subsection. The fee shall be in an amount prescribed by the Secretary of Labor, and shall be paid to the Department of Labor. . . .

- (ii) During the period ending September 30, 2001, such a fee shall not exceed \$250 for each position.

- (v) It shall be unlawful for an employer to require, as a condition of employment by such employer, that the fee prescribed under this paragraph or any part of the fee, be paid directly or indirectly by the alien whose services are being sought.

- (vi) Any person or entity that is determined, after notice and opportunity for an administrative hearing, to have violated clause (v) shall be subject to a civil penalty of \$5,000 for each violation, to an administrative order requiring the payment of any fee described in this paragraph, and the disqualification for 1 year from petitioning for foreign skilled temporary workers under this subsection.
- (vii) Any amount determined to have been paid, directly or indirectly, toward the filing fee described in paragraph (3)(A) by the alien whose services were sought, shall be repaid from the fund to such alien.

VII. Training

The Administration strongly supports the creation of Regional Skills Alliances and expansion of the National Science Foundation (NSF)'s advanced technical education programs. The Administration does not support providing scholarships or loans to individuals, including the expansion of the State Student Incentive Grant (SSIG) program.

VIII. New Visa Category Proposal

A new program (H-1C) that creates temporary visas for use only by non-immigrants with very high skill levels. In particular:

- The program would be authorized for four years beginning in FY1998.
- There would be a maximum of 25,000 visas for FY1998, FY1999, and FY2000, and a maximum of 15,000 visas for FY2001.
- Only employers whose number of H-1B and "H-1C" employees in the prior year constitutes no greater than one-half of their U.S. based workforce are eligible to apply.
- Only individuals with a minimum of a master's degree (or equivalent degree) in math, science, or engineering; or a bachelor's degree in math, science, or engineering and five years of experience in the specialty occupation; or who will earn at least \$75,000 per year (exclusive of benefits) are eligible for an "H-1C" visa.
- Requires a \$500 fee for each position for which an application is filed for training, enforcement, and administration of the program.
- The "H-1C" visas would be issued for a 3-year period, and renewable for an additional 3 years.
- All of the requirements of the "H-1C" visa program would be the same as would exist under the reformed H-1B program.

From: Ingrid M. Schroeder on 04/28/98 06:15:17 PM

Record Type: Record

To: Julie A. Fernandes/OPD/EOP

cc:

Subject: H-1B LRM

----- Forwarded by Ingrid M. Schroeder/OMB/EOP on 04/28/98 06:15 PM -----

James J. Jukes

04/28/98 06:11:44 PM

Record Type: Record

To: Ingrid M. Schroeder/OMB/EOP@EOP

cc:

Subject: H-1B LRM

----- Forwarded by James J. Jukes/OMB/EOP on 04/28/98 06:11 PM -----

04/28/98 06:10:19 PM



Clifford J. Gabriel
04/28/98 06:10:19 PM

Record Type: Record

To: James J. Jukes/OMB/EOP@EOP

cc:

Subject: H-1B LRM

Jim: Here are OSTP's comments on the H-1B LRM. Cliff

April 28 1998

MEMORANDUM FOR JAMES JUKES

ASSISTANT DIRECTOR FOR LEGISLATIVE REFERENCE, OMB

FROM:

ARTHUR BIENENSTOCK
ASSOCIATE DIRECTOR FOR SCIENCE

SUBJECT: DRAFT PROPOSALS ON H-1B TEMPORARY IMMIGRANT
VISA PROGRAM REFORMS

OSTP has reviewed the draft proposals regarding H-1B reforms. Based on the paucity of H-1B data, we continue to question the need for the proposed reforms and feel they will have a negative impact on our nation's S&T programs. In particular, we have serious reservations that the overly broad definition of "laid off" will capture normal turnover of research personnel and teaching faculty at our nation's universities, Federal research laboratories, federally funded research and development centers and non-profit research institutes. This should be addressed by inserting the following sentence at the end of Section I., (F)(II):

"Laid off" also does not apply to loss of employment due to the expiration of a Federal research grant or fellowship.

In addition, the word "joint" should be deleted from Section I., (E)(II), in the phrase, "cooperative joint scientific activity carried out under an Agreement..." as unnecessary following the word cooperative.

From: Ingrid M. Schroeder on 04/28/98 06:08:38 PM

Record Type: Record

To: Julie A. Fernandes/OPD/EOP

cc:

Subject: Comments on draft H-1B language

----- Forwarded by Ingrid M. Schroeder/OMB/EOP on 04/28/98 06:08 PM -----



Daniel J. Chenok
04/28/98 06:05:33 PM

Record Type: Record

To: Ingrid M. Schroeder/OMB/EOP@EOP

cc: Debra J. Bond/OMB/EOP@EOP, John F. Morrall III/OMB/EOP@EOP

Subject: Comments on draft H-1B language

I.a. In (E)(1)(a)(ii), the employer is given the option of demonstrating that it has taken significant steps to recruit and retain U.S. workers by either 1) offering salary above market rate for U.S. workers or 2) providing a training program/subsidies to help U.S. workers qualify for the job. This is in addition to mandatory widespread advertising of job openings that the employer must do.

We recommend deleting the first of the two options above, which has the government provide a choice that would, under the first option, require that a rate higher than market be paid. This places a Federal policy interest as promoting a different wage for skilled work than what the employer would offer workers based on what their skills are worth in the market. Rather than requiring a prevailing wage, this specifically says that the offer should be "above" prevailing wage.

In addition, we concur with Debra Bond's comment about the new H-1C program. Specifically, we support the following comment:

"The fourth bullet refers to "bachelor's degree plus 5 years experience." Given the priority workers as defined under the INA (which we are exempting from the recruitment requirement) only have to have 3 years experience, the 5 year requirement is too high. We suggest a bachelor's degree plus 3 years experience (to be consistent with other sections in the INA). In addition, we suggest deleting the \$75K per year option because it dilutes the effect of the provision as targeting high-tech workers. How was the \$75 developed and what group is it attempting to capture?"

From: Ingrid M. Schroeder on 04/28/98 05:50:34 PM

Record Type: Record

To: Julie A. Fernandes/OPD/EOP

cc: Debra J. Bond/OMB/EOP

Subject: LRM 309: H-1B Program Reform Proposals

----- Forwarded by Ingrid M. Schroeder/OMB/EOP on 04/28/98 05:50 PM -----



Debra J. Bond

04/28/98 05:41:22 PM

Record Type: Record

To: Ingrid M. Schroeder/OMB/EOP@EOP

cc: Larry R. Matlack/OMB/EOP@EOP, Maureen H. Walsh/OMB/EOP@EOP, Daniel J. Chenok/OMB/EOP@EOP

Subject: LRM 309: H-1B Program Reform Proposals

Below are our comments. There may be additional comments on the training section as a result of the 4:00 pm meeting. I will keep you posted. Please let me know if you have any questions about these changes. Thanks--

II. Wage Comparability.

The drafting of this provision provides an incentive to an employer to use the DOL established "prevailing wage rate" versus the "actual wage rate" in order to avoid paying benefits. This section should be redrafted. DOL agrees with this formulation.

Section 212(n)(1)(A) is amended by inserting a new subparagraph (ii) and changing the current subparagraph (ii) to subparagraph (iii).

(ii) is offering and will offer during the period of authorized employment to aliens admitted or provided status as a nonimmigrant described in section 101(a)(15)(H)(i)(b) benefits and additional compensation that are at least the same level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question.

IV. Enforcement.

Section (a)(I)(c): The threshold is set too high in this provision. Suggest striking "(whichever is fewer)" and changing "100 employees" to "250 employees." The effect of this provision as drafted is that a small employer who has 9 employees lays off one worker and because they are bringing in one foreign worker the employer is all the sudden subject to a possible investigation. It is my understanding that this provision is also inconsistent with the WARN

Act which carves out exceptions for small employers and provides a larger threshold.

Furthermore, suggest the following to add specificity about the type of worker. Suggest inserting "with substantially equivalent qualifications and experience" after "250 US workers." As drafted, the language is wide-open and not targeted on the issue. That is, did the employer lay-off workers affected by the visa application? As drafted, consolidating a shipping operation that affected 250 workers would open a company to an investigation even though the action was unrelated to visa applications.

VIII. New Visa Category Proposal.

The fourth bullet refers to "bachelor's degree plus 5 years experience." Given the priority workers as defined under the INA (which we are exempting from the recruitment requirement) only have to have 3 years experience, the 5 year requirement is too high. We suggest a bachelor's degree plus 3 years experience (to be consistent with other sections in the INA). In addition, we suggest deleting the \$75K per year option because it dilutes the effect of the provision as targeting high-tech workers. How was the \$75 developed and what group is it attempting to capture?

The fifth bullet refers to a \$500 fee for H-1C visas while H-1B visas could only be a maximum of \$250. It was our understanding that the H-1B fee would be used for the same purposes as the H-1C (training, enforcement, and administration of the program). Therefore it is difficult to argue that the H-1C visa should be costed differently. Suggest making the H-1C visa fee parallel to the H-1B visa fee.

QUESTION: It was our understanding that DOL drafted H-1C legislative language on Friday. Why is it not in this version?

From: Ingrid M. Schroeder on 04/28/98 05:49:45 PM

Record Type: Record

To: Julie A. Fernandes/OPD/EOP, Debra J. Bond/OMB/EOP

cc:

Subject: H1B Visa Program Reforms

----- Forwarded by Ingrid M. Schroeder/OMB/EOP on 04/28/98 05:49 PM -----



ASCHER_BERNARD@ustr.gov

04/28/98 06:33:00 PM

Record Type: Record

To: Ingrid M. Schroeder@eop

cc:

Subject: H1B Visa Program Reforms

Re: LRM ID: IMS309 (USTR LRN 1998-0123). A preliminary comment on the proposed new fee. Our preference is to limit the fee to the new H1C Visa, but if this is not possible, we would opt for the provision in the legal text-- that the Secretary of Labor be authorized to set the fee not to exceed \$250 per position. The lower the fee, the less likelihood that it will attract complaints from foreign countries and U.S. employers.



042817BI.TX



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

LEGISLATIVE REFERENCE DIVISION
ECONOMICS , SCIENCE , AND GENERAL GOVERNMENT BRANCH

TO:

Bill Marshall
Julie Fernandes
Cecilia Rouse

FROM: INGRID SCHROEDER
phone: (202) 395-3883
FAX: (202) 395-3109

DATE: 4/28/98NUMBER OF PAGES (including this cover sheet): 2

COMMENTS:

Justice comments on HIB

Justice

April 28, 1998

Urgent for Ingrid Schroeder, OMB

From: Greg Jones, DOJ

Re: Administration's H1B visa proposals

The proposal is out for comment here; however, I thought I'd better alert you to one problem right away. One provision on enforcement would authorize the Labor Department to issue subpoenas for the production of records, books and papers and the like. It then goes on to say: "For the purpose of any hearing or investigation provided for in this paragraph, the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 USC §§ 49 and 50), relating to the attendance of witnesses and the production of books, papers and documents shall apply". Neither of these sections appears to vest independent litigation authority in the FTC; however, when 15 USC § 56 was enacted in 1975 it was intended to supplant any other provisions of the Federal Trade Act concerning institution or defense of court actions under the Act and the representation of the Commission in such actions. As a general matter, under 15 U.S.C. § 56, the FTC may represent itself if the Attorney General fails to act within 45 days of receiving a request from the FTC. There are several exceptions, however, including 15 USC § 49 (relating to enforcement of a subpoena) -- in which case the Commission's authority is wholly independent of the Attorney General.

Inasmuch as this provision would have the effect of vesting the Department of Labor with independent litigation authority (and is therefore contrary to well established Administration policy), it must be deleted.

URGENT

TO: INGRID SCHROEDER OMB
395-3885

FROM: MARK MARON DOJ
209-8065 ex 109

DOJ COMMENTS ON DRAFT

Similar comments transmitted in DOJ draft dated 4/24/98.
(attached)

Encl plus 15 pages

TO: Julie Fernandes

DOL COMMENTS MARKED

April 27, 1998

Draft Proposals Regarding Reform to the H-1B Visa Program

The Administration has committed to pursuing both reforms to the H-1B visa program and increased training opportunities for U.S. workers as part of any legislation that would temporarily raise the annual cap on H-1B visas. The following are some draft proposals for reform of the H-1B visa program

I. Recruitment and Non-displacement of United States Workers Prior to Seeking Nonimmigrant Workers

(a) IN GENERAL -- Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended by inserting at the end the following new subparagraph:

(E)(i) The employer, prior to ^{in good faith} filing the application, has taken ^(good faith) timely and significant steps to recruit and retain sufficient U.S. workers in the specialty occupation in which the non-immigrant whose services are being sought will be employed. Good faith steps to recruit and retain shall be defined as:

(I) ^{and carried out} the employer taking the following two actions in a manner reasonably designed to recruit and retain U.S. workers:

(a) ^{in the U.S. for the} widespread advertising ^{in the specialty occupation} of the relevant job openings to both current and prospective employees ^{position(s) in the specialty occupation in which the nonimmigrant will be employed.} through America's Job Bank, participation in job fairs, the Internet, employer newsletters and electronic communications, general circulation publications, professional journals and magazines); and

(b) ^{Required} offering meaningful monetary incentives to applicants (such as paying above the prevailing wage, paying bonuses, or providing stock options) above those already included in the base compensation package; or offering training subsidies, or a training program, that provides the means for its current employees to enhance their skills to qualify for jobs in the specialty occupation in which the nonimmigrant will be (or is) employed; and

(II) The employer did not receive applications from ~~any U.S. worker with at least substantially equivalent qualifications and experience to the temporary foreign worker offered~~

and potential applicants

~~(Employment) or (ii) offered employment to any U.S. worker with at least substantially equivalent qualifications and experience to the (Temporary foreign worker offered employment, but the offer of employment to the U.S. worker was refused; and nonimmigrant who will be (or is) employed~~

"(iii)
~~(iii)~~

Offering compensation at least at the amount required by subparagraph (A).

"(ii)
~~(ii)~~

(iii) The recruitment requirements of this subparagraph shall not apply to aliens with extraordinary ability, aliens who are outstanding professors and researchers, and certain multinational executives and managers described in section 203(b)(1). The recruitment requirements of this subparagraph shall also not apply to a scientist, mathematician, or engineer who has attained at least a master's degree or its equivalent in a scientific or engineering discipline, and who is coming temporarily in the United States to participate in a cooperative joint scientific activity carried out under an Agreement between the Federal Government and the alien's Government.

"(F)(i) The employer

~~has~~ has not and will not -- within the 90-day period immediately preceding and the 90-day period immediately following the filing of the application, and within the 90-day period immediately preceding and the 90-day period immediately following the filing of any visa petition supported by the application -- lay off or otherwise displace any United States worker, including a worker obtained by contract, employee leasing, temporary help agreements, or ~~otherwise displace any United States worker, including a worker obtained by contract, employee leasing, temporary help agreement, or~~ other similar basis, who has substantially equivalent qualifications and experience in the specialty occupation in which the nonimmigrant will be (or is) employed, ~~and~~ (i)

"(ii)
~~(ii)~~

(iii) For purposes of this subparagraph, the term "laid off," with respect to an employee, means the employee's loss of employment, other than a discharge for cause or a voluntary departure or voluntary retirement. The term "laid off" does not apply to any case in which employment is relocated to a different geographic area and the affected employee is offered a chance to move to the new location with the same wages and benefits, but elects not to move to the new location."

~~(iii) The employer offered compensation as required by subparagraph (A).~~

Redundant? of (F)(ii) above

(b) DELETED ~ Section 212(n) of such Act is further amended by adding the following new paragraph:

(1) For purposes of this subsection, the term "United States worker" means --

- (A) a citizen or national of the United States
- (B) an alien lawfully admitted to the United States for permanent residence; or
- (C) ~~an alien authorized to be employed by this Act or by the Attorney General.~~

II. Wage Comparability

Section 212(n)(1)(A)(i) of such Act is amended by inserting ~~"including the value of benefits and additional compensation."~~ after "wages." Section 212(n)(1)(A)(iii) is amended by inserting ~~"(including the value of benefits and additional compensation)"~~ after "actual wage level."

"100 percent" at the beginning of subsection (i), and by adding at the end of the sentence "also will include in the value of an benefits and additional compensation."

This needs 100% of prevailing wage and this must be added as add-on to wage sub-part (see also Bush input.)

III. Job Contractors

Section 212(n) of such Act is amended by adding at the end: ~~"In the case of an employer that is a job contractor (within the meaning of regulations promulgated by the Secretary of Labor to carry out this subsection), the contractor will not place any H-1B employee with another employer unless such other employer has executed an attestation that the employer is complying and will continue to comply with the requirements of this paragraph in the same manner as they apply to the job contractor."~~

no section of this becomes an attestation, doesn't it?

IV. Enforcement

(a) Independent Authority to Investigate

Section 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(n)) is amended --

- (i) in paragraph (2)(A), by striking the first sentence and inserting the following:

shall establish a process for

"The Secretary ~~may conduct~~ investigations pursuant to a complaint or, absent a complaint, where the Secretary has reasonable cause to believe that:

- (i) there is a pattern ~~or practice~~ of complaints by U.S. workers against the employer; unsuccessful recruitment by the employer; or violations by the employer;

- (ii) the employer's U.S. workforce is comprised of more than 10%

nonimmigrant workers or the employer is making application that would result in more than 10% nonimmigrant workers in its U.S. workforce;

(iii)

an employer has laid off or otherwise displaced more than 10% of its U.S. workforce or 100 U.S. workers (whichever is fewer) in any one year period (or has announced the intent to make such a lay-off).

~~The Secretary shall establish a process for the receipt, investigation, and disposition of complaints or other cases of noncompliance with this section.~~

(ii) in paragraph (2)(C), by inserting ", or that the employer failed to cooperate in the conduct of the Secretary's investigation or has intimidated, discharged, or otherwise discriminated against any person because that person has asserted a right or has cooperated in an investigation under this paragraph" ~~after a material fact in an application.~~

*This should be added to new sentence language @ **

max to size of next prp

in paragraph (2), by adding at the end the following new subparagraph:

"(E) The Secretary may issue subpoenas requiring the attendance and testimony of witnesses or the production of any records, books, papers, or documents in connection with any investigation or hearing, conducted under this paragraph. In conducting a hearing, the Secretary may administer oaths, examine witnesses, and receive evidence. For the purpose of any hearing or investigation provided for in this paragraph, the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49 and 50), relating to the attendance of witnesses and the production of books, papers, and documents, shall apply."

V. Sanctions

of sub Act
Section 212(n)(2)(C) is amended to read:

"If the Secretary finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B), a substantial failure to meet a condition of paragraphs (1)(C) or (1)(D); a willful failure to meet a condition of paragraph (1)(A); a violation(s) of paragraphs (1)(E) or (1)(F) that is willful, or reflects a pattern or practice of violations, or is a violation that affects a significant number of individuals; or a misrepresentation of a material fact in the application (but any misrepresentation of a material fact relating to paragraphs (1)(E) or (1)(F) must be willful, or reflects a pattern or practice of

violations, or is a violation that affects a significant number of individuals)

* insert
from
above

- "(i) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$5,000 per violation) as the Secretary determines to be appropriate," and

VI. Application Fee *or H-1B of H-1B visa during a period of at least 1 year for a time to be employed by the employer."*

Section 212(n) of the Immigration and Nationality Act (8 USC 1182(n)) is amended by adding the following new paragraph:

"(3)(A) The Secretary of Labor shall establish, by regulation, a fee to be paid by an employer for each position for which an application is filed for certification of a nonimmigrant temporary worker under section 101(a)(15)(H)(i)(b) ~~and~~ (c).

(B) The fee shall be set at a level that --

(i) will ensure recovery of the full costs of ~~providing adjudication and application services~~ *administering and enforcing the ~~subsection~~* and,

(ii) finances activities authorized under Section XXXXX (the Regional and Industry Special Skills Training Fund).

(C) During the period ending September 30, 2001, such a fee shall not exceed \$250 for each position.

(D) (i) It shall be unlawful for an employer to require, as a condition of employment by such employer, that the fee prescribed under this paragraph or any part of the fee be paid directly or indirectly by the alien whose services are being sought.

(ii) Any person or entity that is determined, after notice and opportunity for an administrative hearing, to have violated clause (i) shall be subject to a civil penalty of \$5,000 for each violation, to an administrative order requiring the payment of any fee described in this paragraph, and the disqualification for one year from petitioning for temporary nonimmigrant workers under this subsection.

(iii) Any amount determined to have been paid, directly or indirectly, toward the filing fee described in paragraph (3)(A) by the alien whose services were sought, shall be repaid by the employer to such alien.

under the paragraph

(E) Notwithstanding any other provision of law, all fees, ~~as described in this paragraph~~ are designated by the Secretary of Labor in regulations shall be deposited as offsetting receipts into a separate account entitled "Temporary Worker Fee Account" in the Treasury of the United States. All deposits into the "Temporary Worker Fee Account" shall remain available until expended by the Secretary to reimburse any appropriation for expenses related to activities described in subparagraph (B)."

VII. Training

At the appropriate place, insert the following new section:

SEC. ____ REGIONAL AND INDUSTRY SPECIAL SKILLS TRAINING GRANTS.

(a) IN GENERAL.-- Amounts available for carrying out this section from the Temporary Worker Fee Account under paragraph (3)(A) of section 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(n)) shall be used in accordance with the provisions of this section. From such amounts, the Secretary of Labor, in consultation with the Secretary of Commerce and the Secretary of Education, shall make competitive grants to eligible entities described in subsection (b), in order to enhance the capabilities of industries with significant skill needs to utilize the labor market in meeting their needs more effectively through--

- (1) improving the job skills of American workers as necessary for employment in specific industries and occupations with significant skill needs;
 - (2) assessing and developing strategies to address significant skills needs at the local, State, regional, and national levels; and
 - (3) developing regional skills alliances to facilitate coordination of activities at the local, State, and regional levels in developing strategies to meet such needs.
- (b) ELIGIBLE ENTITIES.

(1) IN GENERAL.-- For the purposes of this section, an eligible entity is a consortium that consists of, but is not limited to, two or more of the following:

- (A) employers;
- (B) labor organizations;
- (C) State or local governments;
- (D) private industry councils;
- (E) postsecondary educational institutions;
- (F) nonprofit organizations representing businesses or industries; or
- (G) nonprofit training organizations.

(2) ADDITIONAL REQUIREMENT.-- To the maximum extent practicable, each business, organization, or governmental unit that joins in forming an eligible entity under paragraph (1) shall be located in the same geographic region of the United States.

(c) GRANT LIMITATIONS.-- A grant may not be provided to any eligible entity under this section for more than two annual grant periods. Out of any grant made to an eligible entity, the portion to be used for creating, planning, and developing the alliance may not exceed \$750,000 for any such annual grant period.

(d) **APPLICATION.**-- The Secretary may provide a grant to an eligible entity under subsection (a) only pursuant to an application that is consistent with the provisions of this section and contains such information as the Secretary may deem reasonable.

(e) **USE OF AMOUNTS.**-- In making grants under subsection (a), the eligible entity may, to the extent that such activities build upon and supplement on-going activities and will not duplicate or supplant current activities, provide for:

- (1) an identification of local, State, regional, and national skills needs;
- (2) an assessment of the extent to which workers in the United States are being educated and trained in needed skills;
- (3) the development of strategies to enhance the focus of training and education investments on industries with significant skill needs and rapidly expanding occupations;
- (4) the provision of training or retraining for upgrading the skills of workers, including retraining incumbent workers for continued employment with an employer;
- (5) the provision of improved occupational information and projections;
- (6) an assessment of training and job skill needs for specific industries; and
- (7) assistance in developing curriculum and training methods, and identification of and assistance in developing training providers.

(f) **ADDITIONAL CRITERIA FOR GRANTS.**-- In making grants under subsection (a), the Secretary shall provide that--

- (1) a peer review process shall be utilized to recommend awards of grants;
- (2) applications shall ensure that private industry councils and labor organizations in the areas to be served have collaborated in the development of such applications;
- (3) preference be given to applications that demonstrate significant collaboration with major stakeholders in the State and local workforce development systems;
- (4) with respect to any application, any amount of Federal funds to be used for training or retraining activities for incumbent workers as described in subsection (e)(4) shall be matched by an equal amount from non-Federal sources to be used for such purpose; and
- (5) preference be given to applications for grants, based on the extent to which non-Federal sources will provide amounts which match a portion of the Federal funds to be made available for the grant.

(g) **NATIONAL ALLIANCE FOR HIGH-TECHNOLOGY SKILLS.**

(1) **ESTABLISHMENT.**-- In order to complement the program of grants under this section, including the activities of regional skills alliances, a National Alliance for High Technology Skills shall be established within six months after the enactment of this Act, consisting of individuals who are representative of private industry, organized labor, work-force development systems, education, and government at the local, State, and national levels.

(2) RECOMMENDATIONS AND REPORT.-- The National Alliance shall develop and recommend strategies for the training of American workers to meet future demands for high-technology skills. The National Alliance shall prepare and submit an interim report to the President and to the Congress, including its findings and recommendations, not later than February 1, 2001, and a final report not later than September 30, 2003.

(3) MEMBERSHIP.-- The Secretary of Labor, in consultation with the Secretary of Commerce and the Secretary of Education, shall establish procedures relating to the appointment of members, the conduct of meetings and public hearings, and the provision of staff assistance and support resources for the National Alliance.

(4) LIMITATION.-- Out of the amounts available for use under this section, not more than \$1,000,000 annually shall be available for carrying out the responsibilities of the Alliance under this subsection.

(h) DEFINITION.-- For purposes of this section:

(1) The term "Secretary" means the Secretary of Labor.

(2) The term "private industry council" means the entity described under section 102 of the Job Training Partnership Act, or similar entity under any successor Federal statute.

VIII. New Visa Category Proposal

-- See figure 14 attached

A new program (H-1C) that creates temporary visas for use only by non-immigrants with very high skill levels. In particular:

- The program would be authorized for four years beginning in FY1998.
- There would be a maximum of 25,000 visas for FY1998, FY1999, and FY2000, and a maximum of 15,000 visas for FY2001.

Only employers whose number of H-1B and "H-1C" employees in the prior year constitutes no greater than one-half of their U.S. based workforce are eligible to apply.

- Only individuals with a minimum of a master's degree (or equivalent degree) in math, science, or engineering; or a bachelor's degree in math, science, or engineering and five years of experience in the specialty occupation; or who will earn at least \$75,000 per year (exclusive of benefits) are eligible for an "H-1C" visa.

- ~~• Requires a \$500 fee for each position for which an application is filed for training, enforcement, and administration of the program.~~

- The "H-1C" visas would be issued for a 3-year period, and renewable for an additional 3 years.
- All of the requirements of the "H-1C" visa program would be the same as would exist under the reformed H-1B program

For DRAFT 4/24/98

April 24, 1998

Administration Position Regarding H-1B Legislation

The Administration has committed to pursuing both reforms to the H-1B visa program and increased training opportunities for U.S. workers as part of any legislation that would temporarily raise the annual cap on H-1B visas. The following represents the Administration's position on major reforms and training initiatives.

I. Recruitment and Non-displacement of United States Workers Prior to Seeking Nonimmigrant Workers

- (a) Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended by inserting at the end the following new subparagraphs:

"(E)(i) The employer, prior to filing the application, has taken timely and significant steps in good faith to recruit and retain sufficient United States workers in the specialty occupation in which the nonimmigrant whose services are being sought will be (or is) employed. Good faith steps to recruit and retain United States workers shall include:

- (I) Good faith recruitment by the employer in the United States, offering compensation at least at the amount required by subparagraph (A); and
- (II) The employer taking at least two of the following steps in a manner reasonably designed and carried out to recruit and retain United States workers in the specialty occupation:
 - (a) widespread advertising in the U.S. for the position in the specialty occupation in which the nonimmigrant will be (or is) employed to both current employees of the employer and potential applicants – e.g., through America's Job Bank, participation in job fairs, the Internet, employer newsletters and electronic communications, general circulation publications, professional and trade journals and magazines;
 - (b) offering to applicants meaningful monetary incentives significantly above those otherwise required, such as paying above the required wage or paying bonuses and training subsidies not included in the base compensation package; or
 - (c) providing the means for its employees to enhance their skills to qualify for jobs in the specialty occupation in which the nonimmigrant will be (or is) employed by operating an employer-financed training program at the employer's facility or by financing or otherwise providing for a training program elsewhere; and

- (III) The employer does not receive applications from any United States worker or offers employment to any United States worker who has qualifications and experience in the specialty occupation which are at least substantially equivalent to the qualifications and experience of the nonimmigrant who will be (or is) employed.
- (ii) The recruitment requirements of this subparagraph shall not apply to aliens with extraordinary ability, aliens who are outstanding professors and researchers, and certain multinational executives and managers described section 203(b)(1). The recruitment requirements of this subparagraph shall also not apply to a scientist, mathematician, or engineer who has attained at least a master's degree or its equivalent in a scientific or engineering discipline, and who is coming temporarily to the United States to participate in a cooperative joint scientific activity carried out under an Agreement between the Federal Government and the alien's Government.
- (F)(i) The employer has not and will not -- within the 90-day period immediately preceding and the 90-day period immediately following the filing of the application, and within the 90-day period immediately preceding and the 90-day period immediately following the filing of any visa petition supported by the application -- lay off or otherwise displace any United States worker, including a worker obtained by contract, employee leasing, temporary help agreement, or other similar basis, who has substantially equivalent qualifications and experience in the specialty occupation in which the nonimmigrant will be (or is) employed.
- (ii) For purposes of this subparagraph, the term "laid off," with respect to an employee, means the employee's loss of employment, other than a discharge for cause or a voluntary departure or voluntary retirement. The term "laid off" does not apply to any case in which employment is relocated to a different geographic area and the affected employee is offered a chance to move to the new location with the same wages and benefits, but elects not to move to the new location."

(b) Section 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(n)) is amended by adding at the end the following new subparagraph:

- "(4) For purposes of this subsection, the term "United States worker" means --
- (A) a citizen or national of the United States;
 - (B) an alien lawfully admitted to the United States for permanent residence; or
 - (C) an alien authorized to be employed by this Act or by the Attorney General."

II. Wage Comparability

Section 212(n)(1)(A)(i) is amended by inserting "100 percent of" at the beginning of subparagraph (II), and by adding at the end of the subsection "also will include in the offer the value of all benefits and additional compensation, and".

III. Job Contractors

Section 212(n)(1) of such Act is amended by adding the following at the end of the concluding paragraph:

"In the case of an employer that is a job contractor (within the meaning of regulations promulgated by the Secretary of Labor to carry out this subsection), the contractor will not place any H-1B employee with another employer unless such other employer has executed an attestation that the employer is complying and will continue to comply with the requirements of this paragraph in the same manner as they apply to the job contractor."

IV. Enforcement

(a) Independent Authority to Investigate

Section 212(n) of such Act is amended—

(1) in paragraph (2)(A), by striking the first sentence and inserting the following:

"The Secretary shall establish a process for investigation pursuant to a complaint or, absent a complaint, where the Secretary has reasonable cause to believe that:

- (i) there is a pattern of complaints against the employer, or of unsuccessful recruitment by the employer, or of violations by the employer; or
- (ii) the employer's U.S. workforce is comprised of more than 10 percent nonimmigrant workers or the employer is making application that would result in more than 10 percent nonimmigrant workers in its U.S. workforce; or
- (iii) the employer has laid off or otherwise displaced more than 10 percent of its U.S. workforce or 250 individuals (whichever is less) in any one year period, or has announced its intent to make such lay off or displacement."

(II) In paragraph (2), by adding at the end the following new subparagraph:

"(E) The Secretary may issue subpoenas requiring attendance and testimony of witnesses or the production of any records, books, papers, or documents in connection with any investigation or hearing, conducted under this paragraph. In conducting a hearing, the Secretary may administer oaths, examine witnesses, and receive evidence. For the purpose of any hearing or investigation provided for in this paragraph, the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49 and 50), relating to the attendance of witnesses and the production of books, papers, and documents, shall apply."

V. Sanctions

Section 212(n)(2)(C) is amended to read:

"If the Secretary finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B); a substantial failure to meet a condition of paragraphs (1)(C) or (1)(D); a willful failure to meet a condition of paragraph (1)(A); a failure to meet a condition of paragraphs (1)(E) or (1)(F) that is willful, or reflects a pattern or practice of violations, or is a violation that affects a significant number of individuals; or a misrepresentation of a material fact in the application (but any misrepresentation of a material fact relating to paragraphs (1)(E) or (1)(F) must be willful, or reflect a pattern or practice, or affect a significant number of individuals); or that the employer failed to cooperate in the conduct of the Secretary's investigation or intimidated, discharged, or otherwise discriminated against any person because that person asserted a right or cooperated in an investigation under this paragraph---

- (i) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$5,000 per violation) as the Secretary determines to be appropriate, and
- (ii) the Attorney General shall not approve petitions filed with respect to that employer under section 1154 or 1184(c) of this title during a period of at least 1 year for aliens to be employed by the employer."

VI. Application Fee

Section 212(n) of such Act is amended by adding at the end the following new subparagraph:

"(3)(A) The Secretary of Labor shall require payment of a fee by the employer for each position for which an application is filed under this subsection. The fee shall be in

an amount prescribed by the Secretary of Labor and shall be paid to the Department of Labor.

- (B) During the period ending September 30, 2001, such a fee shall not exceed \$250 for each position.
- (C) It shall be unlawful for an employer to require, as a condition of employment by such employer, that the fee prescribed under this paragraph or any part of the fee, be paid directly or indirectly by the alien whose services are being sought.
- (D) Any person or entity that is determined, after notice and opportunity for an administrative hearing, to have violated paragraph (C) shall be subject to a civil penalty of \$5,000 for each violation, to an administrative order requiring the payment of any fee described in this paragraph, and the disqualification for 1 year from petitioning for foreign skilled temporary workers under this subsection.
- (E) Any amount determined to have been paid, directly or indirectly, toward the filing fee described in paragraph (A) by the alien whose services were sought, shall be repaid by the employer to such alien."

VII. Training

The Administration strongly supports the creation of Regional Skills Alliances and expansion of the National Science Foundation (NSF)'s advanced technical education programs. The Administration does not support providing scholarships or loans to individuals, including the expansion of the State Student Incentive Grant (SSIG) program.

VIII. New Visa Category Proposal

- (a) Section 101(a)(15)(H)(i) of such Act is amended by adding at the end the following:

"or (c) for a four year period beginning with fiscal year 1998, who is coming temporarily to the United States to perform services which require, at a minimum, a master's degree (or equivalent) in math, science, or engineering and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1);"

- (b) Section 214(a)(2) is amended by adding at the end the following subparagraph:

"(C) The period of authorized status as a nonimmigrant described in section 101(a)(15)(H)(i)(c) shall be for an initial period not to exceed 3 years and such period may be extended by the Attorney General for an additional period of up to

3 years."

- (c) Section 214(g)(1) is amended by adding at the end the following subparagraph:

"(C) under section 101(a)(15)(I)(i)(c) may not exceed 25,000 in fiscal years 1998, 1999, and 2000; and 15,000 in fiscal year 2001."

- (d) Section 212(n)(1) is further amended by adding "or (c)" after "101(a)(15)(H)(i)(b)" every time it appears.

- ~~(e) Section 212(n)(3)(B), as added by this Act (see Section VI, above), is amended to read:~~

~~"(B) In the case of an alien described in section 101(a)(15)(H)(i)(b), such fee shall not exceed \$250 for each position during the period ending September 30, 2001; in the case of an alien described in section 101(a)(15)(H)(i)(c), such fee shall not exceed \$500 for each position."~~

~~(e)~~

Section 212(n) as amended by this Act is further amended by adding at the end the following new subparagraph:

"(5) The Secretary of Labor may not provide the certification described in section 101(a)(15)(H)(i)(c) if, in the fiscal year prior to the filing of the application, nonimmigrants described in sections 101(a)(15)(H)(i)(b) or (c) constituted more than 50 percent of the intending employer's workforce."



UNITED STATES DEPARTMENT OF LABOR
FACSIMILE TRANSMISSION

OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS

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MESSAGE:

SUBCOMMITTEE ON IMMIGRATION AND CLAIMS**COMMITTEE ON THE JUDICIARY****U.S. HOUSE OF REPRESENTATIVES**

(202) 225-5727
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FAX COVER SHEET**TO:****Name:**Earl Goll**office:****Fax Tel.:****Phone:****Page (w/cover):****FROM:**George Fisher**DATE:****TIME:****SPECIAL INSTRUCTIONS:**

WORKFORCE IMPROVEMENT AND PROTECTION ACT OF 1998

I. H-1B VISA QUOTA

Current - 65,000/maximum of 390,000 H-1B aliens in America at any one time

- fy 1998 - 95,000 (46% increase)
fy 1999 - 105,000 (62% increase)
fy 2000 - 115,000 (77% increase)/maximum of 690,000 H-1B aliens in America at any one time should fy 2000 quota be continued in future years
- No more than 7,500 of the visas in fy 1999 and fy 2000 can go to health care workers (other than physicians). *source - compromise between S. 1723 as reported by the Senate Judiciary Committee on April 2, 1998, and Kennedy/Feinstein substitute to S. 1723*

II. NEW ATTESTATIONS

• "No Lay-off" Attestation

Within the time period set by the General Agreement on Trade in Services, the employer can not lay-off an American worker and replace with an H-1B alien where the American worker has substantially equivalent qualifications and experience in the specialty occupation in which the H-1B alien will be or is employed and works in the same area of employment.

If "job contractor" petitions for H-1B alien, the employer to whom the H-1B will be contracted has to complete equivalent no lay-off attestation. *source - H.R. 2202 as passed by the House of Representatives in the 104th Congress*

• "Recruitment of American Workers" Attestation

Employer must have taken good-faith, timely, and significant steps to recruit and retain sufficient American workers in the specialty occupation in which the H-1B alien will be employed. Such steps include recruitment in the United States using procedures that meet industry-wide standards, offering at least the prevailing wage, and offering employment to any qualified American workers who apply.

Recruitment attestation not required when employer is petitioning for alien with extraordinary ability, aliens who are outstanding professor or researchers, or multinational executives and managers.

III. Department of Labor-Initiated Investigations

Currently, the Department of Labor can only launch an investigation of an employer of H-1B aliens if an aggrieved party files a complaint.

- Department of Labor can initiate investigations without having received complaints in the case of "H-1B dependent" employers (generally, those employers for which H-1B aliens make up at least 15-20% of the workforce) where there appear to be violations of the H-1B program. *source - H.R. 2202 as passed by the House of Representatives in the 104th Congress*
- Department of Labor can initiate random investigations for five years in the case of employers who have been found to have committed certain violations of the H-1B program. *source - S. 1723 as reported by the Senate Judiciary Committee on April 2, 1998*

IV. Penalties

Currently, penalties cannot exceed \$1,000 per violation where an employer fails to meet attested promises or makes a misrepresentation of a material fact on an application. Such employer cannot file new petitions for H-1B aliens for at least 1 year.

- Current penalties will be retained.
- Penalty of up to \$5,000 per violation will be available where an employer willfully fails to meet attested promises or makes willful misrepresentation of a material fact on an application. *source - S. 1723 as reported by the Senate Judiciary Committee on April 2, 1998*
- Penalty of up to \$25,000 per violation will be available where an employer willfully fails to meet attested promises or makes willful misrepresentation of a material fact on an application and violates the no lay-off attestation. In addition, employer cannot file new petitions for H-1B aliens for at least 2 years. *source - S. 1723 as reported by the Senate Judiciary Committee on April 2, 1998*